



# THE “BLUE BOOK”

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A Parent's Guide to Civil Rights + Education



Disability  
Rights  
Arkansas



## Introduction

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The text which follows is directed primarily to the Individuals with Disabilities Act, (IDEA) 20 U.S.C. § 1401 et seq. and related Federal statutes including the Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g(b)(1) et seq; Section 504 of the Rehabilitation Act (Section 504) 29 U.S.C. § 794; the No Child Left Behind Act (NCLB) 20 U.S.C. § 6301 et seq; the Americans with Disabilities Act (ADA) 42 U.S.C. § 12101 et seq; and Arkansas state law, including the Children with Disabilities Act, Ark. Stat. Ann. §§ 6-41-202 et seq. All of the Federal and State laws discussed in this booklet have specific relation to the education of individuals with disabilities. This booklet represents an effort to describe the processes prescribed by these statutes and their governing regulations.

This “Blue Book” is not intended to offer specific legal advice, but intends to be of general educational value so that the reader may better understand the purpose of the law governing the education of students with disabilities. Although their use is sparing, certain legal citations are used. For example, “U.S.C.” simply means United States Code, i.e., Federal statutory law. Therefore, IDEA begins at volume 20 of the United States Code and is found beginning at section 1401. “C.F.R.” means Code of Federal Regulations, i.e., regulations governing and implementing Federal statutes. These written laws may be obtained by calling Disability Rights Arkansas (DRA). DRA stands ready to supply students, parents, and other interested persons with information and advocacy to advance the cause of equality in educational opportunities for students with disabilities. That information and advocacy are based on law described in this booklet.

## Common Abbreviations

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<b>ADA</b>	Americans with Disabilities Act
<b>AT</b>	Assistive Technology
<b>ArPIE</b>	Arkansas Parent Information Exchange
<b>DRA</b>	Disability Rights Arkansas
<b>C.F.R.</b>	Code of Federal Regulations
<b>EPSDT</b>	Early and Periodic Screening Diagnosis and Treatment
<b>FAPE</b>	Free Appropriate Public Education
<b>FERPA</b>	Family Education Rights and Privacy Act
<b>IAP</b>	Individualized Accommodation Plan
<b>ICAN</b>	Increasing Capabilities Access Network
<b>IDEA</b>	Individuals with Disabilities Education Act
<b>IDEA 04</b>	2004 Amendments to the IDEA
<b>IEE</b>	Independent Educational Evaluation
<b>IEP</b>	Individual Education Program
<b>IFSP</b>	Individual Service Plan
<b>LEA</b>	Local Education Agency; (School District)
<b>LRE</b>	Least Restrictive Environment
<b>NCLB</b>	No Child Left Behind Act
<b>OCR</b>	Office for Civil Rights of the U.S. Department of Education
<b>OSEP</b>	Office of Special Education Programs of the U.S. Department of Education and is the component of OSERS that administers IDEA
<b>OSERS</b>	Office of Special Education and Rehabilitative Services of the U.S. Department of Education
<b>SEA</b>	State Education Agency; State Department of Education
<b>U.S.C.</b>	United States Code
<b>USDOE</b>	United States Department of Education

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# PART I

## Individuals with Disabilities Education Act

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### A. PURPOSE OF THE ACT

#### 1. History

In 1975 Congress enacted the Education for all Handicapped Children Act, the predecessor title of the Individuals with Disabilities Education Act (IDEA), for the following reasons:

- Children with disabilities did not receive appropriate educational services
- Children were excluded entirely from the public school system and from being educated with their peers
- Undiagnosed disabilities prevented the children from having a successful educational experience
- Lack of adequate resources within the public school system forced families to find services outside the public school system

The Act provided for Federal grant money to each state to educate children with disabilities with the condition that states would comply with goals and procedures set forth in the legislation.

Two United States District Court cases provided the impetus of this legislation: *PARC v. Pennsylvania* and *Mills v. District of Columbia*. Both cases held that children with disabilities must be given access to an adequate publicly supported education. The Judge in the *Mills* case, finding discrimination on the basis of equal protection, wrote,

“That no handicapped child eligible for publicly supported education in the District of Columbia public schools shall be excluded from a regular school assignment by a Rule, policy, or practice of the Board of Education of the District of Columbia, or its agents, unless such child is provided (a) adequate alternative educational services suited for the child’s needs, which may include special education or tuition grants, and (b) a constitutionally adequate prior hearing and periodic review of the child’s status, progress, and the adequacy of any educational alternative.”

Over the years the Act has been amended on several occasions (including a change in the title to IDEA), including substantial amendments strengthening the procedural and substantive rights of children with disabilities and their parents. The last amendments were enacted in 2004 and were effective in July 2005. This version of the Blue Book includes updates from the regulations that were released August 3, 2006. The purposes of the legislation remain the same:



- To ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the unique needs and prepare them for further education, employment, and independent living;
- To ensure that the rights of children with disabilities and parents of such children are protected; and
- To assist states, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities.

The Act is designed to assist states in the implementation of statewide comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families, as well as children ages three – 21. The Act’s purpose is to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities, including coordinated research and personnel preparation with technical assistance, dissemination, support and technology development, and media services.

Part B of the Act governs the education of children with disabilities ages three (3) to 21. Part C governs those children ages zero (0) to three (3).

Finally, the states are obligated to assess and ensure the effectiveness of efforts to educate all children with disabilities.

## 2. Child with a Disability 34 C.F.R. § 300.8

Under the Act a “child with a disability” means a child evaluated in accordance with the Act as having any of the following disabilities and who, by reason thereof requires special education and related services:

- ***Mental retardation*** - a significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period
- ***Hearing impairment including deafness*** - an impairment in hearing whether permanent or fluctuating that adversely affects a child’s educational performance or one that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification
- ***Speech or language impairment*** - a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment
- ***Visual impairment, including blindness*** - an impairment in vision that, even with correction, would adversely affect education
- ***Emotional disturbance*** - a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: inability to learn that cannot be explained by intellectual, sensory or health factors; inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; tendency to develop physical symptoms or fears associated with personal or school problems

- **Orthopedic impairment** - includes impairments caused by congenital anomaly, impairments caused by disease and impairment from other causes
- **Autism** - a developmental disability significantly affecting verbal and nonverbal communication and social interaction
- **Traumatic brain injury** - an acquired injury to the brain caused by external physical force resulting in total or partial functional disability or psychosocial impairment or both
- **Other health impairment** - having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactive disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Tourette's Syndrome and sickle cell anemia and adversely affects the child's educational performance
- **Specific learning disability** - a disorder in one or more basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations
- **Deaf/blindness** - concurrent hearing and visual impairments, the combination of which causes such severe communication and other development and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness
- **Multiple disabilities** - concurrent impairments, blindness, deafness, mental retardation, orthopedic impairment, etc., the combination which causes such severe educational need that they cannot be accommodated in special education programs solely for one of the impairments

Children age three through five (3-5) who are experiencing developmental delays as defined by the state in one or more of the following areas - physical development, cognitive development, communications development, social or emotional development, or adaptive development – may also be children with disabilities.

In every case the evaluated disability must adversely affect a child's educational performance in order to be eligible for special education under IDEA. If, after evaluation, the child needs only a related service, but not special education, the child is not a "child with a disability".

### 3. Applicability

States are obligated to provide a free appropriate public education to all children with disabilities, found eligible under IDEA by appropriate evaluation. That obligation extends to all political subdivisions of the state that are involved in the education of children with disabilities, including the state educational agency (Arkansas Department of Education), local education agencies (school districts), educational service agencies (Educational Cooperatives), public charter schools, and other state agencies and schools (such as

managed by the Department of Health and Human Services) and state schools (for the Deaf and Blind). The Act is also applicable to private schools, a matter which will be discussed later. The various state institutions falling under this obligation include juvenile facilities.

#### 4. Special Education

The use of the term “special education”, by both schools and parents, has had some unfortunate consequences. It is true that the legislative purposes, including parental “rights”, set forth in IDEA can be seen as the legislative equivalent of *Brown v. Board of Education* where the United States Supreme Court concluded that segregation by race in public education violated the Fourteenth Amendment’s Equal Protection Clause. The lesson of the decision and the statute is that a particular class of students cannot be segregated from their peers for purposes that are discriminatory. *Brown* itself discarded the unconstitutional practice of “separate but equal”. The same is true of IDEA. “Special” does not mean “separate.”

“Special education” is meant to be specifically designed instruction to meet the unique needs of the child. The purpose is to “ensure that educators and parents have the necessary tools to *improve* educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance; dissemination, and support; and technology development and media services.” (Italics added).

In short, IDEA’s purpose has always been to *supplement, not supplant* regular education as, for example, demanded by the Arkansas Constitution.

Too often, “special education” has implied separation and even isolation from the regular school population (for example, “resource” service is not a placement; it is meant to be a tool to improve services). Like *Brown*, IDEA’s purpose is to discard “separate but equal.”

#### 5. Other statutes

IDEA does not restrict or limit rights, procedures, and remedies available under the United States Constitution, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Family Education Rights and Privacy Act, and the No Child Left Behind Act, or other Federal statutes protecting the rights of children with disabilities. Those statutes may be used, when appropriate, in conjunction with administrative and judicial actions under IDEA. If, however, the act or failure to act by the school district arises under IDEA (even partially), complete administrative relief must be brought under IDEA and exhausted before filing a civil action (appeal) under IDEA and any of the laws mentioned above.

When engaged in the process of securing an appropriate education for a child with a disability, other statutes should not be overlooked, either in conjunction with IDEA or singly. All of the statutes discussed here will be relevant to parents’ and students’ progress

through the system of education for children with disabilities. At least temporarily, there is an exception to the rule of exhaustion. The Eighth Circuit has recently held that a Section 504 action for damages may be brought despite failure to comply with IDEA administrative procedures. In the future, parents may wish to check with an attorney or with DRA to determine whether such a case is viable.

## B. DEFINITIONS 34 C.F.R. §§ 300.5 – 44

Definitions of key terms as used in IDEA are as follows:

- **Assistive Technology Device** – 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. (The term does not include a medical device that is surgically implanted, or the replacement of that device.)
- **Assistive Technology Service** – Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Among the services, the school district must ensure that hearing aids worn in school by children with hearing impairments are functioning properly. The same is true as to external components of surgically-implanted medical devices. However, the district is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted.
- **At Risk** – When used with respect to a child, youth, or student, means a school aged individual who is at-risk of academic failure, has a drug or alcohol problem, is pregnant or is a parent, has come into contact with the juvenile justice system in the past, is at least 1 year behind the expected grade level for the age of the individual, has limited English proficiency, is a gang member, has dropped out of school in the past, or has a high absenteeism rate at school.
- **Charter School** – A public school that is operating under the terms of a charter granted by the State Board of Education or an open enrollment charter school. Open enrollment charter school means a public school that is operating under the terms of a charter granted by the State Board of an eligible entity and may draw its students from across public school district boundaries.
- **Consent** – 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 written consent describes that activity and the parent understands that granting of the consent is voluntary and may be revoked at any time.

- **Core Academic Subjects** – English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.
- **Free Appropriate Public Education (FAPE)** – Special education and related services that: (a) are provided at public expense, under public supervision and direction and without charge; (b) meets the standards of the state and IDEA; (c) includes an appropriate pre-school, elementary school, or secondary school education, and (d) provided in conformity with an individualized education program. FAPE must be available to any child with a disability who needs special education and related services, even though the child has not failed or been retained in a course, and is advancing from grade to grade.
- **Homeless Children** – Individuals who lack a fixed, regular, and adequate nighttime address, children and youths who are sharing the housing of other persons due to loss of housing, economic hardships, or a similar reason; are living in hotels, motels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; are awaiting foster care placement; children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation; and children who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.
- **Parent** – (a) A biological or adoptive parent of the child; (b) a foster parent unless an employee of a state agency with educational responsibilities or over the legitimate objection of the district (normally, there should be no “legitimate” objection); (c) a guardian; (d) an individual acting in the place of a biological or adoptive parent with whom the child lives, or an individual who is legally responsible for the child’s welfare; or (e) a surrogate parent who has been appointed in accordance with the Act.
- **Personally Identifiable Information** – (a) The name of the child, the child’s parent or other family member; (b) the address of the child; (c) a personal identifier such as Social Security or student number; (d) a list of personal characteristics or other information that would make it possible to identify the child.
- **Supplementary Aids and Services** – Aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate. Supplementary aids and services determined appropriate and necessary by the IEP Team must be available to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. Those services must be available unless the school district enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
- **Ward of the State** – May be a foster child, ward of the state, or in the custody of a public child welfare agency as state law provides.

## **C. CHILD FIND 34 C.F.R. § 300.111**

### **1. Applicability**

All children with disabilities residing in the state, including children with disabilities who are homeless or are wards of the state and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, must be identified, located, and evaluated. The State is required to devise a practical method to be implemented to determine which children are currently receiving needed special education and related services. This statewide system shall include, at a minimum, the following components:

- A public awareness program including the preparation and dissemination by the lead agency
- Information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under Part C

### **2. Other Children**

Child Find also must include children who are suspected of being children with disabilities and in need of special education, even though they are advancing from grade to grade, and highly mobile, including migrant children.

Nothing in IDEA requires that children be classified by a specific disability so long as each child who has a disability, as listed in the Act, and who, by reason of that disability needs special education and related services, or is regarded as a child with a disability.

## **D. INFANTS AND TODDLERS 34 C.F.R. §§ 300.631-644**

### **1. Definitions**

- At risk infant or toddler – an individual under three (3) years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided.
- Developmental Delay – a child who is delayed in any one of the following areas:

Physical development, cognitive development;  
Language speech development;  
Psycho-social development; and  
Self-help skills.

“Developmental delay” is used in Arkansas as a non-categorical description, i.e., not a specific Part B disability, and applies to ages birth to five only. The term is difficult of explanation without rigorous examination by thorough testing.

- Infant or toddler with a disability – an individual under three (3) years of age who needs early intervention services because of developmental delays or a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.
- Early intervention services – services provided under public supervision at no cost to the parent and designed to meet the developmental needs of an infant or toddler with a disability as identified by an Individual Family Service Plan in any one or more of the following areas:
  - Physical development;
  - Cognitive development;
  - Communication development;
  - Social or emotional development;
  - Adaptive development; or
  - Sign language and cued language services (including screening and services provided by qualified personnel).

## 2. Requirements

It is the statutory policy of the State of Arkansas that the development of infants and toddlers be enhanced so that the potential for developmental delay will be “minimized”. It is also a part of that policy to enhance the ability of families to meet the special needs of their infants and toddlers with disabilities. (It is also a part of this policy to minimize the need for special education and related services when the child reaches school age. Parents should therefore be acutely aware of the requirements of the transition process so that no child with a disability is left without needed services. Administrative and judicial remedies are available to the parents.) The state must meet requirements as follows:

- A state policy that assures that appropriate early intervention services based on scientifically based research are available to all infants and toddlers with disabilities and their families;
- A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler
- An Individualized Family Service Plan
- A comprehensive child find system
- A public awareness program focusing on early identification
- A central directory that includes information on early intervention services, resources and available experts
- A comprehensive system of personnel development

## 3. Individualized Family Service Plan (IFSP)

An IFSP shall provide, at a minimum, for each infant and toddler with a disability and the infant’s or toddler’s family to receive:

- A multidisciplinary assessment of the unique strengths and needs of the individual and the identification of appropriate services
- A family directed assessment of the resources, priorities, and concerns of the family
- A written individualized family service plan developed by a multidisciplinary team

The IFSP must be evaluated once a year and the family provided with a review of the plan at six month intervals.

The IFSP shall be in writing and contain:

- A statement of the infant or toddler’s present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development
- A statement of the family’s resources, priorities, and concerns
- A statement of measurable results or outcomes expected to be achieved
- A statement of specific early intervention services
- A statement of the natural environment in which early intervention services will be provided
- The projected dates for initiation of services and the anticipated length, duration, and frequency of the services
- The identification of a Service Coordinator from the profession most immediately relevant to the infant’s or toddler’s or family’s needs who will be responsible for the implementation of the plan
- The steps to be taken to support the transition of the toddler with a disability to preschool

The contents of the IFSP shall be fully explained to the parents and written informed consent from the parents shall be obtained.

