

The new IDEA: Track the important changes

The following chart is organized by topic, keeping you on top of the final IDEA regulations implementing federal special education law. The chart notes IDEA '97 regulations, '04 proposed language, and '04 final regs language.

Note: The '04 final regs take effect 60 days following publication in the Federal Register. Publication is scheduled for Aug. 14.

(Last updated Aug. 4, 2006)

	IDEA '97 Regulations	IDEA '04 Proposed Regulations	IDEA '04 Final Regulations
Attorney's Fees	Court has discretion to award reasonable attorney's fees to prevailing-party parents .	Court has discretion to award reasonable attorney's fees to prevailing-party parents . Court also may award fees to SEA or LEA against parent's attorney who files or continues to litigate action that is frivolous, unreasonable or without foundation . SEAs and LEAs can recover fees from attorney, or parent, if complaint presented for any improper purpose , such as to harass, cause unnecessary delay or needlessly increase cost of litigation.	Same as proposed regulations.
Definitions -- Assistive technology	"Assistive technology device" is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.	Definition of "assistive technology device" remains the same, except it now specifically excludes "a medical device that is surgically implanted, or the replacement of that device.	Same as proposed regulations. But definition of "related services" clarifies that related services don't include medical device that is surgically implanted, the optimization of that device's functioning, maintenance of the device, or the replacement of the device. Definition also clarifies that nothing limits right of child with surgically implanted device to receive related services determined necessary by the IEP team. Also, doesn't limit responsibility of district to appropriately monitor/maintain devices needed to maintain child's health and safety. Nothing in definition prevents routine checking of an external component of surgically-implanted device to make sure it's functioning properly.

<p>Definitions --</p> <p>Highly qualified</p>	<p>No provision.</p>	<p>-- Applies NCLB requirements to special education teachers. Must be certified or licensed as special ed teacher; must demonstrate subject-matter competency. Optional criteria created for special ed teachers who teach to alternate achievement standards or who teach multiple subjects exclusively to students with disabilities.</p> <p>-- Requirements do not apply to private school teachers.</p>	<p>-- Clarifies that, with respect to any special ed teacher teaching in charter school, term means that teacher meets certification or licensing requirement in state's public charter school law.</p> <p>-- New provision allows states to develop HOUSSE for special ed teachers, provided that adaptations would not establish lower standard for content knowledge requirements for special ed teacher and meets all requirements for a HOUSSE for regular ed teachers.</p> <p>-- Highly qualified requirements do not apply to private school teachers hired or contracted by districts to provide equitable services to parentally placed private school children with disabilities.</p>
<p>Definitions --</p> <p>Other health impairment</p>	<p>List of chronic or acute health problems includes asthma, ADD or ADHD, diabetes, epilepsy, heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia.</p>	<p>List of chronic or acute health problems includes asthma, ADD or ADHD, diabetes, epilepsy, heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia.</p>	<p>Adds "Tourette syndrome" to list of chronic or acute health problems</p>
<p>Definitions --</p> <p>Parent</p>	<p>Term means: (1) natural or adoptive parent; (2) guardian (but not the state if child is ward of the state); (3) person acting in place of parent (such as grandparent or stepparent with whom child lives or a person legally responsible for child's welfare); or (4) duly appointed surrogate parent. State may allow</p>	<p>Term means: (1) natural or adoptive parent; (2) foster parent, unless state law, state regulations or contractual obligations prohibit foster parent from acting as parent; (3) guardian (but not the state if child is ward of the state); (4) individual acting in the place of natural or adoptive parent (including grandparent, stepparent or other relative) with whom the child lives, or an individual who is legally responsible for child's welfare; or (5) duly</p>	<p>-- Substitutes term "biological" for "natural."</p> <p>-- Clarifies that to be considered a "parent," a "guardian" must be person generally authorized to act as child's parent or authorized to make educational decisions for the child.</p>

