

# Special Education

Brief History and Process Overview

Sarah M. Reinhardt, SAU 50 Special Education Director

March 20, 2018

# Section 504 of the Rehabilitation Act of 1973

In 1973 the first federal civil rights protection for people with disabilities, Section 504 of the Rehabilitation Act, was signed into law. What section 504 says is “no otherwise qualified handicapped individual in the United States shall solely on the basis of his handicap, be excluded from the participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”<sup>1</sup>

# Public Law 94-142: The Education for All Handicapped Children Act of 1975

- ▶ On November 19, 1975, Congress enacted Public Law 94-142, *The Education for All Handicapped Children Act of 1975*. The intention was for all children with disabilities to “have a right to education, and to establish a process by which State and local educational agencies may be held accountable for providing educational services for all handicapped children.”<sup>2</sup>
- ▶ Initially, the law focused on ensuring that children with disabilities had access to an education.
- ▶ To ensure that children also have access to due process of law, Congress included an elaborate system of legal checks and balances called “procedural safeguards” designed to protect the rights of children and their parents.<sup>3</sup>

# Americans with Disabilities Act of 1990

The Americans with Disabilities Act (ADA) gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.<sup>4</sup>

# Individuals with Disabilities Education Improvement Act of 2004 (known as IDEA)

- ▶ On December 3, 2004, the Individuals with Disabilities Education Act (IDEA) was amended again. The reauthorized statute is the Individuals with Disabilities Education Improvement Act of 2004 and is known as IDEA 2004.
- ▶ In reauthorizing the Individuals with Disabilities Education Act, Congress increased the focus on accountability and improved outcomes by emphasizing reading, early intervention, and research-based instruction by requiring that special education teachers be highly qualified. <sup>5</sup>

# Individuals with Disabilities Education Improvement Act of 2004 cont.

- ▶ The Individuals with Disabilities Education Act of 2004 has two primary purposes. The first purpose is to provide an education that meets a child's unique needs and prepares the child for further education, employment, and independent living. The second purpose is to protect the rights of both children with disabilities and their parents. <sup>6</sup>
- ▶ The Individuals with Disability Education Act guarantees *special education* and related services to eligible students with disabilities ages 3 through 21, including preparation for employment and independent living for students 14 and older. <sup>7</sup>

# Legal Requirements for Preschool

- ▶ SAU/School Districts are obligated:
  - ▶ To provide all children preschool to age 21 identified with an educational disability and who need special education services with FAPE (Free and Appropriate Public Education)
  - ▶ Educate children with disabilities in the Least Restrictive Environment (LRE)
  - ▶ Educate children with disabilities with non-disabled peers to the maximum extent possible and provide a continuum of special education services that allows for this to occur.
- ▶ SAU/School Districts are obligated:
  - ▶ To identify children who have an educational disability and are in need of special education services (Child Find responsibility)
  - ▶ If a child is referred from Early Intervention, have an agreed upon IEP in place by the age of 3 which includes appropriate goals and services.

# Special Education Process

- ▶ There are 13 specific categories of educational disability under IDEA: autism spectrum disorders, deaf-blind, deaf and hard of hearing, developmental cognitive disability, developmental delay, emotional or behavior disorders, other health disabilities, physically impaired, severely multiply impaired, specific learning disability, speech or language impairments, traumatic brain injury, and visually impaired.
- ▶ If a parent or staff member suspects that a child has an educational disability they begin the process by submitting a request, in writing, to the special education teacher stating the nature of their concern. **School districts have a Child Find obligation.**



# Receipt of Referral

- ▶ Once a referral has been received, the LEA notifies parents in writing that a referral has been received and a Disposition of Referral meeting is scheduled **within 15 business days** of receipt of the referral.
- ▶ Meeting notices must be mailed **12 calendar days** prior to all meetings. Parents are legally entitled to **10 Day Prior Written Notice** of an IEP team meeting. **If parents do not receive this notice and do not waive this right, the meeting can not be held and must be rescheduled.**
- ▶ Remember that a decision regarding the referral must be made at this meeting.

# Evaluation and Eligibility Determination

- ▶ The evaluation process must be completed within **60 calendar days of the date Parental Consent is received**. For the process to be completed, the following must occur:
  - ▶ Evaluation and written summary of results
  - ▶ Evaluation meeting to review results
  - ▶ Determination of eligibility (the child has a disability **and** requires Specialized Instruction to access FAPE) if appropriate.
- ▶ **At least 5 calendar days before the meeting**, unless waived by the parent, the LEA must send the parent copies of all examiner reports that will be discussed.

# Initial IEP and Placement

- ▶ If a child is found eligible for special education services the IEP team needs to develop and hold the IEP team meeting **within 30 days of receipt of parental consent to the identification.**
- ▶ Placement, where the IEP will be implemented (usually the local school), has to be proposed as well at the IEP team meeting.

# Next Steps

- ▶ IEPs must be reviewed and updated annually. No IEP can be written for longer than 1 year.
- ▶ All students must be re-evaluated every 3 years to determine continued eligibility for special education services as well as to inform the development of the IEP.

# Triennial Evaluation Process

- ▶ An IEP team meeting to plan the evaluation is held at least 75 days prior to the date the triennial evaluation is due. Be sure that guidelines following Prior Written Notice of meetings are followed. When scheduling this meeting, consider that:
  - ▶ The re-evaluation process must be completed within **60 calendar days of the date Parental Consent is received**. However, the district and parents can agree to one extension of not more than **30 calendar days**.
- ▶ At the meeting, the team determines what evaluations are to be completed and the district makes a formal request for parental consent for the evaluations.
- ▶ If consent is provided, the 60 day deadline begins the date the parental consent is received.
- ▶ If the parents refuse the evaluation, another IEP team meeting will be scheduled to discuss parental concerns and next steps.

# Works Cited

<sup>1</sup> U.S. Department of Education, “The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973,” Last Modified October 15, 2015.

<https://www2.ed.gov/about/offices/list/ocr/docs/hq5269.html>

<sup>2</sup> Wright, Pete Esq., “The History of Special Education Law,” Last Modified November 29, 2010.

<http://www.wrightslaw.com/law/art/history.spec.ed.law.htm>

<sup>3</sup> Ibid

<sup>4</sup> ADA National Network, “What is the American’s with Disabilities Act (ADA)?” Accessed March 9, 2018. <https://adata.org/learn-about-ada>

<sup>5</sup> LD Online, “Highlights of Key Provisions and Important Changes in the Final Regulations in IDEA 2004,” Accessed March 20, 2018.

<http://www.ldonline.org/article/11201/>

# Works Cited

<sup>6</sup> Council for Exceptional Children, “A Primer on the IDEA 2004 Regulations,” Accessed March 20, 2018. <https://www.cec.sped.org/Policy-and-Advocacy/Current-Sped-Gifted-Issues/Individuals-with-Disabilities-Education-Act/A-Primer-on-the-IDEA-2004-RegulationsIDEA>

<sup>7</sup> Ibid

*For additional information on NH Special Education Standards, please refer to:*

New Hampshire Department of Education, “New Hampshire Standards for the Education of Children with Disabilities,” Last Modified March 23, 2017.

[http://www.gencourt.state.nh.us/rules/state\\_agencies/ed1100.html](http://www.gencourt.state.nh.us/rules/state_agencies/ed1100.html)