#### 4. Transition

The state must assure that it maintains a description of the policies and procedures to be used to ensure a smooth transition for toddlers receiving early intervention services to preschool, school, or other appropriate services including:

- A description of how the families of such toddlers and children will be included in the transition plans
- Notification of the local school district
- With the approval of the family, the district must convene a conference with the family not less than 90 days before the child is eligible for the preschool special education services, to discuss any services that the child may receive
- In the case of a child with a disability who may not be eligible for preschool special education services, with the approval of the family, there must be reasonable efforts to convene a conference to discuss appropriate services that the child may receive. The family and providers of appropriate services for such children who are not eligible for preschool services must attend this conference. “Infants and toddlers at risk” is a much broader description than the specific Part B disability categories. Therefore, the child may be eligible for early intervention services and not Part B services.



Parents should note that, in the event they wish to file a complaint concerning initial Part B services at the time of transition, the “stay put” provision will not afford the child continued services under Part C in that the child has aged out. However, those services agreed upon and not subjects of the complaint (conducted under Part B procedures) will be provided. Parents should bear in mind that the goal is the provision of appropriate services for the child before taking formal action against the school.

## **5. Procedural Safeguards**

Administrative complaints may be filed at any time with the lead agency (DDS) and parents have the right to use mediation (also at any appropriate time) the same as applies to children ages three to twenty one. Any party unsatisfied with the attempted resolution of the complaint shall have the right to file a complaint in a state court of competent jurisdiction or in the appropriate United States District Court. During the infant and toddler process, parents have the right to confidentiality of personally identifiable information, including the right to written notice as to the exchange of such information among agencies. Parents also maintain the right to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service without jeopardizing other services allowed by law. Of course, parents must be given the opportunity to examine records related to the screening, assessment, eligibility and development of IFSP. During the proceedings allowed by the procedural safeguards, the infant or toddler shall continue to receive appropriate early intervention services, unless the parents and agency agree otherwise (the “stay put” provision).

## **6. Interagency Coordinating Council**

The duties and responsibilities of the Interagency Coordinating Council shall be to advise and assist the lead agency, Developmental Disabilities Service (DDS) in Arkansas, in the performance of its responsibilities, particularly the identification of the sources, physical and other support for services for early intervention programs. It will advise and assist DDS regarding the transition of toddlers with disabilities to preschool and to prepare and submit an annual report to the Governor on the status of early intervention programs for infants and toddlers with disabilities.

The Coordinating Council shall be composed as follows:

- Not less than one member shall be from the agency responsible for the state Medicaid program
- Not less than one member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths
- Not less than one member shall be a representative from the state child welfare agency responsible for foster care
- Not less than one member shall be a representative from the state agency responsible for children’s mental health

## E. REFERRAL

If it is believed that a child might require special education, the first step is referral. Referral is made for the purpose of compiling information about a child experiencing problems which interfere with learning. Referral may be made by any individual with relevant information about the child. Referral may be made at any time and should be in writing. A suggested referral letter is as follows:

Date

Principal's Name

School Address

City, State, Zip

Dear (Principal's Name):

I would like to refer my child, (child's name), for special education testing. I have some concerns that I would like to discuss with you at a referral conference. Please notify me as to when this conference can be scheduled.

I look forward to your response.

Thank you,

Sincerely,

(Sign your name)

cc: Special Education Supervisor (You may have to call your school office and ask the name and address of this person or contact DRA for the information.)

Following referral, the school district must notify the parent within seven days and a referral conference must be held within 21 days from the date of referral. Along with the information provided in the referral letter, any information which may assist in determining whether or not a child is a child with a disability should be submitted, including but not limited to:

- The results of hearing and vision screening
- Home or classroom behavior checklist
- Existing medical, social, or educational data
- Need for assistive technology devices and services
- Examples of the child's academic work
- Screening inventories

After submission of the referral notice and other information, notice of a referral conference shall be provided to the parents and a referral conference scheduled.

The purpose of the referral conference is to review all existing information related to the student. The referral conference must be attended by a minimum of three persons: the principal or designee, the teacher directly involved with the education of the student, and the parent.

Other persons with relevant information regarding the child may attend the referral conference, including the child. These individuals are considered the student's team. During the referral conference, the school is required to inform the parents of their rights and decide whether an evaluation of the student is required.

If the parent or other team members have acknowledged that the student may need specialized testing, this should be requested at the conference. The school district must notify the parents in writing if it intends to begin or to change the child's identification as a child with a disability, to begin an evaluation, or to begin to change the child's placement. The district must notify the parents of any changes in the child's program. If the district refuses to do any of these things, it must also notify the parents. The notice must fully explain the parent's rights of what the district is doing or refusing to do with an explanation of why and a description of any other options considered and the reasons they were rejected.

If the referral conference decision is to evaluate, it may be necessary to initiate a temporary placement for the student if agreed upon by the parent and the school district. To initiate the entire process, a letter should be sent to the principal requesting referral of the child for special education testing. A request should be made for a conference and supporting medical and other records may be attached. In any case, all records should be brought to the conference. If the child is age 0 – 2 the letter should be addressed to the appropriate Early Intervention Case Service Coordinator listed in Appendix III. If the child is age 3 – 4 the letter should be addressed to the relevant Education Cooperative also listed in Appendix III.

## **F. EVALUATION 34 C.F.R. §§ 300.300 – 311**

The purpose of evaluation is to determine if the child has a disability which adversely affects educational performance and if the child also needs specially designed instruction. Evaluation information is utilized in program planning, including the needs for related services. Evaluations must be completed within 60 calendar days of the referral conference decision notification to the parents.

[1414(a) 301(b) Referral]

The evaluation should include information from the school, the home, and relevant community sources. It is important to measure the child's performance in a variety of settings. Evaluations may be specialized or comprehensive, although it should be borne in mind that the child should be tested for all disabilities that may affect educational performance.

## **a. Comprehensive Evaluation**

The components of a comprehensive evaluation should include all measures necessary for determining the presence of a disability and whether the disability has an adverse effect on educational performance.

Minimum Components:

- Academic Performance
- Intellectual Skills
- Adaptive Behavior and Social Functioning
- Communicative Abilities Assessment or Language Abilities
- Social History
- Additional Components: Current Health Status, Ophthalmological, Audiological, Neurological or Psychiatric Evaluation

An assessment must be comprehensive enough to identify all of the child's special education correlated service needs not commonly linked to the disability the child has been classified for.

## **b. Specialized Evaluation**

Specialized evaluations would include, for example, a speech evaluation, an evaluation for children with learning disabilities, and an evaluation for assistive technology devices or services. Whatever the evaluation, the minimum requirements for examinations and other evaluation materials are that they:

- Are selected and administered so as not to be racially or culturally discriminatory
- Include tests and other materials tailored to assess specific areas of educational need and not merely those that provide a general intelligence quotient
- Are selected and administered so as to best ensure that when a child has impaired sensory, manual or speaking skills, the test still accurately reflects the child's aptitude or achievement level or whatever other level the test is supposed to measure, if the test is being given to determine that level
- Are provided and administered in the child's native language or other mode of communication
- Have been validated for the specific purpose for which they are used
- Are administered by trained personnel in conformance with the instructions provided by their producer

## **1. Initial Evaluation**

The school district must conduct a full and individual initial evaluation before the first provision of special education and related services. Either a parent of a child or a public agency may initiate a request for initial evaluation which must be conducted within 60 days of receiving parental consent for the evaluation.

The district must seek to obtain informed consent from the parent before the initial evaluation and before any provision of special education and related services to the child. The district is required to at least make reasonable efforts to obtain the informed consent from the parent for this initial evaluation. If the parent fails to respond or refuses to consent to services, the district will not violate its obligation to provide a free appropriate public education if it declines to pursue the evaluation. However, the district is required to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation. If a parent of a child who is home schooled or placed in a private school by the parent, at the parent's expense, does not provide consent for initial evaluation or a re-evaluation or the parent fails to respond to a request to provide consent, the district is prohibited from using consent override by due process procedures and is not required to consider the child eligible for services under the requirements relating to parentally- placed private school children with disabilities. Reasonable efforts must, of course, be expended for obtaining informed consent and the district must document its attempt to obtain that consent. Consent for evaluation is not to be construed as consent for placement for receipt of special education.

If the evaluation is to go forward, the school district shall:

- Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parents
- Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or to determine an appropriate educational program for the child
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors

The child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, and motor abilities. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related service's needs, and assistive technology, whether or not commonly linked to the disability category in which the child has been classified.

## **2. Independent Educational Evaluation (IEE) 34 C.F.R. § 300.502**

An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child. The parents have a right to obtain an IEE and the school district must provide to the parents, upon request, information about where such an evaluation may be obtained and the district's criteria applicable to independent evaluations.

Regulations direct that school districts ensure that the information provided by the parents from an IEE is properly considered by the district. Results of that evaluation must be considered by the district in any decision with respect to the revision of FAPE. The IEP team is required to consider that evaluation. The parents are usually responsible for the cost of the IEE, but districts may provide the independent evaluation at public expense if the district does not have the personnel or resources to conduct an evaluation that an IEP team

has identified as needed. In the event that parents and the school district disagree about the need for an IEE, the evaluation may be done at public expense if the parents present an evaluation that the district previously refused to conduct, and in that case, the district may be required to reimburse the parents for the cost. If the parents disagree with the district, and request an IEE at public expense, the district must obtain the independent evaluation and pay for it unless the school district requests a due process hearing and the Hearing Officer rules that the IEE is not needed. A parent is entitled to only one independent educational evaluation at public expense each time the district conducts an evaluation with which the parent disagrees.

### **3. Specific Learning Disability (SLD) 34 C.F.R. §§ 300.307-311**

Wholly apart from normal evaluation procedures, the state must adopt criteria for determining whether a child has a specific learning disability. The district must promptly request parental consent to evaluate a child suspected of having an SLD who has not made adequate progress after an appropriate period of time when provided appropriate instructions. The criteria:

- To ensure that underachievement in a child suspected of having SLD is not due to lack of appropriate instruction in reading or math, and the eligibility group is required to consider data that demonstrates that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel
- Must permit the use of a process that determines if the child responds to scientific, research-based intervention, as a part of the evaluation procedure; and
- May permit the use of other alternative research-based procedures for determining the child's status

To determine whether a child suspected of SLD is a child with a disability, a group consisting of qualified professionals (including the child's regular education teacher) and the parents must:

- Conduct an individual diagnostic assessment in the areas of speech and language, academic achievement, intellectual development, and social/emotional development
- Interpret assessment and intervention data
- Develop appropriate educational and transitional recommendations; and
- Deliver and monitor specifically designed instruction and services to meet the needs of the child

The child will be determined SLD if the child is not progressing commensurate with the child's age in one or more of the following areas:

Oral expression  
Listening comprehension  
Written expression  
Basic reading skills  
Reading fluency skills  
Reading comprehension  
Mathematics comprehension  
Mathematics calculation  
Mathematics problem solving

When Congress reauthorized IDEA 2004, they changed the law about identifying children with specific learning disabilities. Schools will “not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability. “ What is Response to Intervention (RTI)? How will these new practices affect struggling children who have not yet been identified with specific learning disabilities? How will this affect the millions of children who have been identified with specific learning disabilities and who are receiving special education services? The devil is in the details. The success of Response to Intervention will depend on whether it is appropriately implemented by highly-trained professionals - and this is likely to be a problem.

A State must adopt, consistent with 34 CFR 300.309, criteria for determining whether a child has a specific learning disability as defined in 34 CFR 300.8(c)(10). In addition, the criteria adopted by the State:

- Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in 34 CFR 300.8(c)(10)
- Must permit the use of a process based on the child’s response to scientific, research-based intervention
- May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in 34 CFR 300.8(c)(10)

A public agency must use the State criteria adopted pursuant to 34 CFR 300.307(a) in determining whether a child has a specific learning disability.

[34 CFR 300.307] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

**a. Require additional group members.**

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in 34 CFR 300.8, must be made by the child’s parents and a team of qualified professionals, which must include:

- The child’s regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or for a child of less than school age, an individual qualified by the State educational agency (SEA) to teach a child of his or her age

- At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. [34 CFR 300.308] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

**b. Add criteria for determining the existence of a specific learning disability.**

The group described in 34 CFR 300.306 may determine that a child has a specific learning disability, as defined in 34 CFR 300.8(c) (10),

- If the child does not achieve adequately for the child’s age or to meet State approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade–level standards:
  - Oral expression
  - Listening comprehension
  - Written expression
  - Basic reading skills
  - Reading fluency skills
  - Reading comprehension
  - Mathematics calculation
  - Mathematics problem solving
- The child does not make sufficient progress to meet age or State-approved grade level standards in one or more of the areas identified in 34 CFR 300.309(a)(1) when using a process based on the child’s response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR 300.304 and 300.305; and the group determines that its findings under 34 CFR 300.309(a)(1) and (2) are not primarily the result of:
  - A visual, hearing, or motor disability
  - Mental retardation
  - Emotional disturbance
  - Cultural factors
  - Environmental or economic disadvantage
  - Limited English proficiency.

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 34 CFR 300.304 through 300.306:



- Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel
- Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 34 CFR 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 34 CFR 300.306(a)(1):

- If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in 34 CFR 300.309(b)(1) and (b)(2)
- Whenever a child is referred for an evaluation.

[34 CFR 300.309] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

**c. Describe the required observation.**

The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

The group described in 34 CFR 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to:

- Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation
- Have at least one member of the group described in 34 CFR 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 34 CFR 300.300(a), is obtained.

In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

[34 CFR 300.310] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

#### d. Specify documentation required for the eligibility determination.

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 34 CFR 300.306(a)(2), must contain a statement of:

- Whether the child has a specific learning disability
- The basis for making the determination, including an assurance that the determination has been made in accordance with 34 CFR 300.306(c)(1)
- The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning
- The educationally relevant medical findings
- Whether the child does not achieve adequately for the child's age or to meet State approved grade-level standards consistent with 34 CFR 300.309(a)(1); and the child does not make sufficient progress to meet age or State-approved grade-level standards consistent with 34 CFR 300.309(a)(2)(i); or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with 34 CFR 300.309(a)(2)(i); or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with 34 CFR 300.309(a)(2)(ii)
- The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level
- If the child has participated in a process that assesses the child's response to scientific, research-based intervention;
- The instructional strategies used and the student-centered data collected;
- The documentation that the child's parents were notified about: (1) the State's policies regarding the amount and nature of student performance data that would be collected
- General education services that would be provided; (2) strategies for increasing the child's rate of learning; and (3) the parents' right to request an evaluation

Each group member must certify in writing whether the report reflects the member's conclusion.

If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

[34 CFR 300.311] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

#### 4. Re-evaluations 34 C.F.R. § 300.303

If the district determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a re-evaluation, it must then take place. The re-evaluation may not occur more than once a year, unless the parent and the school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a re-evaluation is unnecessary. If a parent refuses to consent to a re-evaluation, the district may, but is not required to, pursue the re-evaluation by means of hearing or mediation. The district is, of course, required to make reasonable efforts to obtain parental consent.

## G. INDIVIDUALIZED EDUCATION PROGRAM (IEP) 34 C.F.R. §§ 300.320 – 328

### 1. The Document

An IEP is a written statement for each child with a disability that is developed, reviewed and revised as a result of a meeting, and must include:

- A statement of the child's present level of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum or, for pre-school children, how the disability affects the child's participation in appropriate activities
- A statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the disability
- A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward the annual goals will be provided
- A statement of the special education and related services and supplementary aids and services to be provided to the child, and a statement of program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals
- An explanation of why it is determined that the child will not participate with non-disabled children in the regular education environment
- A statement of individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child
- The projected date for the beginning of the services and modifications (supplementary aids and services) and the anticipated frequency, location, and duration of those services and modifications

When a child turns 16, or younger if determined appropriate by the IEP team, the first IEP to be in effect must include appropriate measurable post-secondary goals and the transition services needed to assist the child in reaching those goals. The IEP must be updated annually. At age 18 the rights under the IEP process transfer to the student. Beginning not later than one year before a child reaches age 18, the IEP must include a statement that the child has been informed of his or her rights under the Act that will transfer to the child at that age.

IDEA 2004 contains several changes to the IEP:

- Levels of education performance. IEPs must now include present levels of academic achievement and functional performance and a statement of measurable annual goals, including both academic and functional goals. There is to be a description of benchmarks or short term objectives only for children who take alternate assessments consistent with alternate achievement standards.
- Assessments. The IEP must now include a statement of any individual appropriate accommodation that is necessary to measure academic achievement and functional performance on statewide and district wide assessments.