	<p>foster parent to act as parent if: (1) natural parents' authority to make educational decisions extinguished under state law and (2) foster parent has ongoing, long-term parental relationship with child, is willing to make required educational decisions and has no interest that would conflict with interests of child.</p>	<p>appointed surrogate parent.</p>	
<p>Discipline -- Change of placement</p>	<p>A change of placement occurs if removal is for more than 10 consecutive school days or if child is subject to series of removals that constitute pattern because the cumulate to more than 10 school days in school year and because of other factors (including length of each removal, total amount of time removed, and proximity of removals to one another).</p>	<p>A change of placement occurs if removal is for more than 10 consecutive school days or if child is subjected to series of removals that constitute pattern -- (1) because the series of removals total more than 10 days in school year; (2) because child's behavior is substantially similar to behavior in the incidents that resulted in series of removals, taken cumulatively, is determined to have been manifestation of child's disability; and (3) because of additional factors such as length of each removal, total time child removed and proximity of removals to one another.</p>	<p>-- Removes requirement that child's behavior must have been manifestation of disability before determining that series of removals constitutes change in placement.</p> <p>A change of placement occurs if removal is for more than 10 consecutive school days or if child is subjected to series of removals that constitute pattern -- (1) because the series of removals total more than 10 days in school year; (2) because child's behavior is substantially similar to behavior in previous incidents that resulted in series of removals; and (3) because of additional factors such as length of each removal, total time child removed and proximity of removals to one another.</p> <p>-- District (subject to review through due process and judicial proceedings) makes determination, on case-by-case basis, whether pattern of removals constitutes change in placement</p>
<p>Discipline Expedited due process</p>	<p>States must establish timeline for expedited hearings that result in written</p>	<p>-- Expedited hearing must occur within 20 days of date hearing requested and result in determination within 10</p>	<p>Same as proposed regulations, except adjusted to provide that unless parents and district</p>

hearing and resolution session	decision within 45 days of public agency's request for hearing.	<p>school days after the hearing.</p> <p>-- Unless waived or mediated, resolution session must occur within seven days of date hearing requested. Hearing may proceed unless matter has been resolved within 15 days of receipt of hearing request.</p>	agree in writing to waive resolution meeting or agree to use mediation process, the resolution meeting must occur within seven days of receiving notice of the due process complaint . Hearing may proceed within 15 days of receipt of due process complaint unless matter resolved to satisfaction of both parties.
<p>Discipline --</p> <p>Manifestation determination review</p>	<p>Conducted by IEP team and other qualified personnel. Review all relevant information. Behavior not a manifestation of disability if: (1) IEP/placement appropriate and services provided consistent with same; (2) disability did not impair child's ability to understand impact and consequences of behavior subject to discipline action; and (3) disability did not impair child's ability to control behavior subject to discipline action.</p>	<p>Conducted by district, parent and "relevant members" of IEP team. Review all relevant information "in the student's file." Behavior is a manifestation of child's disability if either of the following applies: (1) The conduct in question was caused by, or had direct and substantial relationship to, the child's disability; or (2) the conduct in question was the direct result of the district's failure to implement the IEP.</p>	<p>Clarifies that if district, parent and members of IEP team determine that child's behavior was the direct result of district's failure to implement IEP, then the district must take immediate steps to remedy deficiencies.</p>
<p>Discipline --</p> <p>Removals</p>	<p>Removals for 10 consecutive days or less don't trigger manifestation determination as long as not a change of placement. Removals that exceed 10 consecutive days and not manifestation of child's disability may be made consistent with policy applicable to students without disabilities except student must receive services to enable child to appropriately progress in general education curriculum</p>	<p>Districts may consider unique circumstances on case-by-case basis when determining whether change of placement is appropriate for student who violates code of conduct. Removals for 10 consecutive days or less don't trigger manifestation determination as long as not a change of placement. Removals that exceed 10 consecutive days and not manifestation of child's disability may be made consistent with policy applicable to students without disabilities except student must receive services to enable participation in general education curriculum</p>	<p>Same as proposed regulations, except:</p> <p>-- After child removed for 10 school days in same school year and current removal is not for more than 10 consecutive days and is not change of placement, then school personnel, in consultation with at least one of the child's teachers determine extent to which services are needed so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals.</p>