- Annual goals. IEPs are required to include a statement of measurable annual goals, including academic and functional goals.
- Measuring progress. IEPs are required to include a description of how the child's progress toward meeting the annual goals will be measured and a description of when periodic progress reports will be provided to the parents which may be quarterly or otherwise concurrent with issuance of report cards. This no longer includes a statement of short term goals and benchmarks unless the child has gone through an alternative assessment (See No Child Left Behind).
- Statement of services. A statement of special education and related services and supplementary aids and services for the child or on behalf of the child that is based on peer-reviewed research to the extent practicable.
- Transition. Not later than the first IEP to be in effect at age 16, the document must include appropriate measurable post-secondary goals based upon age appropriate transition, assessments related to training, education, employment and independent living skills. It must also contain the services needed to assist the child in reaching those goals equating courses of studies. (The previously referenced age of 14 has been eliminated.)

In general, parents should recognize that a child's IEP must include a statement of the child's present level of academic achievement and functional performance based on objective data from assessments. The IEP must also include a description of how the child's progress toward meeting the annual goals will be measured and when there will be periodic reports on the progress the child. The IEP must include a statement of special education and related services and a statement of the program modifications or supports to be provided by school personnel. There must be individual appropriate accommodations included in the IEP that are necessary to measure the academic achievement and functional performance of the child. In developing the IEP, the IEP team shall consider the child's strengths, enhancement of the child's education, the results of the initial evaluation or most recent evaluation, and the child's academic, developmental, and functional needs.

## 2. The IEP Conference

The IEP Team is composed of the following persons:

- Parents
- Not less than one regular education teacher (if the child is, or maybe, participating in the regular education environment)
- Not less than one special education teacher, or when appropriate, not less than one special education provider
- A representative of the school district who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, who is knowledgeable about the general education curriculum and the availability of resources; an individual who can interpret the instructional implication of evaluation results
- Other individuals, at the discretion of the parent or the district, who have knowledge or special expertise regarding the child, including related services personnel as appropriate
- When appropriate, the child

The IEP is the MOST important document in determining the services your child needs and has a right to receive under IDEA. Without an IEP special education and related services are not to be provided. It is imperative that you gain as much information as you can regarding the IEP process. Parents can often feel intimidated going into an IEP meeting, so it is important to remember KNOWLEDGE is POWER and allows you to become an effective advocate for your child.

**a. Identify the members of the IEP Team.**

The public agency must ensure that the IEP Team for each child with a disability includes:

- The parents of the child
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)
- Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child
- A representative of the public agency (who has certain specific knowledge and qualifications)
- An individual who can interpret the instructional implications of evaluation results and who may also be one of the other listed members
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate
- Whenever appropriate, the child with a disability

In accordance with 34 CFR 300.321(a)(7), the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under 34 CFR 300.320(b).

[34 CFR 300.321(a) and (b)(1)] [20 U.S.C. 1414(d)(1)(B)]

**b. Identify instances when an IEP Team member may not need to attend**

A member of the IEP Team described in 34 CFR 300.321(a)(2) through (a)(5) is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

A member of the IEP Team described in 34 CFR 300.321(a)(2) through (a)(5) may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

- The parent, in writing, and the public agency consent to the excusal; and
- The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting. [34 CFR 300.321(e)] [20 U.S.C. 1414(d)(1)(C)]

**c. Provide for inviting representatives from the Part C system.**

In the case of a child who was previously served under Part C of the IDEA, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

[34 CFR 300.321(f)] [20 U.S.C. 1414(d)(1)(D)]

**d. Require that the notice inform parents of other IEP Team participants.**

The notice required under 34 CFR 300.322(a)(1) (regarding an IEP meeting), among other things, must inform the parents of the provisions in 34 CFR 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and 34 CFR 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the IDEA).

[34 CFR 300.322(b)(1)]

**e. Provision for amending the IEP without another meeting and with parental consent.**

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

If changes are made to the child's IEP in accordance with 34 CFR 300.324(a)(4)(i), the public agency must ensure that the child's IEP Team is informed of those changes.

[34 CFR 300.324(a)(4)] [20 U.S.C. 1414(d)(3)(D)]

Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in 34 CFR 300.324(a)(4), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

[34 CFR 300.324(a)(6)] [20 U.S.C. 1414(d)(3)(F)]

**f. Encourage consolidation of IEP meetings.**

To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

[34 CFR 300.324(a)(5)] [20 U.S.C. 1414(d)(3)(E)]

**g. Provide for the review and, as appropriate, revision of the IEP.**

Each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP, as appropriate, to address:

- Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
- The results of any reevaluation;
- Information about the child provided to, or by, the parents, as described under 34 CFR 300.305(a)(2) (related to evaluations and reevaluations);
- The child's anticipated needs;
- Other matters.

In conducting a review of the child's IEP, the IEP Team must consider the special factors described in 34 CFR 300.324(a)(2) (development of the IEP). A regular education teacher of the child, as a member of the IEP Team, must, consistent with 34 CFR 300.324(a)(3) (participation of regular teacher in development of the IEP), participate in the review and revision of the IEP of the child.

[34 CFR 300.324(b)] [20 U.S.C. 1414(d)(4)]

**h. Authorize alternative means of meeting participation.**

When conducting IEP Team meetings and placement meetings pursuant to subparts D and E of Part 300, and carrying out administrative matters under section 615 of the IDEA (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

[34 CFR 300.328] [20 U.S.C. 1414(f)]

The authorization of any new law typically brings about a spate of interpretations and more questions. Certainly, IDEA 2004 will raise its fair share of questions. Self-styled experts may spread wrong interpretations, misinformation and deliberate disinformation. Do not rely on the opinions of others or advice you may find in articles or at training programs.

When you hear statements that don't make sense, you need to verify what the law says. There is nothing wrong with asking school personnel if they can show you where that section of the law is. However, you can also look that section up by going to <http://idea.ed.gov/> the new website developed by the US department of education to provide parent friendly information regarding IDEA 2004.

**3. Arkansas Change in Time for Implementing IEPs**

Implementation of IEPs. Each public agency shall ensure that - 8.03.2.1 An IEP –

- Is in effect before special education and related services are provided to an eligible child under this part
- As soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. Exceptions to this would be when the meetings occur during the summer or other vacation period, or when there are circumstances which require a short delay, such as working out transportation arrangements. However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible, but not later than thirty (30) calendar days following the IEP meeting.

At the beginning of each school year, each district must have in effect, for each child with a disability within its jurisdiction, an IEP. In the case of children ages 3 – 5, there must be an IEP or IFSP.

## H. RELATED SERVICES

If the student is found in need of special education services, appropriate related services must be provided to meet the student's need as indicated in the IEP. "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.

The need for related services is determined by an appropriate evaluation of the student's needs. Therefore, if it is felt that the student is in need of specific related services, a request for an evaluation in that specific area should be made. The IEP should state each needed related service, the date of initiation of the service, and the anticipated duration of the service. It should also state how many times per week or how many minutes or hours the service will be rendered and by whom. The IEP should also provide whether the service will be conducted on a one-to-one basis, in a group, or by consultation with a classroom teacher.

Related services include:

- Early identification and assessment of disabilities in children
- Speech/language pathology and audiology services (related services do not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or replacement of the device)
- Assistive technology services
- Interpreting services
- Psychological services
- Physical and occupational therapy
- Recreation, including therapeutic recreation;
- Counseling services, including rehabilitation counseling, orientation and mobility services and medical services for diagnostic or evaluation purposes
- School health services and school nurse services designed to enable a child with a disability to receive a free appropriate public education
- Social work services in schools
- Parent counseling and training



Related services may include medical services for diagnostic and evaluation purposes only. Other medical services may not be the responsibility of the school district. The regulations distinguish between “school health services” which are provided by a qualified school nurse or other qualified person, and “medical services” which are provided by a licensed physician.

“Rehabilitation counseling services”, means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the work place and community. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act. “Interpreting services” includes transcription services, such as communication access real-time translations for children who are deaf or hard of hearing and special interpreting services for children who are deaf-blind.

Related services do not include a medical device that is surgically-implanted, the optimization of that devices’ functioning (e.g., mapping), maintenance of that device, or the replacement of that device. However, nothing in the related services section limits the right of a child with a surgically-implanted device (e.g., a cochlear implant) to receive related services as determined by the IEP Team to be necessary for the child to receive FAPE. This section also does not limit the responsibility of the school district to appropriately monitor and maintain medical devices that are needed for the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school. There is also nothing to prevent the routine checking of an external component of a surgically-implanted device to make certain that it is functioning properly.

## **I. ASSISTIVE TECHNOLOGY**

While assistive technology devices and services are specifically noted in IDEA, and generally thought of as a related service, assistive technology requirements run throughout Federal law prohibiting discrimination against individuals with disabilities. For example, Section 501 of the Rehabilitation Act prohibits discrimination on the basis of disability in Federal employment.

Section 504 prohibits discrimination based on disability in federally funded and federally conducted programs or activities. Section 505 establishes enforcement procedures for the Rehabilitation Act. The Rehabilitation Act requires Federal agencies to make their electronic and information technology accessible to people with disabilities. Section 508 of that Act was enacted to eliminate barriers in information technology, to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals. The Act requires that Federal agencies must give employees and members of the public who are disabled access to information that is comparable to the access available to others.

The ADA requires that reasonable accommodations be provided in meeting the needs of individuals with disabilities which include assistive technology services. For example, manufacturers of telecommunications equipment and providers of telecommunications services must ensure that such equipment and services are accessible to people with disabilities. The Assistive Technology Act itself establishes a grant program, administered by the Department of Education, to provide Federal funds to support state programs that address the assistive

technology needs of persons with disabilities. That program is administered by Increasing Capabilities Access Network (ICAN).

Because assistive technology is an important ingredient in most programs involving disability, Disability Rights Center of Arkansas has a priority: “disability rights advocacy for individuals to acquire or maintain devices or services that empower them to be successful in employment, community life and independent living.” The priority is based on evidence that children and adults with disabilities continue to encounter barriers to access to services and to independent living due to denial of or unawareness of assistive technology devices or services. Technology advances are unknown to many families and individuals with disability, and many professionals are not qualified or trained to provide adequate services. Barriers exist to the provision of timely, appropriate assistive technology assessments in schools, accommodations in higher education, in the workplace and for inclusive community living. For more information as to existing technology programs, contact should be made with ICAN and/or DRA. (ICAN is a Federally funded program of Arkansas Rehabilitation Services designed to make technology available and accessible.)

Therefore, reference to assistive technology devices and services are integral to discussion of all laws prohibiting discrimination on the basis of disability. The statutory description of “assistive technology devices and services” is noted above. However, parents should bear in mind that a “device” or “service” can be any item or services, however purchased or provided, will qualify so long as they will assist in providing the child with FAPE. As to its educational context, assistive technology services include:

- Evaluating a child’s needs, including a functional evaluation in the child’s customary environment
- Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices
- Coordinating or using other therapies, interventions, or services with assistive technology devices (such as those associated with existing education and rehabilitation plans and programs)
- Training or technical assistance for the child with a disability, or, if appropriate, the child’s family
- Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are substantially involved in the major functions of that child

The decision as to whether the child requires assistive technology devices and services is made on a case by case basis in connection with the development of the child’s IEP. If the child requires assistive technology to receive a free appropriate public education, those services must be provided. Therefore, the IEP team must determine the child’s needs for assistive technology devices or services, determine those devices that will facilitate the student’s education, and list them in the IEP. The district must then provide them to the student at no cost to the parents.

Use of assistive technology devices, purchased by the district, in the child's home, or other non-school settings may be required if the IEP team determines that the child needs access to those devices in order to receive FAPE. In that case, the parents cannot be charged for normal use, wear and tear.

Assistive technology becomes vitally important upon the transition of the student with disabilities to life after secondary education. Beginning at age 16, the IEP must include the transition service needs related to the child's studies at school, such as participation in advanced placement courses or a vocational education program. The transition services are defined as a coordinated set of activities for a student, designed with an outcome oriented process that promotes movement from school to post-school activities. The areas of concern include post-secondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, and community participation. These services are to be based on the individual student's needs, taking into account the student's preferences and interests. The specific services to be offered include instruction, related services, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and a functional vocational evaluation.

In order to carry out its responsibilities under the Act, the school district must attempt to involve other agencies, notably Rehabilitation Services. The transition service needs, as developed by the IEP team with a representative of the rehabilitation agency, should include a commitment by Rehabilitation to meet any financial responsibilities it may have in the provision of transition services. Assistive technology devices and services loom large in these plans and for actual services provided following completion of school. If the graduating student clearly will need the assistive technology device to prepare for employment, a reasonable approach would be to have the rehabilitation agency to purchase the device in the first instance or purchase it from the school when the student graduates. After all, the school's obligation to provide FAPE is at an end.

Nothing prevents the rehabilitation agency from purchasing the assistive technology outright for the student while still in special education or from purchasing it from the school upon graduation.

In any case, assistive technology devices and services remain critical throughout the education of a student with disabilities and his or her life after graduation.

## **J. LEAST RESTRICTIVE ENVIRONMENT 34 C.F.R. §§ 300.114 - 120**

### **1. Placement**

The two fundamental principles of IDEA are that a child receives a free appropriate public education and that the student does so in the least restrictive environment (LRE). That is to say that the student must receive special education and related services that are provided at public expense, under public supervision and direction and without charge and meet the standards of the state education agency as well as IDEA in a placement that is the least restrictive environment appropriate for the child.

A state funding mechanism cannot be sued to distribute funds on the basis of the type of setting in which a child is placed that will result in the failure to provide the child with a disability with FAPE according to the unique requirements of the child.

Arkansas law is entirely consistent with Federal law in that the school district must ensure, to the maximum extent appropriate, students with disabilities in public or private institutions or other facilities are educated with children who are nondisabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. In determining the educational placement (including preschool) the district must ensure that:

- The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- The decision must be made in conformity with the LRE provisions of IDEA regulations
- The child's placement is determined annually
- The placement is based on the child's IEP
- The placement is as close as possible to the child's home, unless otherwise agreed
- Unless the IEP provides for other arrangements, the child must be educated in the school that he or she would attend if nondisabled, unless the parent agrees otherwise
- In determining LRE, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs
- A child with a disability is not removed from education in an age-appropriate regular classroom solely because of needed modifications in the general education curriculum. The student is entitled to the modifications if necessary to provide FAPE

The district must arrange for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities necessary to afford children with disabilities an equal opportunity for participation. These nonacademic and extracurricular services and activities may include: counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the district and assistance in making outside employment available.

The state is responsible for ensuring that teachers and administrators in all districts are fully informed about their responsibilities for implementing LRE and are provided with technical assistance and training necessary to assist them in this effort. The state is also responsible for the monitoring of the school districts to ensure compliance with the LRE requirements of IDEA.

## 2. Continuum

The state must ensure that a continuum of alternative placements is available to meet the needs of children eligible under IDEA for special education and related services. Alternative placements (instruction in regular classes, special classes, special schools,

home instruction, and instruction in hospitals and institutions) include instruction in physical education, speech/language pathology services, travel, and vocational education.

The continuum, from least restrictive environment to most restrictive environment, is as follows:

**SERVICE DELIVERY OPTIONS  
CONTINUUM OF ALTERNATIVE PLACEMENTS**

INSTRUCTION IN REGULAR CLASS  
Indirect Services

INSTRUCTION IN REGULAR CLASS  
Some Direct Special Education Instruction

INSTRUCTION IN REGULAR CLASS  
Resource Service (not to exceed 21 - 60% of instructional day)

SOME OR NO INSTRUCTION IN REGULAR CLASS  
Special Education Class Service (Exceeds 60% of the instructional day)

SOME OR NO INSTRUCTION IN REGULAR  
CLASS SCHOOL-BASED DAY TREATMENT

NO INSTRUCTION IN REGULAR CLASS  
SPECIAL DAY SCHOOL

RESIDENTIAL SCHOOL

HOSPITAL INSTRUCTION

HOMEBOUND INSTRUCTION

### **3. Residential Setting**

The LRE requirements extend to public and private institutions and may require a memorandum of agreement or special implementation procedures between the state and the institutions. (The State of Arkansas, Department of Education, has many such interagency agreements with institutions, available for public inspection.)

Arkansas law provides:

- The district where a residential facility (other than state operated) is located is responsible for each student's education if the child is placed there for non-educational reasons
- If the student with disabilities is placed in a residential facility (other than state operated) for psychiatric diagnostic/emergency services (inpatient, 24 hour, under the care of a physician, in a Department of Health and Human Services (DHHS) licensed facility),

- If the student is placed for educational purposes, the placing (home) district is responsible for FAPE
- If the student is placed in a facility for educational purposes by the parent, the parent may petition the home district for the provision of education; or if the student is in a state facility, the facility is responsible when the student is in residence for more than 60 days

#### 4. Transfers

Arkansas law enables any student to attend a public school in Arkansas in a district other than the one in which the student resides, subject to certain conditions. A student may apply to a district provided that the transfer would not adversely affect the district's racial balance. The receiving district must agree in advance to participate in the transfer program as provided by Arkansas statute. To begin the process, the student's parent or guardian must submit an application to the non-resident district no later than April 17 in order to attend school for the fall semester. A school board must adopt a resolution determining it will or will not participate in the legislation allowing transfers. Those school boards wishing to participate are required to adopt specific standards for accepting and rejecting applicants.

Permissible decisional criteria include the capacity of a program, class, grade level or school building. The receiving district is not required to add teachers or classrooms. The districts (sending, receiving, or both) may participate in the student's transportation, however, other state and Federal statutes may require that transportation services be provided in certain categories of students as determined on an individual basis. Because the receiving district (the district of choice) is responsible for providing FAPE to all children with disabilities participating in the choice program, that district must ensure the provision of transportation when it is a related service listed in the IEP.

Within 60 days of receipt of an application from a nonresident student, a district must provide a written response to each application accepting or rejecting the applicant.

Federal law is consistent with that of Arkansas. When a child with a disability transfers to a new school within the same academic year, and had an IEP that was in effect in the same state, the receiving district shall provide the child with FAPE, including services comparable to those described in the IEP. The district must do so in consultation with the parents until such time as the district adopts the previously held IEP or develops and implements a new IEP that is consistent with law. To facilitate the transfer process, the new school shall take reasonable steps to promptly obtain the child's records, and previous school shall promptly respond to the request in accordance with FERPA.

#### K. HOME SCHOOLING

A home school is a school conducted primarily by parents or legal guardians for their own children. A parent/guardian who intends to home school a child must file a notice (to the district) and waiver (of district educational responsibility) form in order to enroll the child in a home school at the beginning of each school year, but no later than August 15 for the Fall semester, or by December 15 for the Spring semester. The child should be enrolled in home school 14 calendar days prior to withdrawing from public school, although the

14 day waiting period may be waived by the superintendent or school board. However, no public school student shall be eligible for enrollment in a home school if the student is currently under disciplinary action for violation of any written school policy including, but not limited to, excessive unexcused absences. Public school students who are under disciplinary action by the school district shall be eligible for enrollment in home school if the superintendent or board chooses to allow the child to enroll in a home school, the disciplinary action against the student has been completed, or the student has been expelled. Home schooled students who enroll in a public, private, or parochial school during the time they are home schooling cannot re-enter home schooling until new Notice of Intent and Waiver forms are completed and returned to the local school district.

Home schooled students who are in the required grade levels for which the state mandates norm- reference testing and who are no more than two years beyond the normal age for the required grade levels must take a standardized norm-reference test provided by the Department of Education. Any student who refuses to participate in the required testing program shall be subject to applicable Arkansas laws regarding truancy.

Books, curricula or materials are not required to be furnished by the Arkansas Department of Education, local school districts, or education service cooperatives. It is the responsibility of the parents/guardians to purchase all books and other materials used in home schooling.

Parents or guardians who plan to home school must file a written notice by completing and returning a Notice of Intent and Waiver forms to the public school superintendent's office. Parents or guardians must sign a waiver acknowledging that the State of Arkansas is not liable for the education of their children during the time that the parent chooses to home school. The Notice of Intent and Waiver forms are valid for the entire school year, and are available from the state or the school district.

Home schools are not accredited by the Arkansas Department of Education. There are no grades, credits, transcripts or diplomas provided by the Department, educational service cooperatives, or the local school district.

It is the policy of the State Board of Education that, where appropriate and feasible, school districts provide a genuine opportunity to students with disabilities who are home schooled to access special education and related services from the district where they reside. However, the policy is not to be construed as conferring any of the IDEA procedural protections and rights to those students and their parents/guardians.

## L. EXTENDED YEAR SERVICES 34 C.F.R. § 300.106

### 1. Requirements

Each district must ensure that extended school year services are available as necessary to provide FAPE. Those services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE. In making the determination, the district may not limit extended year services to particular categories of disability or, unilaterally, limit the type, amount or duration of extended year services. The extended year program should be provided when it is determined by the IEP team that the student has regressed (a decrease in the level of performance as a result of an interruption of services), or is predicted to regress. If the regression is to such a substantial degree in a critical area that recoupment (ability to regain the level of skills prior to the interruption of services) of those skill losses following the summer break would be unlikely or would require an unusually long period of time. Extended year services are appropriate to prevent significant regression. The issue of a need for extended year services may be raised at any time and must be determined on an individual basis by the IEP team.

### 2. Services

The need for extended year services is not based strictly on a regression/recoupment standard. Instead, need may be proven by expert opinion based on a professional individual assessment. Although the list is not exhaustive, the following factors must be considered by the IEP team in determining the need for extended year services:

- Degree (nature and severity) of the student's disability
- Degree of regression relative to IEP annual goals and instructional objectives
- Recovery/recoupment time from the regression
- Ability of the student's parents to provide educational structure at home
- Student's rate of progress
- Behavioral progress
- Behavioral problems
- Physical problems
- Availability of alternative resources
- Ability to interact with nondisabled children
- Areas in the student's curriculum which need continuous attention;
- Vocational training needs
- Whether the requested service is extraordinary for the student's condition as opposed to an integral part of a program for the student
- Other relevant factors determined by the IEP team

The services to be provided must, in all cases, be determined by the IEP team. The determination will involve consideration of all data collected by the team in the same manner as in determining services under IEPs in all other cases.



## M. TRANSITION SERVICES 34 C.F.R. § 300.320(b)

### 1. Definition

The purposes of IDEA include ensuring that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. [34 CFR 300.1(a)] [20 U.S.C. 1400(d)(1)(A)]

The definition of “transition services” is changed to refer to a “child,” rather than a “student,” with a disability. [34 CFR 300.43] [20 U.S.C. 1401(34)]

The term “transition services” means a coordinated set of activities for a child with a disability that:

- 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 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
- 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 functional vocational evaluation [34 CFR 300.43 (a)] [20 U.S.C. 1401(34)]

### 2. Requirements

We hope you have been working closely with your child’s IEP team through high school to ensure that appropriate transition goals have been established and your child’s progress toward these goals has been measured and documented. It is during the transition phase of your child’s education where this teamwork should really begin to show.

IDEA 2004 requires Transition Services to be “results-oriented” to “facilitate the child’s movement from school to post school activities . . .” The law requires that the IEP Transition Services be in place by (before) the child’s 16th birthday. The following are two checklists and some advice to help your child make a successful transition from school to employment or further education.

## a. IDEA 2004 Transition Checklist

IDEA 2004 describes the required components of the transition plan. During your child's high school years, it is essential that the IEP team adhere to these requirements:

- The student must be invited to participate in IEP meetings to discuss his/her goals for life after high school
- You may request several IEP/Transition Planning meetings during the school year
- You may invite representatives of local agencies to these IEP meetings to discuss transition goals and services to support those goals
- The IEP, including the transition plan, should be based on person-centered planning, and reflect the student's interests and skills
- The work experiences or "community based work assessments" (CBWAs) chosen should be based on the student's interests and abilities. Students should NOT be placed in a community based work assessment simply because it is available
- Any placement should help the student develop skills in a setting that is of personal interest to him/ her and where his/her unique abilities can be successfully utilized and improved with job coaching
- Annual transition goals in the IEP should lead to successful post- high school outcomes
- Progress should be documented and measurable
- Ask for progress reports about your child's community based work experience. Discuss with the IEP team how your child will meet the goal of being employed after graduation, without a lapse in supports and services
- Maintain a portfolio and resume of your child's experiences, progress reports, and favorable reviews from your child's supervisors

## b. Transition Planning Checklist

While IDEA 2004 provides the legal requirements for transition services to support your child's goal of employment in the community or further education, there are several things that parents and students must do to prepare for life after high school:

- Confirm the date of your child's graduation. Federal law states that your child's eligibility for special education ends when s/he graduates from high school with a regular diploma or until the child reaches the age of eligibility for a free appropriate education under State law. (Arkansas law is age 21)
- Clarify whether your child will receive a regular high school diploma or a certificate of attendance
- Clarify that you child will be able to fully participate in the graduation ceremony
- Find out what local agencies provide job coaching for transitioning youth
- Contacting adult provider agencies before your child graduates or "ages out" will help to ensure that your child will continue to receive services after graduation. This may also prevent your child from being placed on a long waiting list for adult services
- You are entitled to invite representatives from other agencies to your child's IEP meetings
- If the IEP Team, which includes the parents and the child, determines that your child's transition needs can be met by participating in transition programs on college campuses or in community based settings, these services should be included in the child's IEP

- If appropriate, invite the child's supports coordinator from your local Office of Mental Retardation to IEP meetings during the last year of high school. This person can help to coordinate post-high school support services
- If your child will be eligible for services through Vocational Rehabilitation, schedule an appointment for an intake interview and file the necessary paperwork with the Office of Vocational Rehabilitation ahead of time. Request that a Vocational Rehabilitation counselor attend the IEP meeting no later than spring of the your child's last year in high school
- Discuss your child's transportation needs. If s/he will need assistance getting to and from work, request and fill out applications for public transportation services
- Request information about social/recreational opportunities for young adults with disabilities in your community. Ask for their contact information
- Request information about post-high school training programs at local vocational schools, community colleges, business schools, and state-affiliated training schools

When your child graduates from high school, you and your graduate should celebrate accomplishments -- and the transition to adulthood. With the new emphasis on transition planning in IDEA 2004 and online resources such as [www.transitionmap.org](http://www.transitionmap.org), more students with disabilities are preparing for further education, employment and independent living as productive, active members of their communities.

### **3. Transfer of Rights**

Beginning not longer than one year before the child reaches the age of eighteen (18), the IEP must include a statement that the child has been informed of his or her rights under the Act that will transfer to the child on reaching the age of majority, in Arkansas age 18. The state is required to establish a procedure for appointing the parent of a child with a disability, or if the parent is unavailable, another appropriate individual, to represent the educational interests of the child throughout the child's eligibility under the IDEA if it can be determined that the child does not have the ability to provide informed consent.

## **N. QUALIFIED PERSONNEL 34 C.F.R. § 300.18**

### **1. Highly Qualified Teachers**

IDEA now requires persons employed as special education teachers in elementary or secondary schools be highly qualified by no later than the end of the 2005-2006 school year. The Act adopts the definition of "highly qualified" as used in the No Child Left Behind Act and requires that special education teachers obtain full state certification as a special education teacher or pass the state special education teacher licensing examination, and hold a license to teach in the state as a special education teacher. Regulations preclude teachers for whom the special education certification or licensure requirements were waived on an emergency, temporary, or provisional basis for meeting the definition of a highly qualified special education teacher. Teachers employed by public charter schools or by private elementary and secondary schools are not subject to these requirements.

“Highly qualified” means that:

- The teacher has obtained full state certification as a special education teacher (including certification obtained through alternative routes to certification), or pass a special education teacher licensing examination, and holds a license to teach in the state as a special education teacher. The term does not apply to teachers teaching in a public charter school except that highly qualified means that the teacher meets the requirements set forth in the state’s public charter school law
- The teacher holds at least a Bachelor’s Degree
- A teacher will be considered to have met the standard of IDEA if that teacher is participating in an alternative route to certification under which the teacher receives high quality professional development; participates in a program of intensive supervision; assumes functions as a teacher only for a specified time, not to exceed three years; and demonstrates satisfactory progress toward full certification

The Arkansas complete description of “highly qualified” can be seen at the Special Education web site.

In Arkansas teacher qualifications for public charter schools are the same as all public schools. However, special education teachers need not be “highly qualified” as defined by the No Child Left Behind Act. The highly qualified special education teacher requirements do not apply to private school teachers hired or contracted by school districts to provide equitable services to parentally-placed private school children with disabilities.

The No Child Left Behind Act requires that teachers of core academic subjects have full teacher certification, hold at least a Bachelor’s Degree, and be able to demonstrate knowledge of the subject matter they teach by the end of the 2005-2006 school years. Elementary school teachers may demonstrate subject matter expertise by passing a rigorous state test of their subject knowledge and teaching skills in reading, writing, mathematics, and other areas of basic elementary school curriculum. Middle or secondary school teachers must demonstrate a high level of confidence in each of the academic subjects that they teach.

Regardless of any individual right of action that a parent or student may have under IDEA, nothing in the “highly qualified” teacher section creates a right of action on behalf of any individual student or class of students for failure of the state educational agency or the school district to have highly qualified teachers. The Act also prohibits “a class of students” to seek judicial action for failure of a state or school district employee to be “highly qualified”.

## **2. Other Personnel**

For related services personnel and paraprofessionals, qualifications must: be consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to professional discipline;

- Ensure that related services personnel who deliver services in their discipline or professions meet the qualification requirements of IDEA and have not have certification or licensure requirements waived on an emergency, temporary or provisional basis
- Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation or written policy, and meeting the requirements of IDEA to be used to assist in the provision of special education and related services.

**O. PRIVATE AND CHARTER SCHOOLS 34 C.F.R. §§ 300.129 – 147; 300.209**

**1. Private Schools**

**a. Parentally Placed Students**

To the extent consistent with the number and location of children with disabilities in the state who are enrolled by their parents in private schools, IDEA provides for the participation of those children in the program assisted or carried out under IDEA by providing for such children with special education. Money expended by the school district is limited to the Federal contribution and does not cover special education and related services (including materials and equipment) unless such services are secular, neutral, and non-ideological. State and local funds may supplement, but in no case supplant, the proportionate amount of Federal funds required to be expended. Highly qualified teacher requirements do not apply to private school teachers hired or contracted by school districts to provide equitable services to parentally-placed private school children with disabilities.

To ensure timely and meaningful consultation, a school district shall consult with private school representatives and parents of parentally placed private school children with disabilities during the design and development of special education and related services, including:

The Child Find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers and private school officials will be informed of the consultation process

The consultation process among the school district, private school officials and parents, must include how the process will operate throughout the school year to ensure that parentally placed children can meaningfully participate in special education

By whom special education and related services will be provided, including a discussion of types of services, including direct services and all delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children and how and when these decisions will be made

How, if the school district disagrees with the private school, whether provided directly or through a contract, the district shall provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract. A private school official shall have the right to submit a complaint to the state education agency that the district did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school. Except for Child Find, due process complaints that a district has failed to meet the private school requirements of IDEA cannot be filed. State complaints, however, may be filed. Any due process complaint regarding the Child Find requirement must be filed with the school district in which the private school is located and a copy forwarded to the State Education Agency.

The school district is not required to pay for the cost of education for a child with a disability at a private school or facility if the district made a FAPE available to the child and the parents nevertheless elect to place the child in the private school. The district may be compelled to reimburse the parents if a court or hearing officer finds that the district had not made a free appropriate public education available to the child in a timely manner prior to the private school enrollment.

A parental placement may be found appropriate even if it does not meet the state standards as promulgated by the state board. However, the cost of reimbursement may be reduced or denied if:

- At the most recent IEP meeting that the parents attended prior to removal of the child from public school, the parents did not inform the IEP team that they were rejecting the placement proposed to provide FAPE to the child, including stating their concerns and their intent to enroll the child in private school
- At least ten business days prior to the removal of the child from public school, the parents did not give written notice to the district of their concerns and intent to enroll in private school
- If, prior to the removal of the child, the school district informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for evaluation.

At any time, a court may find the parents' actions unreasonable, thereby reducing or denying reimbursement.

#### **b. Private School Placement by Public Agencies**

The State Department of Education must ensure that a child with a disability who is placed in or referred to a private school or facility by the school district or other state agency:

- Is provided special education and related services in conformance with an IEP at no cost to the parents
- Is provided an education that meets the standards that apply to education provided by the State and school districts including the requirements of IDEA
- Have all the rights of a child with a disability who is served by a school district or a public agency, except for the requirement for "highly qualified teachers."

In meeting these requirements, the State must monitor compliance through procedures such as written reports, on-site visits and parent questionnaires. The State is also responsible to disseminate copies of applicable standards to each private school and facility to which a school district has referred or placed a child with a disability. The Arkansas Department of Education must provide an opportunity for those private schools and facilities to participate in the development and revision of State standards. While the Arkansas Department of Education has the primary responsibility for the provision of education to all students, other agencies may by law, also have educational responsibilities (DHHS, Rehabilitation, for example). These other state agencies therefore may be obligated to provide or pay for some or all the cost of FAPE for any child with a disability in the State. The Governor or a designee of the Governor shall ensure that an Interagency Agreement or other mechanism for interagency coordination is in effect.

### c. Remedies

A private school official has the right to submit a complaint to the state that the school district:

- Did not engage in consultation that was meaningful and timely
- Did not give due consideration to the views of the private school officials.