	<p>and to appropriately advance toward IEP goals.</p>	<p>although in another setting and to progress toward IEP goals. Also must receive as appropriate, FBA and behavioral interventions/modifications.</p> <p>After child removed for 10 school days in same school year and current removal is not for more than 10 consecutive days and is not change of placement, then school personnel, in consultation with at least one of the child's teachers determine extent to which services are needed, if any, and the location, if any, in which services will be provided.</p> <p>If removal is for more than 10 consecutive school days or is change of placement, IEP team determines appropriate services and location in which services will be provided.</p>	<p>-- If removal is for more than 10 consecutive school days or is change of placement, IEP team determines appropriate services. (Deletes requirement referencing determination of location.)</p> <p>-- Specifies that on date when a decision made to make a removal that constitutes change of placement because of violation of code of student conduct, district must notify parents of the decision and provide them with procedural safeguards notice.</p>
<p>Discipline -- Special circumstances</p>	<p>-- Districts have authority to remove student to IAES for not more than 45 days if student (1) carries weapon to school or to school function; or (2) knowingly possesses or uses illegal drugs or sells or solicits the sale of controlled substance while at school or school function.</p> <p>-- Hearing officer may order change of placement to IAES for not more than 45 days if IHO: (1) determines that district demonstrated by substantial evidence that maintaining current placement is likely to result in injury to child or others; (2)</p>	<p>-- Districts have authority to remove student to IAES for not more than 45 school days if student (1) carries weapon to or possesses weapon at school, on school premises or at school function; (2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises or at school function; or (3) has inflicted serious bodily injury upon another person while at school, on school premises or at school function.</p> <p>-- Hearing officer may order change of placement to an appropriate IAES for not more than 45 school days if IHO determines that maintaining current placement is "substantially likely" to result in injury to the child or to others.</p>	<p>Same as proposed regulations, except clarifies that hearing procedure may be repeated if district believes that returning child to original placement "is substantially likely to result in injury to the child or others."</p>

	<p>considers appropriateness of student's current placement; (3) considers whether district made reasonable efforts to minimize risk of harm in current placement; and (4) determines that IAES proposed by school personnel: allows student to progress in general curriculum, although in another setting; continue to receive services to enable meeting of IEP goals; and includes services and modifications designed to prevent behavior from recurring.</p>	<p>Hearing officer may also return child to placement from which removal was determined that removal was improper or that child's behavior was manifestation of disability.</p> <p>--Hearing appeal procedure may be repeated if district believes child would be "dangerous" if returned to original placement.</p>	
<p>Discipline -- Stay-put</p>	<p>Unless behavior involves drug or weapons offense or the school seeks a 45-day extraordinary removal from a hearing officer, stay-put requires student remain in "pre-discipline" placement pending the decision of hearing officer.</p>	<p>When appeal of disciplinary action requested (either by parent to challenge action or by district to seek removal to interim setting), the child remains in the IAES pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first.</p>	<p>Same as proposed regulations.</p>
<p>Discipline -- Students not yet eligible</p>	<p>Child gets IDEA disciplinary protections if district had knowledge child was with a disability before behavior that precipitated disciplinary action occurred. District presumed to have knowledge if: (1) parent expressed concern to district personnel that child needed services; (2) behavior or performance of child demonstrates need for services; (3) parent requested evaluation; or (4)</p>	<p>Child gets IDEA disciplinary protections if district had knowledge child was with a disability before behavior that precipitated disciplinary action occurred. District presumed to have knowledge if: (1) parent expressed concern in writing to district supervisory or administrative personnel, or teacher of the child, that child needed services; (2) parent requested evaluation; or (3) teacher of the child, or other district personnel, expressed specific concerns about pattern of behavior directly to special ed director or other supervisory personnel pursuant to district</p>	<p>Same as proposed regulations.</p>