If the private school official is dissatisfied with the decision of the state, the official may submit a complaint to the United States Department of Education.

## 2. Charter Schools

Children with disabilities who attend public charter schools and their parents retain all rights under IDEA. If the charter school is a public school of the school district, the district is responsible to serve all children with disabilities attending those charter schools in the same manner as the district serves children with disabilities in its other schools. This responsibility includes providing supplementary and related services on site at the charter school. The district must provide funds under IDEA on the same basis as the district provides funds to its other public schools, including proportional distribution based on relative enrollment of children with disabilities.

The NCLB definition of “charter schools” is adopted by IDEA and is as follows:

- In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph
- Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction
- Operates in pursuit of a specific set of educational objectives determined by the school’s developer and agreed to by the authorized public chartering agency
- Provides a program of elementary or secondary education, or both
- Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution
- Does not charge tuition
- Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 794 of Title 29, and part B of the Individuals with Disabilities Education Act
- Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated
- Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program
- Meets all applicable Federal, State, and local health and safety requirements
- Operates in accordance with State law; and has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are

required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

Charter schools that are by themselves school districts are responsible for ensuring that the requirements of IDEA are met.

## **P. DISCIPLINE 34 C.F.R. §§ 300.530-536**

### **1. Behavior**

If you have a child with a disability whose behavior is impeding his/her learning you need to learn what the law requires IEP teams to do when children with disabilities have behavior problems.

The IDEA regulations and commentary to the regulations were published in August 2006. The law, federal regulations and commentary describe what IEP teams must do when a child's behavior "impedes the child's learning or the learning of other children." Do not assume that your child's IEP team is knowledgeable about these requirements.

The questions and answers about the requirements for meeting the needs of children with behavior problems (below) are taken from IDEA 2004, the special education regulations, and the Commentary.

#### **1. If a child's behavior impedes the child's learning or that of others, must IEP Teams base positive behavioral interventions and support on a functional behavioral assessment?**

Yes. Conducting functional behavioral assessments typically precedes developing positive behavioral intervention strategies.

#### **2. Does "consideration of special factors" address the behavioral needs of children with disabilities in the IEP process?**

Yes. The IEP Team determines whether a child needs positive behavioral interventions and supports. If the behavior of a child impedes the child's learning or the learning of other children, the IEP Team must consider the use of positive behavioral supports, supports, and other strategies to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i), 34 C.F.R. § 300.324(a)(2)(i))

#### **3. If the child's behavior impedes the child's learning or that of others, must the IEP Team develop a plan to address these problem behaviors?**

Yes. If the child's behavior impedes his learning or the learning of others, the IEP team must include strategies, including positive behavioral interventions, supports, and other strategies to address that behavior. If the child's behavior that impedes learning is not addressed in the IEP, the IEP Team must review and revise the IEP to ensure that the child receives appropriate positive behavioral interventions and supports and other strategies. (34 C.F.R. § 300.324(a)(2)(i) and 34 C.F.R. § 300.324(a)(3)(i).



**4. Must school districts train teachers regarding the use of positive behavioral interventions and support?**

Yes. School districts must provide teachers with high-quality professional development, including the use of scientifically based instructional practices. School districts must ensure that personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities. Each district must ensure that all personnel necessary are appropriately and adequately prepared. (20 U.S.C. § 1412(a)(14), 34 C.F.R. § 300.156). Each State must establish and maintain qualifications to ensure that personnel are appropriately and adequately prepared and trained, and have the content knowledge and skills to serve children with disabilities. (20 U.S.C. § 1412(a)(14), 34 C.F.R. § 300.156(a))

**5. Must school districts use research-based positive behavioral supports and systematic and individual research-based interventions when addressing the behavioral needs of children with disabilities in their IEPs?**

Yes. School districts must ensure that scientifically based research drives their professional development activities and services. (34 C.F.R. § 300.226(b)(1)). The implementation of early intervening services specifically focuses on professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, and providing educational and behavioral evaluations, services, and supports. (20 U.S.C. § 1413(f)(2), 34, C.F.R. § 300.226(b)(1))

The definition of “scientifically based research” is included in the regulations (34 C.F.R. § 300.35). Scientifically based research is referenced in IDEA 2004 (20 U.S.C. § 1411(e)(2)(C)(xi)). The full definition of the term “scientifically based research” includes that a peer-reviewed journal published the research, or that a panel of independent experts through a comparably rigorous, objective, and scientific review approved it.

**6. Must public agencies provide positive behavioral interventions and supports for all children identified as having an emotional disturbance?**

No. IEP Teams make decisions on an individual basis for each child. IEP Teams need not consider such interventions, supports, and strategies for a particular group of children, or for all children with a particular disability. IEP Teams must consider the use of positive behavioral interventions and supports, and other strategies to address the behavior of a child whose behavior impedes the child’s learning or that of others. (20 U.S.C. 1414(d)(3)(B)(i)), 34 C.F.R. § 300.324(a)(2)(i))

## 2. § 300.174 Prohibition on mandatory medication.

(a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§ 300.300 through 300.311, or receiving services under this part.

(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing 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 under § 300.111 (related to child find).

## 3. Procedure

School personnel may remove a child with a disability who violates a code of student conduct from a current placement to an appropriate interim alternative educational setting, or suspension for not more than 10 school days. School personnel may consider any unique circumstance on a case by case basis when determining whether to order a change in placement. If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities shall apply. These rules will be applied in the same manner and for the same duration as they apply to children without disabilities.

A child with a disability who is removed from current placement, irrespective of whether the behavior is determined to be a manifestation of, will continue to receive appropriate educational services. The district will ensure that the child will continue to receive FAPE in the general education curriculum, although in another setting, and progress toward meeting the goals set out in the IEP.

Within 10 school days of any decision to change the placement of a child with a disability, the district, the parent, and relevant members of the IEP team shall review all relevant information in the student's file, any teacher's observation, and any other relevant information to determine if the conduct in question was caused by or had a direct or substantial relationship to the child's disability, or if the conduct was a direct result of the district's failure to implement the IEP. If it is determined that the conduct was a manifestation of the child's disability, the IEP Team will conduct a functional behavioral assessment, and implement a Behavioral Intervention Plan.

School personnel may remove a student to an interim alternative educational setting for not more than 45 days without regard to whether the behavior is determined to be a manifestation of the disability in cases where a child:

- Carries or possesses a weapon on school premises, or at a school function
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of controlled substances while at school or on school premises or at a school function
- Has inflicted serious bodily injury upon another person while at school or at a school function

The parent of a child who disagrees with any decision regarding placement, or the manifestation determination, or a school district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing. The Hearing Officer may order a change in placement or return the child to a placement from which the child was removed. During the appeal, the child shall remain in the interim alternative placement.

The child who has not been determined to be eligible for special education under IDEA and who has engaged in behavior that violates a code of student conduct may assert any of the protections provided for a child under IDEA if the district had knowledge that the child was a child with a disability before the behavior in question. The basis of that knowledge may be notification of the parent, a request for an evaluation, or a teacher or other personnel have expressed concerns about the pattern of behavior of the child. (If the parent of the child has not allowed an evaluation, the district will not be liable.)

#### **4. Referral to Authorities**

Nothing in IDEA prohibits a district from reporting a crime committed by a child with a disability to appropriate authorities or to prevent state law enforcement agencies and judicial authorities from exercising their responsibilities with regard to the application of Federal and state law in crimes committed by a child with a disability. The district reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by appropriate authorities to whom the district reports the crime.

### **Q. ASSESSMENTS**

#### **1. Participation**

All children with disabilities are included in all general and district wide assessment programs under IDEA and NCLB with appropriate accommodations and as indicated in their IEPs. The state and districts must develop guidelines for the provision of alternate assessments.

#### **2. Reporting**

The Arkansas Department of Education (or, in the case of district wide assessment, the school district) must report the number of children with disabilities who participate in:

- Regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments
- Alternate assessment reports also must be made public on the performance of children with disabilities on regular assessments and on alternate assessments compared with the achievement of all children including children with disabilities

### **3. No Child Left Behind (NCLB)**

By the 2013 – 2014 school years, NCLB requires that all children will be at a proficient level on state testing. Beginning in fall 2002, the districts were required to report the scores for statewide testing to parents. The scores are broken into four subgroups, including children with disabilities. The information is to inform parents whether the school has been successful in teaching all groups of children. From this “report card”, the parents will be able to compare their school with report cards from other schools in the district and in the state. Beginning in 2005, the district must test all children in grades three through eight every year in math and reading. By fall 2007, science assessments are required. These test scores will determine if the school is making Adequate Yearly Progress (AYP) toward the goal of proficiency for all children by the 2013 – 2014 deadlines. “Proficiency” means that the child is performing at average grade level. All subgroups of children, including children with disabilities, as well as the school as a whole, must meet the AYP goal or the school will fail.

If the school receives Title I grants, and if that school fails to meet the AYP goal for two consecutive years, all the children in the school may choose to attend a non-failing school in the school district. If the school (receiving Title I funds) fails to reach the AYP goal for three years, the school will provide supplemental services to the children remaining there. These supplemental services include tutoring, after school programs, and summer school. A parent may choose a tutor, or other service provider, from a state approved list. Those services will be provided at no cost. If the school fails to meet its AYP goal for four years, the school may replace school staff responsible for the failure. The school may also implement a new curriculum. If the school fails for five consecutive years, the school district may replace the principal and staff and contract with a private firm to run the school. The school may also open as a charter school. If these options are unsuccessful, the state will take over management of the school.

### **4. Individualized Education Program**

- IEPs must include a description of benchmarks for all children with disabilities. Short term objectives are only for children who take alternate assessments aligned to alternate achievement standards
- IEPs must include a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on a state wide and district wide assessment
- IEPs must, if the IEP Team determines that the child shall take an alternate assessment, provide a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child.

## **R. CONFIDENTIALITY OF INFORMATION 34 C.F.R. §§ 300.610-627**

### **1. Notice**

The state education agency must give notice to fully inform parents of the following:

- Procedural safeguards available to parents
- That the notice is given in the native language of the various population groups in the state
- Children on whom personally identifiable information is maintained, the types of information sought, the method the state intends to use in gathering the information (including the sources from whom information is gathered) and the uses to which the information will be put
- A summary of the policies and procedures that districts must follow regarding storage, disclosure to the third parties, retention, and destruction of personally identifiable information
- A description of all the rights of the parents and children regarding this information including the rights under the FERPA.

### **2. Access to Records**

Confidentiality of information and access to education records is protected by the Individuals with Disabilities Education Act and the Family Educational Rights and Privacy Act of 1974. “Education records” means those records that are (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. Parents and eligible students (18 years or older) have the right to inspect and review any of the student’s educational records. Under the FERPA regulations, the rights of parents regarding education records are transferred to the student at age eighteen. IDEA permits the transfer of these rights to children with disabilities who have reached the age of eighteen, and who have not been determined to be incompetent under state law. If those rights are transferred, the school district must provide any notice required under the due process provisions of IDEA to the student and the parents.

The school must comply with a request to provide access without unnecessary delay and before any IEP meeting or hearing, and in no case more than 45 days after the request is made. Parents also have the right to have someone at the school explain or interpret any item in the records upon reasonable request, to receive copies of the records if it is the only way to ensure that the parent will be able to review and inspect them, and have a representative inspect and review the records. The school district may charge a fee for copies of records if that fee does not effectively prevent the parents from exercising their right to inspect and review the records. The school district may not, however, charge a fee to search for or to retrieve the information.

If a parent believes that any information in the child’s education records is wrong or misleading, or violates the privacy or other rights of the child, the parent may request that the school district change it. The district must either change the statements in a reasonable period of time or formally refuse to do so. If it refuses, the school must inform the parent of the refusal and advise them of the right to a hearing to challenge information in the child’s educational records. If, following hearing, the school district’s information is held to be accurate; the parent has the

right to add a statement to the record commenting on the information or setting forth any reason for disagreeing with the decision.

The school district is responsible for protecting the confidentiality of the student's education records by:

- Permitting parents to see only that information which relates to their own child when records contain information on more than one child
- Requiring the parent's consent before the education records are given to anyone not involved in the student's education
- Requiring the parent's consent before using the records for any purposes other than those related to providing special education and related services
- Not releasing information from education records to participating agencies without parental consent unless authorized to do so under Federal law
- Adhering to state policies and procedures which apply in the event that the parent declines to give this consent and the school district feels the records should be given to the person requesting them
- Protecting the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages
- Assign an individual who is responsible for ensuring the confidentiality of records
- Guaranteeing that all persons who collect or use such information receive training in the state's policies and procedures regarding confidentiality
- Keeping for public inspection a list of names and positions of those employees permitted access to the records
- Informing the parent when confidential information is no longer required to provide educational services; and
- Destroying the information at the parent's request, when consistent with state law. A permanent record of a student's name, address and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

### 3. Hearing

The school district must provide an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If, as a result of the hearing, it is decided that the information is inaccurate or otherwise in violation of the child's rights, it must amend the information accordingly and inform the parent in writing of the action taken. If, however, it is decided that the information is not inaccurate, it must inform the parent of the right to place in the records a statement commenting on the information or setting forth any reason for disagreement with the decision of the school district. That explanation must be maintained by the district as part of the child's records. If the records of the student are disclosed by the district to any party, the explanation must also be disclosed to that party.

## S. MEDICAID

### 1. Description

Medicaid is a nationwide Federal/state medical assistance program for selected low-income populations. The Medicaid program is funded by a combination of Federal and state dollars. The Federal Government “matches” state dollars as long as both the services and the eligible populations are within the parameters approved in the state plan. Medicaid services may be direct school based and include:

- Speech, physical, occupational therapies
- School based mental health services
- Personal care
- Private duty nursing
- Targeted case management

Early and periodic screening, diagnosis, and treatment (EPSDT) is a package of Medicaid benefits for children. Under EPSDT requirements, states must provide comprehensive health and development assessments and vision, dental and hearing services to children and youth up to age 21. Additional services may be covered if an EPSDT screening determines that such services are medically necessary.

AR Kids First program was established to provide access to health care services for children not eligible for Medicaid. The program is limited to children 18 years of age or less whom members of a family with a gross family income are not exceeding 200% of the Federal poverty guideline who are not otherwise Medicaid eligible and for whom health care coverage is unavailable. Services may include:

- Ambulance, chiropractor, dental care, durable medical equipment, emergency room services, family planning
- Inpatient hospital
- Laboratory and x-ray
- Medical supplies
- Nurse mid-wife
- Outpatient mental and behavioral health services
- Physician services
- Podiatry
- Prescription drugs
- Preventative health care screening
- Immunizations
- Speech therapy
- Vision care

## 2. IDEA

A district may use Medicaid or other public insurance benefits programs to provide or pay for services required by IDEA. With regard to services required to provide a free appropriate public education, the district (1) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive an appropriate education under IDEA, and (2) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-payment incurred in filing a claim for services, but may pay the cost that the parent otherwise would be required to pay. Further, the school district may not use a child's benefits under a public insurance program if that use would (1) decrease available lifetime coverage for any other insured benefits, (2) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school, (3) increase premiums or lead to the discontinuation of insurance, or (4) risk loss of eligibility for home and community based waivers, based on aggregate health-related expenditures. Parents should remember that the State and the district are responsible for providing FAPE, and cannot evade that responsibility by claiming that insurance, including Medicaid, will not pay for a needed service.

By Arkansas statute, by May 1 of each year, the Special Education Section shall determine which school districts are under performing in the area of direct Medicaid billing. Those districts shall be directed to associate with an educational cooperative for the provision of those billing services. Of course qualified public and private providers may continue to develop and maintain Medicaid service relationships with districts.

## T. SURROGATE PARENTS 34 C.F.R. § 300.519

### 1. Appointment

The State and school districts must have procedures in effect to protect the rights of the child whenever the parents of the child are not known, the district cannot after reasonable efforts locate the parents, or the child is a ward of the state. These procedures include the assignment of an individual to act as a surrogate for the parents. The surrogate cannot be an employee of the state educational agency, the school district, or any other agency that is involved in the educational care of the child. Normally, a foster parent is an appropriate surrogate parent unless the district has a legitimate objection. The surrogate may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

### 2. Definitions

“Child with a disability” – a child evaluated as having disabilities, as listed in the beginning of this booklet, which, because of those disabilities, requires special education and related services.

“Parent” – a natural or adoptive parent; a foster parent (unless an employee of a state agency providing education or over the genuine objection of the school district), a guardian or an individual acting in the place of the natural or adoptive parent (including grandparent,



stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.

“Ward of the state” – in the custody of a public child welfare agency.

### **3. Wards of the State and Homeless Children**

A judge, overseeing a child's case, can appoint a surrogate if the child is a ward of the state. If the parents of a homeless, unaccompanied youth are unavailable or unwilling to participate in the child's education, those children are entitled to the appointment of a surrogate parent.

Appropriate staff members of emergency shelters, transitional shelters, independent living programs, and street outreach programs are not considered to be employees of agencies involved in the education or care of the youth, for purposes of the prohibition of employees acting as surrogates. While they may be appointed surrogates, the role will be temporary until a surrogate is appointed.

The State and district must make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after the district determines that a surrogate is needed.

## **U. LITIGATION AND THE ROWLEY STANDARD**

Prior to entering into administrative or judicial litigation (all administrative remedies should be exhausted before proceeding to court), parents should recognize the legal boundaries in which such actions will take place. As a general proposition, the United States Supreme Court has agreed with the plain meaning of IDEA that “Congress intended to open the door to all qualified children and require participating states to educate handicapped children with non-handicapped children whenever possible.” [Garret F. v. Cedar Rapids] Yet, rights given to parents under IDEA are neither absolute nor without qualification.

The first, and landmark, case involving the interpretation of IDEA was Board of Education v. Rowley in 1982. The Rowley decision continues to control the basis upon which IDEA cases are reviewed by administrative law judges and courts.

The Rowley Court began with the finding that, according to the Act, a “free appropriate public education” consists of educational instructions specially designed to meet the unique needs of a child with a disability, supported by such services as are necessary to permit the child “to benefit” from the instruction. (The instruction is to consist of individualized services to meet the additional needs of children with disabilities.) The “benefit” language became the guiding principle of the Rowley doctrine. The Court concluded that there was no Congressional intent to achieve strict equality of opportunity or services for children with disabilities. The Court reasoned that a requirement that states provide “equal” educational opportunities would present an unworkable standard requiring impossible measurements and comparisons. In other words, the Court's majority did not believe that there was an implication of Congressional intent to achieve strict equality of opportunity of services. Thus, the requirement that a child with disabilities’ “benefit” from specially designed instruction is more of a floor than a ceiling. The Court held:

We hold that it satisfies [free appropriate public education requirements] by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet state educational standards, must approximate the grade levels used in the state's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act, and if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

Therefore, in actions brought under IDEA the parties are limited primarily to two issues:

- Has the state complied with the procedures of IDEA?
- Is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?

The responsibility for formulating the education to be accorded to a child with a disability, and for choosing the educational method most suitable to the child's needs, was left by IDEA to state and local education agencies in cooperation with the parents or guardian of the child. Courts have generally held that they lack specialized knowledge and experience necessary to resolve the difficult questions of educational policy. Nevertheless, courts will not rubber stamp the findings and conclusions of an educational agency where there is a violation of the procedural requirements of the Act or failure to design an appropriate IEP and provide services under that IEP reasonably calculated to provide the child with educational benefits.

These boundaries must be born in mind before proceeding to litigation.

## **V. STATE COMPLAINT 34 C.F.R §§ 300.151-153**

### **1. Nature of Complaint**

Pursuant to authority given in the Federal statute, the State maintains a complaint procedure that is available to parents to resolve disagreements with the school district over any matter concerning the alleged failure of the school district to provide appropriate services for the child with a disability. The Arkansas Department of Education, Special Education, must resolve a complaint within 60 calendar days (extensions are allowed). The person or organization filing the complaint has an opportunity to submit complete information either orally or in writing about the allegations of the complaint. This procedure is less costly and, at times, a more efficient mechanism for resolving disputes than is possible under the impartial due process hearing system. The school district must be given an opportunity to respond to the complaint and there must be an opportunity for a parent who has filed the complaint and the district to voluntarily engage in mediation.

## 2. Filing a Complaint

Any organization or individual may file a signed written complaint. That complaint should include:

- The name, address of the child (or children) with a complete description of the disability and its educational consequences
- A statement that a district has violated a requirement of IDEA or its regulations
- The facts on which the statement is based
- The signature and contact information for the complainant

In the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending will be required. The complaint should include a description of the nature of the problem, including facts related to the problem and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. Complete facts (with appropriate documentation, if available) should be set forth in the complaint.

## 3. State Responsibility

Within 60 days after a complaint is filed, the State must carry out an independent on-site investigation (if the State determines that investigation is necessary), give the complainant the opportunity to submit additional information, provide the school district with an opportunity to respond to the complaint, including proposals to resolve the complaint and, with the parents' permission, to engage the parent in mediation or alternative means of dispute resolution. If the district and parents agree on an alternative means of dispute resolution, the sixty day timeline will, of course, be extended. The State Department of Education must review all relevant information and make an independent determination as to whether the district is violating requirements of IDEA or its regulations. The decision should include procedures for effective implementation of the decision, if needed, including technical assistance activities, negotiations, and corrective action to achieve compliance with IDEA.

If the State complaint allegation is also the subject of a due process hearing, the State must set aside the complaint until the conclusion of the hearing procedure. If an issue raised in the complaint filed after a hearing has been previously decided in a due process hearing involving the same parties, the due process hearing is binding on that issue.

State complaints may include a request for monetary reimbursement and compensatory services where appropriate. These requests are examples of corrective actions that may be appropriate to address the needs of the child. Where the state has an appropriate procedure (as Arkansas does currently), complaints may also be filed to enforce a due process hearing decision. Thus, the complaint would seek to implement the terms of the decision when the district has failed to accept the directions given by the hearing officer. Complaints must be served on the school district involved, and there must be an opportunity for the district to respond to the complaint and, if feasible, move to mediation.

While the issues raised in due process complaints and state complaints overlap, the state complaint procedure is normally used for the district's failure to provide appropriate services, including corrective action appropriate to address the needs of the child and appropriate future provision of services for all children with disabilities. In any event, the State must explain the differences between the due process complaint and the state complaint to parents. Parents should seek advice as to entering into either type of administrative litigation.

## **W. DUE PROCESS 34 C.F.R. §§ 300.500 – 520**

### **1. Notice**

If the school district proposes to initiate or change the identification, evaluation, or educational placement of the child for the provision of FAPE, or refuses to initiate or change the identification, evaluation, or educational placement for the provision of FAPE, the district must give notice to the parents prior to taking such action or refusing to take such action. The notice required must include:

A description of the action proposed or refused by the district;  
an explanation of why the district proposes or refuses to take the action

A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action; a statement that the parents have protection under the procedural safeguards of the Act and, if the notice is not an initial referral for evaluation, the means by which a copy of the description of procedural safeguards can be obtained

Sources for parents to contact to obtain assistance in understanding the procedural safeguards for provisions of IDEA

A description of other options that the IEP team considered and the reasons why those options were rejected

A description of other factors that are relevant to the district's proposal or refusal

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. Parents may elect to receive electronic notice. The district must take steps to ensure that the parent understands the content of the notice. Although a copy of the procedural safeguards normally is required only one time a year, a copy must also be given to the parents upon initial referral or parent request for evaluation, upon the first state complaint or a due process complaint, and upon request by a parent.

The procedural safeguards notice must include a full explanation of all of the safeguards available under IDEA relating to:

- Independent educational evaluations
- Prior written notice
- Parental consent
- Access to educational records
- Opportunity to present and resolve complaints through the due process complaint or state complaint procedures including the time period in which to file

The district is required to explain the difference between the due process complaint and the state complaint procedures including the jurisdiction of each procedure, what issues may be raised, filing deadlines, and relevant procedures.

The district is also required to advise the parent of the availability of mediation and the child's placement during pendency of hearings on due process complaints. The parents must be informed of the requirements of unilateral placement by the parents of children in private schools. Notice must be given of rules of procedures for hearing on due process complaints and appeals, i.e., civil actions filed in state courts of competent jurisdiction and United States District Courts, and the possibility of attorneys' fees.

Parents should not forget their various responsibilities to notify the school. This responsibility includes informing the school of a proposed resolution of the problem raised by the parents.

## **2. Mediation**

All districts shall ensure procedures to allow parties to disputes involving any matter arising under IDEA to resolve disputes through a mediation process. That process should ensure that it is voluntary on the part of the parties and is not used to deny or delay a parent's rights to a hearing on a due process complaint. The mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The new regulations would permit employees of the school district that are not involved in the education or care of the child involved in the dispute being qualified to serve as mediators.

Mediation is available to resolve any dispute, not just when a hearing has been requested, as was the case under the prior law. IDEA 04 has added opportunities to resolve disputes when a hearing has been requested, such as through the resolution process. The state maintains a list of individuals who are qualified mediators and knowledgeable in laws relating to the provision of FAPE. The State Department of Education will select mediators on a random, rotational, or other impartial basis. The State bears the cost of the mediation process, including the cost of meetings. All sessions in the mediation process must be scheduled in a timely manner and will be held at a location that is convenient to the parties to the dispute. The district should have procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested person, including an alternative resolution entity, to encourage the use, and explain the benefits, of the mediation process. IDEA 2004 provides ample opportunity for resolution of any disagreement prior to hearing without fear that timelines will deny parents their right to the hearing. Of course, the school cannot use the process to delay orderly procedure if the parents wish to proceed to hearing.

Mediation services are also available through the UALR Law School (under contract with the Arkansas Department of Education, Special Education). An explanation of those services, along with a form request, is attached as Appendix VI.

If the parties resolve a dispute through the mediation process, the parties will execute a legally binding agreement that accurately describes that resolution. All discussions that occurred during the process will remain confidential. The agreement must be signed by both a parent

and a representative of the district who has authority to bind the district. That signed mediation agreement is enforceable in any state court of competent jurisdiction or in a United States District Court. The parties to the process may be required to sign a confidentiality pledge prior to the commencement of mediation to ensure that all discussions that occur during the mediation remain confidential.

### **3. Multiple Complaints**

If a written statement complaint is received that is also the subject of a due process hearing or contains multiple issues of which one or more or a part of the due process hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of that hearing. However, any issue in the state complaint that is not part of the due process hearing must be resolved using the time limit and procedures described. Also, the state is required to resolve state complaints alleging a school district's failure to implement a due process hearing.

### **4. Due Process Complaint**

Either a parent or district may file the due process complaint on any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education. The complaint must allege a violation that occurred not more than two (2) years before a district knew or should have known about the alleged action that forms a basis for the complaint.

The party filing the complaint must forward a copy to the Arkansas Department of Education. The complaint must include:

- The name of the child
- The address of the child
- The name of the school involved
- In the case of a homeless child or youth, available contact information for the child
- A description of the problem relating to the proposed or refused initiation or change, including facts relating to the problem
- A proposed resolution of the problem to the extent known, and available to the party at the time

A due process complaint will be deemed sufficient unless the party receiving the complaint notifies the Hearing Officer and the other party in writing within 15 days of receipt of the complaint that the receiving party believes the due process complaint does not meet with the requirements of IDEA. Within five (5) days of receipt of that notification, the Hearing Officer must make a determination on the face of the due process complaint as to whether IDEA requirements had been met. At that time, a party may amend its due process complaint, but only if the other party consents in writing to the amendment and is given the opportunity to resolve the complaint through a meeting for resolution. In the alternative, the Hearing Officer may grant permission, except that the Hearing Officer may only grant permission to amend not later than five days before the due process hearing begins.

If the parent files the due process complaint, within ten days (10) of receiving the complaint, the district must send to the parents a response that includes:

- An explanation of why the district proposed or refused to take the action raised in the due process complaint
- A description of other options that the IEP team considered and the reasons why those options were rejected
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for its decision
- A description of other factors that are relevant to the district's proposed or refused action. If the district or other party files the complaint, a response covering the above information must be filed within 10 days. (The Arkansas Department of Education has model forms to assist parents in complying with these procedures, Appendix VIII.) Parents are entitled to the State approved forms

Within 15 days of receiving a notice of the parents' due process complaint, and prior to the initiation of a due process hearing, the district must convene a meeting with the parents and the relevant members of the IEP team. The meeting will include a representative of the district who has decision making authority and may not include an attorney of the district unless the parents are also accompanied by an attorney. The purpose of this meeting is to discuss the complaint and the facts that form the basis of it, so the district has the opportunity to resolve the dispute. This meeting need not be held if the parents and the district agree in writing to waive the meeting or the parents and district agree to use the mediation process. If the district has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the hearing will go forward. The timeline (60 days) for issuing the final decision begins at the expiration of this 30 day period. During the pendency if proceedings (administrative or judicial) the child will remain in the current educational placement unless otherwise agreed (the stay put provision).

If a complaint involves an application for initial services for a child who is transitioning from Part C to Part B and is no longer eligible for Part C services because the child has turned three, the district is not required to provide the parts and services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education services, then the district must provide those special education and related services that are not in dispute between the parents and the district.

## 5. Hearing

The due process hearing is conducted by the Arkansas Department of Education. The Hearing Officer must not be an employee of the state education agency or the district involved in the educational care of the child or a person having a personal or professional interest that conflicts with the person's objectivity at the hearing. That person must possess knowledge of, and the ability to understand, the provisions of IDEA and Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts. The Hearing Officer must possess the knowledge and ability to conduct hearings in accordance with appropriate standard legal practice and must possess the knowledge and ability to render and write decisions in accordance with standard legal practice. Hearing Officers are selected at random from a list of approved individuals by the Arkansas Department of Education, Special Education.

The party requesting the hearing may not raise issues at the due process hearing that were not raised in the due process complaint, unless the parties agree otherwise. A parent or a district must request an impartial hearing on their due process complaint within two years of the date the parent or district knew or should have known about the alleged action that is the basis for the complaint. This time line does not apply, if the parent was prevented from filing a due process complaint due to specific misrepresentations by the district or the district's withholding of information from the parent that was required under IDEA to be provided.

All parties to the hearing have the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities
- Present evidence and confront, cross examine, and compel the attendance of witnesses
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing
- Obtain a written or, at the option of the parents, an electronic, verbatim record of the hearing
- Obtain written or electronic findings of fact and conclusions

The parent has the right at hearing to have the child present, open the hearing to the public, and have the record of the hearing and the findings of fact and decisions provided at no cost.

## 6. Appeal

A decision of the Hearing Officer is final. Any party aggrieved by the findings and decisions made by the Hearing Officer has the right to bring a civil action in any state court of competent jurisdiction or in a United States District Court without regard to the amount in controversy. The party bringing the action shall have 90 days from the date of the decision of the Hearing Officer to file such an action. The Court will receive the records of the administrative proceedings and, at its discretion; the Court may hear additional evidence at the request of a party. The Court will base its decision on a preponderance of the evidence and will grant such relief as it determines to be appropriate. This part of IDEA allows the bringing of the action in conjunction with the ADA, Rehabilitation Act, or other Federal laws alleged to have been violated by the district.

IDEA clearly provides that, while other relevant statutes and the United States Constitution are available to be utilized in an appeal, "except that before filing of a civil action under such laws seeking relief that is also available [under IDEA]," the IDEA hearing procedures shall be exhausted. In addition, there is substantial and long standing precedent requiring administrative exhaustion if the case filed in court involves an IDEA issue. However, the United States Court of Appeals for the Eighth Circuit (covering Arkansas) has recently held that a student has the right of action for damages under Section 504 for unlawful discrimination despite the failure to exhaust administration remedies under IDEA. Advice should be sought before filing such a law suit.

Attorneys' fees are available and the Court, in its discretion may award reasonable attorneys' fees. The attorneys' fees may be collected by a parent who is the prevailing party. If the district is the prevailing party, attorneys' fees may also be assessed against the attorney of the parent, who files a complaint that is frivolous, unreasonable, or without foundation, or against the



attorney of the parent who continues to litigate after the litigation clearly becomes frivolous, unreasonable, or without foundation. Attorney's fees may also be collected by the school district or the state education agency when the request for a due process hearing or further action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

The 2004 amendments, for the first time, allow attorney's fees to be collected by the district. The standards to be used in determining the allowance of fees is the same as those long applied in the ADA and the Civil Rights Act of 1964 and amendments. In order for a complaint to be judged frivolous, the parents must fail to produce evidence of an essential element of the case or lack the support of a legal basis. If the claims are without foundation, factually or legally, the complaint may be found to have been filed in "bad faith." In addition, attorneys are also subject to "Rule 11" court sanctions under Federal and State law if the case is found to be frivolous, unreasonable, or without foundation.

# PART II

## Related Statutes

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### INTRODUCTION

From the initial enactment of the legislation that became IDEA and through the 2004 amendments, IDEA has provided that nothing in its text shall be construed to constrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or other Federal laws protecting the rights of children with disabilities. Section 504 and the ADA differ in scope and eligibility from IDEA; nevertheless, they may be essential ingredients in any complaint mechanism brought against a school district. In law, they should be raised in an IDEA due process hearing prior to going to court in order to preserve the issues. Issues raised under Section 504/ADA may be integral to the successful administrative or judicial litigation involving parents and a school district. Thus, other statutes and their governing regulations, as well as Constitutional issues, must be considered before engaging in administrative or judicial litigation.