	teacher of the child, or other district personnel, expressed specific concerns about behavior or performance to special ed director or other personnel pursuant to district established child find or referral policy. District not deemed to have knowledge if it conducted an evaluation and determined child did not have disability or determined evaluation unnecessary, providing notice to parents of determinations.	established child find or referral policy. District not deemed to have knowledge if parent has not allowed evaluation or refused services; or child has been evaluated and determined not to have disability.	
Due Process -- Complaint procedure	Parent or attorney must provide notice in request for hearing. Notice must include child's name, address, name of school, description of nature of problem, and proposed resolution	More formalized complaint procedures. Party filing complaint must forward copy to SEA. Content of complaint must include child's name, address, name of school, contact information (in the case of homeless children), description of nature of problem, and proposed resolution. Complaint deemed sufficient unless party receiving it notifies IHO and other party within 15 days of receipt. IHO then makes decision as to sufficiency within 5 days . If district had not sent prior written notice, it must file response to parent's complaint within 10 days of receipt . Response must include (1) explanation of why it proposed/refused to take the action raised in the complaint; (2) description of other options that IEP team considered and why options rejected; (3) description of each evaluation procedure, assessment, record or report used as basis for proposed/refused action; and (4) description of other relevant factors.	--Same complaint procedures as proposed regulations, except for clarification that due process complaint procedures also may apply to complaints that district failed to meet child find requirements for parentally placed private school children. Complaint must be filed with LEA in which private school is located. -- State complaint procedures also clarified to require each state to give public agency an opportunity to respond including opportunity for voluntary mediation. If any portion of state complaint is also subject of a due process hearing, state must set aside that portion of complaint until conclusion of hearing.
	Voluntary on part of	Voluntary on part of both	Same as proposed

<p>Due Process --</p> <p>Mediation</p>	<p>both parties.</p>	<p>parties. For parents and schools that choose not to use mediation, district may establish procedures to enable them to meet with disinterested party who would explain to the parents the benefits of, and encourage use of, mediation process.</p>	<p>regulations except that signing confidentiality pledge no longer required.</p>
<p>Due Process --</p> <p>Procedural safeguards notice</p>	<p>Must be given to parents, at a minimum, upon initial referral for evaluation; upon each notification of IEP meeting; upon reevaluation; and upon receipt of request for due process.</p>	<p>Must be given to parents only one time per year, except also upon initial referral or parental request for evaluation; upon receipt of first state or due process complaint in that school year; and upon request by parent. Required content now includes notice of any applicable statute of limitations period.</p>	<p>-- Clarifies that copy of safeguards must be given to parents upon receipt of first due process complaint in school year, as well as upon receipt of first state complaint.</p> <p>-- Notice must also be given upon removal of student for violation of school code of conduct that constitutes a change of placement</p>
<p>Due Process --</p> <p>Resolution sessions</p>	<p>No provision.</p>	<p>Resolution meeting required within 15 days of receiving notice of parents' due process complaint. Meeting need not be held if waived by both parties or if parties agree to mediation. If LEA has not resolved complaint to satisfaction of parents within 30 days of receipt of due process complaint, hearing must take place.</p>	<p>-- Due process hearing "may occur" (in lieu of "must occur") by end of resolution period if parties have not resolved dispute.</p> <p>-- Except where parties have jointly agreed to waive resolution session, failure of parent to participate will delay timelines for resolution process and due process hearing.</p> <p>-- If district unable to obtain participation of parent after reasonable efforts, it may, at conclusion of 30-day resolution period, request hearing officer dismiss parent's due process complaint.</p> <p>--If district fails to hold resolution session within required 15 days or fails to participate in resolution meeting, parent may seek intervention of hearing officer to begin due process hearing timelines.</p> <p>--Exceptions to 30-day</p>

			period: (1) both parties agree in writing to waive;(2) after either mediation or resolution meeting starts, parties agree in writing that no agreement is possible; or (3) if both parties agree in writing to continue mediation at the end of the 30-day period, but later, the parent or district withdraws from the process.
Early Intervention	No provision.	Districts may spend not more than 15 percent IDEA monies to provide coordinated, early intervention services for students in grades K through 12 who have not been identified as needing special education and related services, but who need additional academic and behavioral support to succeed in regular education environment.	Same as proposed regulations.
Eligibility	Child may not be determined to be eligible if (1) the determinant factor for eligibility determination is lack of instruction in reading or math, or limited English proficiency; and (2) child does not otherwise meet eligibility criteria.	Child may not be determined to be eligible if (1) the determinant factor for eligibility determination is lack of appropriate instruction in reading (including essential components of reading instruction), lack of instruction in reading or math, or limited English proficiency; and (2) child does not otherwise meet eligibility criteria.	Same as proposed regulations.
Evaluations/Reevaluations	-- No timeline for completion of initial evaluations . -- Reevaluations conducted if conditions warrant or if parent or teacher requests. Reevaluations must be conducted at least once every three years.	-- Initial evaluation must be complete within 60 days from the date of parental consent . But states can set their own timelines. Time limit doesn't apply if parent repeatedly fails to produce the student for the evaluation. Nor does time limit apply if child transfers to district while initial evaluation is pending. However, new district must be making sufficient progress to ensure prompt completion of evaluation; parent and district must agree to a specific time for completion.	Same as proposed regulations.

		-- Reevaluations conducted if conditions warrant or if parent or teacher requests. Reevaluations must be conducted at least once every three years, unless parents and district agree that evaluation is unnecessary . May not occur more than once a year , unless parent and district	
Hearing Officers -- Decision guidelines	No provision.	Must make a decision on substantive grounds based on a determination of whether child received FAPE. In matters alleging a procedural violation , IHO may find child did not receive FAPE only if procedural inadequacies: (1) impeded child's right to FAPE; (2) significantly impeded parents' opportunity to participate in decision-making process regarding provision of FAPE; or (3) caused deprivation of educational benefit.	Revises language slightly to state that hearing officer's decision of whether child receives FAPE must be based on substantive grounds , except if procedural inadequacies (1) impeded child's right to FAPE; (2) significantly impeded parents' opportunity to participate in decision-making process regarding provision of FAPE; or (3) caused deprivation of educational benefit.
Hearing Officers -- Qualifications	Hearing may not be conducted by person employed by state agency or LEA involved in education or care of child; or by any person having professional interest that would conflict with objectivity in hearing.	Hearing may not be conducted by person employed by state agency or LEA involved in education or care of child; or by any person having professional interest that would conflict with objectivity in hearing. Additionally, IHO must possess: (1) knowledge of, and ability to understand, IDEA, federal/state regulations, and legal interpretations; (2) knowledge and ability to conduct hearings in accordance with appropriate standard legal practice; and (3) knowledge and ability to render and write decisions in accordance with standard appropriate legal practice.	Same as proposed regulations.
Independent educational evaluations	Parents have right to IEE at public expense if they disagree with evaluation obtained by district. District can file for due process to show its	Parents have right to IEE at public expense if they disagree with evaluation obtained by district. District can file for due process to show its evaluation is appropriate. If parent obtains IEE at public expense or	Clarifies that parent is entitled to only one IEE at public expense each time district conducts evaluation with which parent disagrees.

	evaluation is appropriate. If parent obtains IEE at public expense or shares a private evaluation with the district, the district must consider the results, if it meets agency criteria, in any decision regarding provision of FAPE.	shares a private evaluation with the district, the district must consider the results, if it meets agency criteria, in any decision regarding provision of FAPE.	
IEPs -- Content	<p>--Statement of present levels of educational performance.</p> <p>--Statement of measurable annual goals including benchmarks or short-term objectives.</p> <p>--Statement of special education and related services and supplementary aids and services to be provided.</p> <p>--Explanation of extent child will not participate with nondisabled children in regular class.</p> <p>--Statement of modifications in administration of assessments. If IEP team determines child will not participate in particular assessment, statement of why assessment isn't appropriate and how child will be assessed.</p> <p>--Projected beginning date for services and modifications and their anticipated frequency, location and duration.</p>	<p>--Statement of present levels of academic and functional performance.</p> <p>--Statement of measurable annual goals including academic and functional goals. Requirement for benchmarks or short-term objectives eliminated except for students who take alternate assessments aligned to alternate achievement standards.</p> <p>--Special education and related services to be provided to child must be based on peer-reviewed research to the extent practicable.</p> <p>--Explanation of extent child will not participate with nondisabled children in regular class.</p> <p>--Statement of individual appropriate accommodations to measure academic achievement and functional performance of assessments. If IEP team determines child must take alternate assessment, statement of why child can't participate in regular assessment and why particular alternate assessment selected is appropriate.</p> <p>--Projected beginning date for services and modifications and their</p>	IEP content same as proposed regulations.