#### **A. SECTION 504 OF THE REHABILITATION ACT (504) 29 U.S.C. § 794; 34 C.F.R. PART 104 AND TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA) 42 U.S.C. §§ 12101 ET SEQ.; 28 C.F.R. PART 35**

Section 504 of the Rehabilitation Act of 1973 provides that otherwise qualified individuals with disabilities shall not, solely by reason of disability, be excluded from, participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving Federal financial assistance. This includes any state or local education agency. Title II of the ADA, using the precise 504 language, prohibits discrimination in all services, programs, and activities provided or made available by state and local governments, including educational agencies, regardless of the receipt of Federal financial assistance. The Title II regulation is comparable in coverage and scope to the regulations implementing Section 504.

#### **1. Eligibility and Scope**

Under both statutes, a student with a disability means any person who (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. Major life activities include caring of self, manual tasks, walking, seeing, hearing, speaking, breathing or learning. As the statutes apply to education, a “qualified individual with disabilities” includes a person (1) of an age during which non-disabled persons are provided with education services, (2) of any age during which it is mandatory under state law to provide such services to persons with disabilities or (3) to whom a state is required to provide a free appropriate public education. Section 504, as it applies to education, specifically provides that a qualified student with disabilities is entitled to an evaluation, development of an individualized program, transportation and placement. Prior to disciplinary suspension and expulsion, an evaluation must be completed.

Section 504 and the ADA are civil rights laws. They exist to protect individuals with disabilities from discrimination for reasons related to their disabilities. However, unlike IDEA, Section 504/ADA do not ensure that a child with a disability will receive an individualized educational program that is designed to meet the child's unique needs and provide the child with IDEA procedural protections. A child with a disability is not qualified for special education services under IDEA unless the disability adversely affects education and the child needs special education and related services. Under Section 504/ADA, the child may receive protections even though not qualifying for special education under IDEA. In order to have protection under Section 504, the child must have a physical or mental impairment. The impairment must substantially limit at least one major life activity, including walking, seeing, hearing, speaking, breathing, learning, reading, writing, performing math calculations, working, caring for one's self, and performing manual tasks. Being a civil rights law providing for equal protection of individuals with disabilities, Section 504 requires meeting the needs of those persons as adequately as those of nondisabled persons. In theory (and often in practice), if the group as a whole is treated the same, no matter how inadequately, there is no Section 504 violation.

Because it may be that a Section 504/ADA child will not receive special education services under IDEA, the child will not have the procedural protections that are available under that statute.

However, the child under Section 504/ADA may receive accommodations and modifications that are not available to children who are not disabled. The prohibitions against discrimination include:

- Denying a student the opportunity to participate in or benefit from a benefit or service
- Providing an opportunity to participate or benefit that is unequal to that provided others
- Providing a benefit or service that is not as effective as that provided to others
- Providing lower quality benefits, services or programs than those Provided to others
- Providing different or separate benefits or services, unless it is necessary to provide benefits or service that are as effective as those provided to others

To determine if a student has a disability, school districts must evaluate the student and make a placement decision. This decision should include documented information from a variety of sources and be considered by a group of persons knowledgeable about the child. Also considered should be the meaning of the evaluation data and the placement options available. If it is determined that the student has a disability, the student is entitled to regular or special education and related aids and services that are designed to meet the individualized educational needs of the student. Title II regulations impose a duty upon education agencies to make reasonable modifications in policies, practices or procedures when those modifications are necessary to avoid discrimination on the basis of disability. These regulations are consistent with cases previously decided under Section 504. Because of the more general description of "disability" of 504/ADA, as opposed to that found in IDEA, students with certain disabilities may qualify for protection under 504/ADA who would not be IDEA eligible.

Students with disabilities shall be afforded an equal opportunity to participate in non-academic/extra-curricular services and activities. Services and activities include counseling, competitive or recreational athletics, transportation, health services, special interest groups or clubs and student employment, among other services.

Section 504 regulations require that all public preschool, elementary, secondary, and higher education programs provide a free appropriate public education to each qualified person with a disability in the jurisdiction of the school district, regardless of the nature or severity of the person's disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that (a) are designed to meet individualized educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met, and (b) are based upon adherence to procedures that satisfy the evaluation and placement, mainstreaming, and procedural safeguards regulations of Section 504. To this end, it is usually necessary to develop an individualized accommodation plan (IAP) detailing the services and accommodations designed to meet the individualized needs of the student. To avoid liability, it is the best practice that all school districts develop and implement formal procedures to make certain Section 504 plans follow students from school to school, whether the students are being promoted from elementary to middle school or transferring from one school district to another. The new school should honor the IAP as a starting point for its own accommodation plan. An IEP consistent with IDEA will comply with the Section 504 regulations.

Parents or guardians who are themselves disabled may be covered by Section 504 when acting on behalf of their children. For example, the school district should provide qualified sign language or oral interpreters for hearing impaired parents at school initiated conferences related to the academic and/or disciplinary aspects of the child's education. However, whether the school district must provide parents with auxiliary aids and services at voluntary extracurricular activities is less clear.

The relevance of both Section 504 and Title II is one of legal and physical access. No student can be denied access to any of the statutorily mandated programs and services on the basis of disability. Access may require the following:

- Redesign of equipment
- Necessary assistive technology devices and/or services
- Reassignment of classes or other services to accessible sites
- Assignment of aids and auxiliary services
- Alteration of existing facilities
- New construction

Each program or activity, when viewed in its entirety, must readily be accessible to persons with disabilities. Title II regulation differs somewhat from Section 504 by requiring the use of specific auxiliary aids in some circumstances. School districts that communicate by telephone are required to use telecommunications devices for the deaf (TDDs) or equally effective telecommunications systems when communicating with individuals (parent or student) with impaired hearing or speech.

Title II does not require a school district to take any action that the district can demonstrate would result in a fundamental alteration in the nature of a service, program or activity, or in undue financial or administrative burdens. That regulation is taken from Section 504 and requires a decision being made by the head of the agency or by his or her designee after considering all resources available for use in the funding and operation of the program, service or activity.

The decision must be accompanied by a written statement of the reasons for reaching that conclusion. Even if an action is deemed to result in an undue burden, the school district must still take other appropriate steps, where possible, to ensure that the needs of students with disabilities are being met. Providing program accessibility should not ordinarily result in undue burdens for most school districts.

Title III of the ADA prohibits discrimination by public accommodations. Therefore, parents' and students' rights to be free from discrimination apply to private schools as well as public. Private schools must eliminate unnecessary eligibility standards that deny access to students with disabilities. They must make reasonable modifications in policies, practices and procedures that would otherwise deny access to students with disabilities, unless a fundamental alteration in the nature of the program would result. The private schools are also required to furnish auxiliary aids such as interpreters, note takers or readers when necessary to ensure effective communication. Title III does not cover religious institutions.

## **2. Free Appropriate Public Education**

While Section 504 does not accord the student with disabilities all of the procedural protections of IDEA, the public school must provide a free appropriate public education to each student eligible under Section 504 regardless of the nature or severity of the disability. An "appropriate education" is the provision of regular or special education and related aids and services that are designed to meet individual educational needs as adequately as the needs of nondisabled persons and are based upon adherence to procedures that satisfy Section 504 regulations. If the school district implements an individualized education program in accordance with IDEA, it will meet the standard established in Section 504 regulations.

The school district is required to educate, or provide for the education of, students with disabilities along with students who are not disabled to the maximum extent appropriate to the needs of the person with disabilities. The district shall place a person with disabilities in the regular educational environment unless it is demonstrated by the district that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. The school may, under appropriate circumstances, place the student with disabilities in an alternative setting, but remains responsible for assuring that the requirements of Section 504 are carried out. In doing so, the district must take into account the proximity of the alternative setting and provide for transportation. If placement in a public or a private residential program is necessary to provide a FAPE, the program, including non-medical care and room and board, shall be provided at no cost to the person or parents. If, of course, the student is parentally placed, the district is not required to pay for the education in the private setting.

## **3. Least Restrictive Environment**

Section 504 requires that children with disabilities must be educated with their nondisabled peers to the "maximum extent appropriate," and removal from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The ADA follows Section 504 by providing that school districts shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

## 4. Standards

Although State and Federal laws, as implemented, tend to isolate children with disabilities in educational settings, the true intent of the statutes, since the enactment of IDEA, has been to treat students with disabilities, in an educational sense, as close as possible to the treatment of their nondisabled peers. Thus, school districts must ensure that:

- To the maximum extent appropriate, children with disabilities, including children in public and private institutions or other care facilities, are educated with children who are nondisabled
- Special classes, separate schooling or other removal of children with disabilities from the regular educational environment only if the nature or severity of the disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily

Arkansas law is consistent with its Federal counterparts in this regard.

It follows then if the state or school district adopts standards for general education, then students with disabilities have the right to an education based on the same standards. To do otherwise would be a failure to provide comparable benefits and services as required by Federal law.

Section 504 and ADA regulations address this point specifically. At the same time, it is true that the method of teaching and the curriculum may need to be modified as a reasonable accommodation or as a supplementary aid or service necessary for maximum feasible participation in regular education. As in IDEA, all decisions in this respect must be made on an individual basis. The district (or the state), may not adopt policies and practices which limit opportunities for students with disabilities to meet the standards established by the state or local school districts. Therefore, policies and practices must be examined to prevent discrimination against such children.

## 5. Procedural Safeguards

Procedural safeguards which apply to the identification, evaluation, and placement process include: notice of non-discrimination policy; an opportunity to examine relevant records; an individual program review procedure; an impartial hearing with an opportunity for participation by the student's parents or guardian; and representation by counsel. School districts are required to have a Section 504 and an ADA Coordinator to coordinate compliance and adopt a grievance procedure with appropriate due process standards for prompt resolution of complaints.

Compliance with the procedural safeguards provisions of IDEA satisfies Section 504/ADA requirements. Wholly apart from the grievance procedure and opportunity for an impartial hearing, parents may file complaints directly with the Federal government. Complaint Procedure under Section 504 and ADA:

All Section 504 complaints against education agencies will also be Title II ADA complaints. A complaint may be filed with the Office for Civil Rights (OCR) in Dallas. The complaint should include the following:

- The identification of the complainant (parent, attorney, etc.)
- A detailed description of the child’s disability or disabilities (parents should have obtained all relevant medical reports as well as previous educational evaluations)
- A description of the nature of the disability and its effect on the child’s educational progress
- The name and location of the school district involved, including the names of relevant individuals including superintendent, principal, special education supervisor, and others thought to be familiar with the issues raised by the complainant (teachers, etc.)
- The exact nature of the discriminatory acts, the dates of occurrences, and the effect on the student and parents;
- Any additional background information that may, to the parents, seem necessary
- A description of administrative procedures, if any, and attempted resolution of issues raised by the complainant. This ground work must be laid out so that the parents will not face a complaint proceeding that involves nothing more than an argument between parents and school district, without attempts to resolve the problem at the school level

The complaint is to be directed against an educational program or violation and must be filed within 180 days of the occurrence of the alleged violation of law:

Office for Civil Rights  
 United States Department of Education  
 1999 Bryan St., Suite 1620  
 Dallas, Texas 75201  
 (214) 661-9600 - (214) 661-9587 fax

Usually, OCR will respond to all complaints. It will investigate the complaint allegations and issue a Letter of Findings. If a school district fails to comply with the Letter of Finding, administrative proceedings can be instituted to suspend, terminate, or refuse to grant further financial assistance. OCR can also refer the matter to the Department of Justice for litigation. OCR will not review the results of individual placement and other educational decisions, limiting its review to assure that the process requirements of the Section 504/ADA regulations have been met.

## 6. Discipline

Generally, discipline under Section 504 has been governed by the same rules as discipline under the IDEA. However, with the newly expanded discipline provisions in the IDEA, the Section 504 rules are more straightforward. First, Section 504 does not have a “stay put” provision maintaining the student in his or her current placement during the due process procedure. The 504 regulations do require that the district conduct a reevaluation of the student before taking any action with respect to any significant change in placement, e.g., a suspension of more than ten consecutive days. Also, where there is a pattern or practice of short term suspensions, a significant change in placement may have taken place. Where there has been such a change in placement, a determination must be made by a group of knowledgeable persons whether the misconduct is caused by the child’s disability. If the misconduct is caused by the disability, the evaluation team must continue the evaluation to determine whether the current placement is appropriate. If it is determined that the misconduct is not caused by the disability, the student may be excluded from school in the same manner as that imposed upon nondisabled children. Throughout the process, the parent is entitled to the procedural protections of notice and right to hearing.

## **7. Confidentiality and Access to Records**

Section 504 regulations guarantee the right of access to relevant records. Further, because parents have the right to an impartial hearing when there is a disagreement regarding the identification, evaluation or educational placement of a student with disabilities, the parents can request the hearing procedure provided for in the regulations. In addition to the Section 504 access rights, parents also have those same rights guaranteed under the Family Educational Rights and Privacy Act.

## **8. Extracurricular Activities**

Section 504 regulations require that school districts provide nonacademic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in those services and activities. The services and activities may include counseling services, physical, recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies which provide assistance to persons with disabilities, and employment of students, including both employment by the school district and assistance in making available outside employment.

School districts may not discriminate on the basis of disability with respect to physical education courses and athletic programs and activities. Schools may offer physical education and athletic activities that are separate only if it is consistent with the least restrictive environment principle and only if no qualified student with a disability is denied the opportunity to compete for teams or participate in courses that are not separate. If a reasonable accommodation is required to enable the student to participate, the district is required to modify nonessential eligibility requirements. Thus, when reasonable accommodation will remove an obstacle to participation, the district must take that action. However, where the student cannot qualify for an essential requirement of the activity, e.g., the age requirement, it has been held that the student not meeting the eligibility requirement would not be “otherwise qualified.”

## **B. NO CHILD LEFT BEHIND ACT (NCLB) 20 U.S.C. §§ 6301 ET SEQ.; 34 C.F.R. PART 200**

### **1. Coverage**

NCLB covers all states, school districts, and schools that accept Federal grants under Title I of the Elementary and Secondary Act. The Title I grants provide funding for remedial educational programs for poor and disadvantaged children in public schools and in some private programs.

### **2. Purpose**

The legislation was enacted to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments. It is meant to close the achievement gap between high and low performing children, especially the achievement gaps between minority and non-minority students, and between disadvantaged children and



their more advantaged peers. The Act stresses accountability and teaching methods that will achieve these ends. It holds all schools and states accountable for improving the academic achievement of all students, including students with disabilities.

## 5. Requirements

In order to obtain a Federal grant under NCLB the state must devise and develop a plan (school districts obtain sub-grants and also have plans to meet the requirements). State Plans must be developed in consultation with school districts, teachers, principals, student service providers, administrators, other staff, and parents. Generally, the plan must include descriptions of the following:

- Academic standards, academic assessments and accountability on a statewide basis
- Adequate yearly progress (high standards for all public schools}
- Timelines for adequate yearly progress (13 years after the end of 2001-2002 school year), all students will meet or exceed the state's proficiency level of academic achievement
- Measurable objectives
- Annual improvement for schools
- Academic assessments
- Language assessments and academic assessments of English Language proficiency
- State report cards
- Parental involvement (the plan is to describe how the state education agency will support the collection and dissemination to school districts of efficient parental involvement practices)

School districts receiving grants must issue report cards and provide them to parents on request. Report cards must contain information concerning the professional qualifications of the students' classroom teachers, licensing criteria for grade levels and subject matter, whether the teacher is teaching under emergency or provisional status, and academic degrees. Districts must also report whether services are provided by paraprofessionals and, if so, the qualifications of those paraprofessionals.

## 6. Relation to IDEA

NCLB includes requirements for parental involvement, qualified teachers and other professionals, scientifically based reading instruction, supplemental services; research based teaching methods, after school tutoring, and state and district report cards. For schools not achieving the standards set by the Act, the schools are held accountable and severe sanctions, including student transfers, are authorized to be imposed. NCLB applies to all children, including to those with a disability.

Indeed, it is the purpose of the Act "to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education. Therefore, the legislation has a pervasive impact on IDEA and Section 504 students.

Students with disabilities, with or without accommodations, are required to take part in state and local assessments. Many such students do not qualify for “special education.” Of those students, many do not have disabilities that would prevent them from competing equally with the general student population. If a student with disabilities requires accommodations, that student is presumed to take the tests on an equal footing, e.g., a blind student taking tests in Braille. Thus, under NCLB, it would be inconsistent with that Act to exclude students with disabilities from its accountability provisions.