	<p>--Statement of how child's progress toward goals will be measured and how parents will be informed.</p> <p>--Statement of transition service needs beginning at age 14 and statement of needed transition services beginning at age 16.</p>	<p>anticipated frequency, location and duration.</p> <p>--Description of how child's progress toward meeting goals will be measured and when periodic reports will be provided.</p> <p>--Appropriate measurable post-secondary goals and transition services beginning not later than first IEP to be in effect when child is 16.</p> <p>--Beginning not later than one year before child reaches age of majority, statement that child has been informed of rights that will transfer on reaching age of majority.</p>	
IEPs -- Meetings	<p>-- Meeting must be conducted to develop IEP within 30 days of determination of eligibility.</p> <p>-- Meeting to review IEP held at least annually.</p>	<p>-- Meeting must be conducted to develop IEP within 30 days of determination of eligibility.</p> <p>-- Meeting to review IEP held at least annually.</p> <p>-- Parent and district may agree to modify IEP without IEP team meeting.</p> <p>-- Districts encouraged to consolidate reevaluation and other IEP team meetings.</p> <p>-- Parent and district may agree to use alternative means of meeting participation, such as video conferencing and conference calls.</p>	<p>Same as proposed regulations, except for new requirement that if revisions are made to an IEP without a meeting, district must ensure that IEP team is informed of the changes.</p>
IEPs -- Team composition	<p>-- Members include: (1) parents; (2) at least one regular education teacher of child (if child is, or may be participating in regular education environment); (3) at least one special education teacher of child, or if appropriate special ed provider; (4) public agency</p>	<p>-- Members include: (1) parents; (2) not less than one regular education teacher of child (if child is, or may be participating in regular education environment); (3) not less than one special education teacher of child, or if appropriate not less than one special ed provider; (4) public agency representative who is qualified to provide or supervise provision of</p>	<p>Team attendance rules unchanged from proposed regulations, except for clarification that excusal of IEP team members from attending IEP meeting applies only to regular ed teacher, special ed teacher, district representative, and other individual who can interpret implications of evaluation results.</p>

	<p>representative who is qualified to provide or supervise provision of specially designed instruction, is knowledgeable about general ed curriculum and is knowledgeable about availability of resources; (5) individual who can interpret instructional implications of evaluation results; (6) at discretion of district or parent, other individuals with knowledge or special expertise about the child, including related services personnel if appropriate; (7) the child, if appropriate.</p>	<p>specially designed instruction, is knowledgeable about general ed curriculum and is knowledgeable about availability of resources; (5) individual who can interpret instructional implications of evaluation results; (6) at discretion of district or parent, other individuals with knowledge or special expertise about the child, including related services personnel if appropriate; (7) the child, if appropriate.</p> <p>-- For child previous served under Part C, invitation to initial meeting must, at request of parents, be sent to Part C service coordinator or other representatives of Part C system.</p> <p>-- Team member not required to attend meeting if parent and district agree in writing that attendance not necessary because member's area of curriculum or related services is not being modified or discussed.</p> <p>-- Member may be excused from attending even if meeting involves modification/discussion of member's area of curriculum if parent and district consent to excusal and member submits written input into development of IEP prior to meeting.</p>	
Least restrictive environment	<p>Child's placement must be as close as possible to child's home. Unless IEP requires another arrangement, child must be educated in school he or she would attend if not disabled.</p>	<p>Child's placement must be as close as possible to child's home, unless parent agrees otherwise. Unless IEP requires another arrangement, child must be educated in school he or she would attend if not disabled, unless parent agrees otherwise.</p>	<p>Removes "unless parent agrees otherwise" language added by proposed regulations.</p>
Over-identification	<p>Tests and other materials used to assess child must be selected and administered so as not to be</p>	<p>Tests and other materials used to assess child must be: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided</p>	<p>Same as proposed regulations.</p>

	discriminatory on a racial or cultural basis and must be provided and administered in child's native language or other mode of communication, unless clearly not feasible to do so.	and administered in child's native language or other mode of communication and in form most likely to yield accurate information on what child knows and can do academically, developmentally and functionally, unless clearly not feasible to provide or administer.	
Parental Consent -- Initial evaluation and reevaluation	<p>-- District must obtain consent, which can't be construed as consent for initial provision of services. If parent doesn't provide consent or fails to respond to request, district may, but is not required to, pursue initial evaluation through due process procedures or mediation, unless inconsistent with state law.</p> <p>-- Must obtain consent for reevaluation unless district can demonstrate it took reasonable measures to obtain consent and parent failed to respond.</p>	<p>-- District must obtain consent, which can't be construed as consent for initial provision of services. If parent doesn't provide consent or fails to respond to request, district may, but is not required to, pursue initial evaluation through procedural safeguards or due process procedures, unless inconsistent with state law.</p> <p>-- If child is ward of state and not residing with parents, district must make reasonable effort to obtain informed parental consent.</p> <p>-- Must obtain consent for reevaluation unless district can demonstrate it took reasonable measures to obtain consent and parent failed to respond.</p>	<p>--District proposing to conduct initial evaluation must, after providing notice, obtain informed consent from parent before conducting evaluation. It must make reasonable efforts to obtain such consent. District may, but is not required to, pursue evaluation through procedural safeguards or due process, but does not violate IDEA obligations if it does not do so.</p> <p>-- Clarifies that if parent refuses to consent to reevaluation, district may, but is not required to, pursue the reevaluation through procedural safeguards or due process. District does not violate IDEA obligations if it does not do so.</p> <p>-- If parent of child who is home schooled or placed in private school at parent's expense does not provide consent for initial evaluation or reevaluation, or fails to respond to request for consent, district may not use consent override procedures and is not required to consider child eligible for services.</p> <p>-- District must document attempts to obtain parental consent in order to meet the "reasonable efforts" requirement.</p>
Parental Consent --	Parental consent must be obtained	District must seek informed consent before initial	Same as proposed regulations, except that

Initial provision of services	before initial provision of special education and related services.	provision of special education and related services. If parent refuses or fails to respond, district may not use due process or other procedures to obtain agreement or ruling that services may be provided. However, district will not be considered to be in violation of FAPE requirement for failure to provide services for which it requested consent. Nor does the district have to convene IEP meeting or develop IEP for the child.	districts must make "reasonable efforts" to obtain informed parental consent for the initial provision of services. District must document attempts to obtain parental consent in order to meet the "reasonable efforts" requirement.
Physical education	Services must be available to every child with disability receiving FAPE.	Services must be available to every child with disability receiving FAPE.	Services must be available to every child with disability receiving FAPE, unless district enrolls children without disabilities and doesn't provide physical education to children without disabilities in the same grades.
Private School Students (parentally placed)	District's child find obligations extend only to children residing in its jurisdiction . Must consult with appropriate representatives of private school children.	<p>-- District where private school is located is responsible for conducting child count and child find.</p> <p>-- Requires meaningful consultation with representatives of children with disabilities parentally placed in private schools.</p> <p>-- Private school official has right to complain to SEA that district did not engage in meaningful or timely consultation.</p>	<p>-- Clarifies that each district in which private schools are located must include in its child find parentally placed private school children who reside in a state other than the state in which the private schools that they attend are located.</p> <p>--Removes requirement that private school officials must submit complaints to SEA using state complaint procedures.</p> <p>-- If FAPE is at issue, disagreements between parent and district regarding availability of appropriate program, and question of financial reimbursement, are subject to due process procedures.</p>
Sovereign immunity	No provision.	No provision.	State that accepts Part B funds waives 11th Amendment immunity from suit in federal court for violation of IDEA.
Specific Learning Disabilities	IEP team may determine SLD if: (1) child does not achieve	--State criteria: (1) may prohibit use of "severe discrepancy" model for determining SLD eligibility;	-- Removes language in proposed regs that allowed state to prohibit use of "severe discrepancy" model