Currently, there are legal exceptions allowing school districts to remove the test scores of students with disabilities from accountability system. For example, if a district has a small number of students with disabilities, the scores of those students may be excluded if the number is too small to yield statistically verifiable information. The “adequate yearly progress” (AYP) required under NCLB provides for the exclusion of a number of students with disabilities (based on a formula). However, one cannot, under the law or in good conscience, generalize these students as a stereotypical group, because many can and should compete on equal ground. In any case, schools must test 95 percent of children with disabilities and therefore up to five percent has already been excluded from the accountability system. Further, districts may be allowed to average data over three years. Lastly, some students will be tested using alternative achievement standards.

In order to meet the individualized and unique needs of each student with a disability, there are four options:

- Take the regular test in the same manner as all students
- Take the regular assessment with approved accommodations or modifications
- Take an alternate assessment based on the same achievement standards as the regular test
- Take an alternative assessment based on different achievement standards, e.g., life skills rather than academic

Therefore, NCLB is highly relevant to IDEA, not only in specific ways (for example, definitions of “highly qualified,” “core academic subjects,” etc.), but in overall application. There is no legitimate or statutory reason to exclude children with disabilities from the national policy announced in NCLB, and to further segregate them as a class.

## **C. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) 20 U.S.C. § 1232g; 34 C.F.R. PART 99; IDEA 20 U.S.C. § 1412(a)(8); 34 C.F.R. §§ 300.610-627**

### **1. Parental Rights**

The school district shall provide an opportunity for the parents of a child with a disability to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. Under FERPA “education records” means those records that are (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. Parents and eligible students (18 years or older) have the right to inspect and review any of the students’ educational records. Under the FERPA regulations, the rights of parents regarding education records are transferred to the student at age eighteen. IDEA also permits the transfer of these

rights to children with disabilities who have reached the age of eighteen, and who have not been determined to be incompetent under state law. If those rights are transferred, the school district must provide any notice required under the due process provisions of IDEA to the student and the parents. The school must comply with a request to provide access to records without unnecessary delay and before any IEP meeting or hearing, and in no case more than 45 days after the request is made. Parents also have the right to have someone at the school explain or interpret any item in the records upon reasonable request. Parents also have the right to receive copies of the records if it is the only way to ensure that parents will be able to review and inspect those records and have a representative inspect and review the records. The school district may charge a fee for copies of records if that fee does not effectively prevent the parents from exercising their right to inspect and review the records. The school district may not, however, charge a fee to search for or to retrieve the information.

If a parent believes that any information in the child's education records is wrong or misleading, or violates the privacy or other rights of the child, the parent may request that the school district change it. The district must either change the statements in a reasonable period of time or formally refuse to do so. If it refuses, the school must inform the parent of the refusal and advise them of the right to a hearing to challenge information in the child's educational records. If, following hearing, the school district's information is held to be accurate; the parent has the right to add a statement to the record commenting on the information or setting forth any reason for disagreeing with the decision.

## **7. School District Responsibility**

The school district is responsible for protecting the confidentiality of the student's education records by:

- Permitting parents to see only that information which relates to their own child when records contain information on more than one child
- Requiring the parent's consent before the education records are given to anyone not involved in the student's education
- Requiring the parent's consent before using the records for any purposes other than those related to providing special education and related services
- Not releasing information from education records to participating agencies without parental consent unless authorized to do so under Federal law;
- Adhering to state policies and procedures which apply in the event that the parent declines to give this consent and the school district feels the records should be given to the person requesting them
- Protecting the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages
- Assign an individual who is responsible for ensuring the confidentiality of records
- Guaranteeing that all persons who collect or use such information receive training in the state's policies and procedures regarding confidentiality
- Keeping for public inspection a list of names and positions of those employees permitted access to the records
- Destroying the information at the parent's request consistent with state law

A permanent record of a student's name, address and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

The district is obligated to give notice that is adequate to fully inform parents with respect to its policies and procedures that it has undertaken to ensure protection of the confidentiality of any personally identifiable information collected, used, or maintained under IDEA and FERPA.

#### **D. FREEDOM OF INFORMATION ACT (FOIA) Ark. Stat. Ann. § 25-19-105**

It is the policy of the State of Arkansas that public records shall be open for inspection and copying by any citizen of Arkansas during regular business hours of the custodian of those records. The request must be sufficiently specific to identify the records sought to be disclosed. A sample copy of an FOIA request is attached at Appendix V. There are many exemptions to the overall policy. An FOIA request may be denied with respect to such records as tax records, medical records, and those education records of others described in FERPA.

Use of the FOIA should not be abused. Parents are entitled to the records of their own child with a disability without resort to the FOIA, but those records will be denied to others under the statutes concerning children with disabilities in an educational setting under IDEA, and relevant statutes, as well as the FOIA. The FOIA should be invoked only where there is refusal by the school district to provide records which the parents find necessary to their child's education. The Act may also be used to secure, for example, minutes of school board meetings where policy questions are discussed and voted on.

# PART III

## Related Statutes

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### A. The Basics

Before engaging in any discussion that may involve a disagreement with the school district, parents should bear in mind to:

- Remain calm
- Remember verbal abuse is counterproductive
- Use the findings and purposes of IDEA to establish a high standard for FAPE
- Ensure that annual goals are comprehensive, specific and measurable
- Use evaluation procedures to monitor academic progress on IEP goals
- Give consent only for evaluations or portions of the IEP with which you agree
- Insist on annual IEP reviews
- Avoid due process hearings if at all possible

Parents must have in mind exactly what services they believe are required for the child in order for the child to receive FAPE. In order to obtain those services, the following suggestions are made:

- Build a good relationship with the person working directly with you or your child
- Come to meetings prepared to be positive
- Leave resentment and defensive attitudes at home
- Get to know the people who can make decisions – names, addresses, phone numbers, etc., so that you can contact them for help and information
- Know your rights – few people know all the laws which concern special education services, but it is important to know where to get this information – local advocacy groups, parent support groups, state agencies, and the protection and advocacy agency, Disability Rights Center of Arkansas

### B. Written Communications

All communications between parent and school should be in writing. When the parent engages in oral conversations with school personnel, the parent should request that the school representative put the major points in writing. If that person refuses, the parent should write a letter to the school which contains the information discussed to the best of the parent's recollection. Above all, the parent should establish a paper trail, i.e., keeping written records of events or discussions which affect the parent's efforts to obtain services. Parents should maintain written records of all contacts with the school and with medical personnel, evaluators and others relevant to efforts to obtain FAPE. All records should be maintained in a file in the parent's home. Further, parents should add a written record of reports and notes relevant to the child's needs. Maintenance of written records by parents will most likely lead toward the school district's compliance with law.

While due process hearings are to be avoided if possible, the parents' record keeping will form the basis for successful due process hearings and, if required, court evidence.

## C. Parent Groups

If at all possible, parents should always work in groups, i.e., with other parents of children in special education who will have similar experiences with their children and with the school. In order to achieve desired services, requests coming from several parents, as opposed to an individual parent, will always be more persuasive and more likely elicit a response from the school. This is particularly true when parents raise not only IDEA issues, but requests based on Section 504 or the ADA.

## D. Participation in IEP Meetings

The law requires meaningful parental participation in the child's IEP process. During IEP meetings, the following may be helpful:

- If you are not introduced at the meeting to any persons, introduce yourself to all team members
- Make a note of the names and positions of everyone at the meeting. You may want to record these on the list of important telephone numbers since they are likely to be people with whom you will have contact in the future
- Ask questions to clarify the particular role of other team members if this is not explained initially
- If you bring a friend, introduce that person and explain his/her role
- If you have a time limit for the meeting, let other team members know. Ask if a time limit has been set by others on the team
- Ask the chairperson to state the purpose of the meeting and to review the agenda, if this is not done at the beginning
- Ask for clarification if you have any questions about your legal rights;
- Ask that all tests administered be explained specifically to include implications for programming
- Ask for explanation of the eligible disability and any sources that may be helpful to your understanding of the condition
- If you disagree with anything in the conference, state your disagreement and seek to resolve it. If not resolved, ask for a future meeting
- At the conclusion of the meeting, ask for a summary to review major decisions and follow-up responsibility
- State specifically how frequently and in what ways you would like to be involved in the program, stating your desire and intent to work closely with the school in partnership for the child

Continually remind yourself of the important role you play for the child you are serving. Your active involvement is valuable and is worth your time and effort. In most cases, you will be well received, the school will welcome your input and everyone will be constructively involved in trying to meet your child's needs. Do not forget to show that you are pleased when things are going well and everyone is "doing their job." Compliment people who are doing a good job. The schools could use the positive feedback.

## E. Parental Rights and Responsibilities

The statute, now known as the Individuals with Disabilities Act, was enacted largely to “ensure that the rights of children with disabilities and parents of such children are protected”. Thus, IDEA and relevant Federal and State legislation confer significant and extensive “rights” on parents to empower them in seeking a free appropriate public education for their children with disabilities. As soon as parents enter the referral/ evaluation/IEP process or engage in administrative litigation, their “rights” are protected throughout so as to comport with the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

For example, before a parent takes formal steps to disagree with an IEP, the burden on the school district is substantial. The district, among other duties, is required to notify, in writing, the parents of:

- A description of the action proposed and an explanation of why such action is proposed or refused
- A description of each evaluation procedure, assessment, record or report the district used as a basis for its decision
- A copy of procedural safeguards
- The availability of an independent evaluation; and
- A description of options considered and reasons why the options were rejected

In short, a full explanation of the basis of all significant decisions relating to the identification, evaluation, educational placement, or the provisions of a free appropriate public education must be provided to parents.

The burden then is clearly on the school district to justify its significant decisions well before parents take any step toward formal disagreement. Also, the parents will have in their possession all relevant documents generated by the district in collaboration with the parents.

It is true that, among the purposes for which the legislation was enacted is to ensure that the rights of children with disabilities and parents are protected at all times during the special education process. Yet, these “rights” do not exist in a vacuum. With them come substantial responsibilities, which parents of students with disabilities must respect and accept.

One great consistency in IDEA is its requirement of parental participation throughout the special education process. This participation is intended to lead to collaboration between parents and school district in a joint effort to provide the child with an appropriate education. If parents, following the evaluation and/or the IEP process, are convinced the district is wrong, they may appeal to the State by complaint or hearing request. If the parents are properly prepared, they may well succeed in their efforts. The Arkansas Department of Education, Special Education, is not in the business of unjustly denying appropriate services to children with disabilities.

From the beginning of the process, parental consent must be obtained. That consent must be informed consent. Because they have a place at the decision table, the parents must take pains to fully understand the district’s proposals as to appropriate services and placement. The parents must attempt to understand the rights given by the statute whether that information comes from the school, an advocacy group, the State, or an attorney. Parents owe the

obligation of patience and understanding to the child. No parent is required to consent to an evaluation or the provision of a FAPE. If parents do enter the process, they are not required to agree to the total package of proposals made by the district. The decision to accept or not to accept is a significant responsibility. It will not be fulfilled by simply expressing anger at the district.

For example, parents may wish immediately to choose a private school over the public school. Before doing so, they must recognize that the district is not required to pay for the cost of that education and related services if the district can show that it has offered FAPE to the child. Even if parents can demonstrate that they are entitled to some reimbursement, that amount will be reduced if, at the most recent IEP meeting prior to the removal of the child from public school, the parents did not inform the IEP team that they were rejecting the proposed placement.

Reimbursement may also be denied or reduced if, at least ten days (including holidays falling on a business day) prior to the removal, the parents did not give written notice to the district. The amount may also be affected if prior to the removal, the district informs the parents of its intent to evaluate the child, but the parents do not make the child available.

In the event parents decide to request a due process hearing for any allowable purpose, responsibilities are significant. Prior to a hearing, parents must carefully consider the prehearing process, including mediation and the resolution process. Obtaining necessary services should be easier at this stage of the proceedings, and parents should engage in the process in good faith.

Options must be considered. When filing a complaint, whether State, OCR, or for due process, parents must include a proposed resolution to the extent possible. If parents continue to feel the school has acted arbitrarily or unlawfully and proceed to hearing, the parameters of the administrative review are established: (1) has the district complied with the procedures set forth in IDEA, and (2) is the IEP reasonably calculated to enable the child to receive educational benefits (not perfect or maximum benefits). If the parents agree to accept this burden, proper preparation should have been completed. All copies of school generated documents must have been retained and organized (for example, put in spiral notebooks). In addition all doctor's reports, all evaluations whether independent or school based, any written report, observation, etc., and names of individuals familiar with the child should be collected in the same notebooks.

As is true from the beginning of the special education process, it is usually advantageous to consult with other parents, or groups of parents, similarly situated, and with advocacy groups such as the protection and advocacy organization (DRA) or groups such as the Parent Training and Information Center (Arkansas Disability Coalition). Even if an attorney is hired, he or she will require the information hopefully maintained in good order by parents. Use of expert witnesses is usually essential. Payment for such witnesses is a problem for most parents, and advice should be sought from an advocacy group. The district or State is required to inform parents of free or low cost legal and other relevant services available in the area.



If parents face the process in good faith and are fully informed, the process will often work in their favor. If a district does take arbitrary and unlawful action, an entire administrative and judicial process is available. But first – it is wise to be composed and secure in the knowledge of the child and the special education process.



# APPENDICES

## APPENDIX I

### DRA PROGRAM DESCRIPTIONS

#### **PROTECTION AND ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES (PADD) 42 U.S.C. §§ 15001 et seq.**

This program was created by the Developmental Disabilities Assistance and Bill of Rights Act which requires each state to have a protection and advocacy system. DRA works with Partners for Inclusive Communities/University Center of Excellence in Developmental Disabilities (UCEDD), Developmental Disabilities Council, and other groups to promote inclusion, community integration, employment and independence of people with developmental disabilities. The program is authorized to pursue administrative, legal and other remedies to protect the rights of persons with developmental disabilities.

#### **CLIENT ASSISTANCE PROGRAM (CAP) 29 U.S.C. § 732**

The purpose of the Client Assistance Program is to provide assistance in informing and advising vocational rehabilitation clients and applicants of all benefits under the Rehabilitation Act of 1973 and under the Americans with Disabilities Act (ADA) Title I Employment. CAP assists clients or client applicants, when requested, in their relationships with projects, programs and facilities providing services to them under the Act.

#### **PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS (PAIMI) 42 U.S.C. §§ 10801 et seq.**

The Protection and Advocacy of Individuals with a Mental Illness Act of 1986 calls for the development in every state of a protection and advocacy system for individuals with mental illness. Each P&A system is charged with protecting and advocating for rights and investigating incidents of abuse and neglect of mentally ill individuals who are inpatients or who reside in a facility giving care or treatment. The P&A also serves eligible individuals facing discrimination or abuse and neglect in their communities.

#### **PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS (PAIR) 29 U.S.C. § 794e**

The Protection and Advocacy of Individual Rights program is authorized by the Rehabilitation Act, with authority to protect and advocate for the civil rights of persons with disabilities not otherwise eligible for other protection and advocacy programs. It is similar to other P&A programs in that it is authorized to pursue administrative, legal and other remedies to protect those rights.

**PROTECTION AND ADVOCACY FOR ASSISTIVE TECHNOLOGY (PAAT)**  
**29 U.S.C. §§ 3001 et seq.**

Disability Rights Center of Arkansas provides individual and systemic protection and advocacy services pursuant to the Technology-Related Assistance for Individuals with Disabilities Act

**PROTECTION AND ADVOCACY FOR  
BENEFICIARIES OF SOCIAL SECURITY**  
**(PABSS) 42 U.S.C. § 1320b-21**

DRA assists individuals with disabilities who are beneficiaries of Social Security to secure, re-gain or maintain employment while retaining their benefits.

**PROTECTION AND ADVOCACY FOR VOTING ACCESS  
FOR AMERICANS WITH DISABILITIES**  
**(PAVA) 42 U.S.C. § 15461**

This program is designed to assist individuals with disabilities by providing information and protection and advocacy with respect to accessible polling places, independent and accessible voting, and denial to register and vote.

**PROTECTION AND ADVOCACY FOR INDIVIDUALS  
WITH TRAUMATIC BRAIN INJURY**  
**(PATBI) 42 U.S.C. §§ 3000d-53**

For individuals who have sustained a traumatic brain injury, DRA will provide legal, administrative, and other remedies to protect and advocate their rights and give helpful information for referral services.



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[www.DisabilityRightsAR.org](http://www.DisabilityRightsAR.org)