	<p>commensurate with age in one or more of oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning, if provided with learning experiences appropriate for age and ability levels; and (2) child has "severe discrepancy" between achievement and intellectual ability in one or more of the areas above.</p> <p>Child not eligible as SLD if severe discrepancy primarily result of visual, hearing or motor impairment; mental retardation; emotional disturbance; or environmental cultural or economic disadvantage.</p>	<p>(2) may not require districts use severe discrepancy model; (3) must permit use of process that determines if child responds to scientific, research-based interventions as part of evaluation procedures; (4) may permit use of other alternative research-based procedures.</p> <p>-- IEP team may determine SLD if: (1) child does not achieve commensurate with age in one or more of oral expression, listening comprehension, written expression, basic reading skill, reading fluency skill, reading comprehension, mathematics calculation, mathematics problem solving, when provided with learning experiences appropriate for age and ability levels; (2) child fails to achieve rate of learning to make sufficient programs in one or more above area when assessed with a response to scientific, research-based intervention process or child exhibits pattern of strengths and weaknesses in performance, achievement or both, relative to intellectual development using appropriate assessments; and (3) findings are not primarily result of visual, hearing or motor impairment; mental retardation; emotional disturbance; cultural factors; or environmental or economic disadvantage.</p>	<p>for determining SLD eligibility.</p> <p>-- State criteria now: (1) must not require use of severe discrepancy model; (2) must permit use of process based on child's response to scientific, researched-based intervention; and (3) may permit use of other alternative research-based procedures for determining whether child has SLD.</p> <p>-- Clarifies that determination of SLD may be found if child does not achieve adequately for child's age or to meet state-approved grade-level standards in one or more of the eight areas (oral expression, basic reading skill, etc.) when provided with learning experiences and instruction appropriate for child's age or state-approved grade level standards.</p> <p>-- Adds "limited English proficiency" to other conditions that could account for child's learning problems.</p> <p>-- In order to ensure that underachievement in a child suspected of SLD isn't due to lack of appropriate instruction in reading or math, group must consider data demonstrating that child was provided appropriate instruction in regular education setting delivered by qualified personnel.</p>
Statute of Limitations	No provision.	-- Alleged violation must have occurred not more than two years before the date that the complaining party knew or should have known about the alleged action forming the basis of the due process complaint , or, if the state has an explicit time	Same as proposed regulations, except to clarify that 90-day time period to file civil action begins from the date of the decision of the hearing officer or state review officer.

		<p>limitation, in the time allowed by state law. Limitations don't apply if parent was prevented from filing for due process due to: (1) specific misrepresentations by the district that it resolved the problem forming the basis of the complaint or (2) the district's withholding of information from the parent that was required to be provided.</p> <p>-- 90-day timeline for appeals from hearing officer decisions, unless state has explicit time limitation for bringing such action.</p>	
Stay-put for child transitioning from Part C to Part B	No provision.	No provision.	If complaint involves application for initial services for a child transitioning from Part C to Part B and the child is no longer eligible for Part C services because child has turned 3, district is not required to provide the Part C services that child had been receiving. If child found eligible under Part B and parent consents to services, the district must provide those services that are not in dispute.
Transition Services	Beginning at age 16 (or younger if determined by IEP team), student's IEP must contain statement of needed transition services, including, when appropriate, a statement of interagency responsibilities or any needed linkages. Also, IEP must contain statement of transition service needs beginning at age 14 and updated annually.	<p>-- Eliminates the requirement for transition services at age 14. Also no "linkages" language.</p> <p>-- Beginning not later than first IEP in effect when student is 16, and updated annually thereafter, program must contain: (1) appropriate measurable post-secondary goals based upon age-appropriate transition assessments; (2) the transition services (including courses of study) needed to assist the student in reaching the goals.</p>	Same as proposed regulations.
Transfer Students	No provision.	-- For child who transfers districts within the same academic year with IEP in	Same as proposed regulations, except adopts term "school year" in lieu of

	<p>effect in the same state, new district must provide FAPE, including services comparable to those of previous IEP, in consultation with parents until it adopts previous IEP or develops new IEP.</p> <p>-- For child who transfers districts within the same academic year with IEP in effect from another state, new district must provide FAPE, including services comparable to those of previous IEP, in consultation with parents until it conducts any necessary evaluation and develops new IEP if appropriate.</p> <p>-- New school must take reasonable steps to obtain child's records, including IEP, from previous school pursuant to FERPA. Previous school must take reasonable steps to promptly respond.</p>	"academic year."
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