

Special Education Services

Fred C. Lunenburg
Sam Houston State University

ABSTRACT

In this article, I discuss the most recent and major statutory provisions of the Individuals with Disabilities Education Act (IDEA), including: free appropriate public education, individualized education programs, attention deficit hyperactivity disorder, least-restrictive environment, placement in private schools, related services, due process protections, discipline, compensatory education, attorney's fees and liability for reimbursement to parents, and the IDEA and Aids.

Introduction

Increased school enrollments over the last 50 years have resulted in an increased diversity of the school population. Whereas exceptional children with learning disabilities, social and emotional maladjustments, and physical disabilities formerly dropped out of school at an early age, they now remain in school until the compulsory age or beyond.

The issue of the exceptional child is not new. Special education services, to accommodate these children, have rapidly expanded its part in education since World War II (Norwich, 2011). Among the forces responsible for this recent expansion are advances in the fields of psychology, sociology, and rehabilitation; growth of the humanitarian movement; new knowledge of medical diagnosis and treatment; educational methodologies for the exceptional child; and new federal and state laws (Friend, 2011; Haines, 2011; Obiakor, 2011; Webber, 2011).

Exceptional children are unlikely to achieve their full human potential without a special education program designed to capitalize on their abilities or help them overcome their disabilities. Special education is specially designed instruction intended to meet the unique needs of students with disabilities. Special teaching procedures, materials, equipment, and facilities may be required (Kaufman & Wandberg, 2010). To this end, Congress passed four landmark pieces of legislation: Section 504 of the Rehabilitation Act of 1973, the Education for All Handicapped Act of 1975 (EAHCA), the Americans with Disabilities Act of 1990 (ADA), and the Individuals with Disabilities Education Act (IDEA). Of these four laws, the EAHCA and later IDEA have had the most significant impact on public schools.

Education for All Handicapped Children Act (EAHCA)

The original Education for All Handicapped Children Act (EAHCA), signed on November 29, 1975, by President Gerald R. Ford, was amended in 1978, 1983, and 1986. The EAHCA (Public Law 94-142) ensured the right of all children with disabilities to a public school education.

The need for this law was expressed by Congress:

1. There are more than eight million handicapped children in the United States today.
2. The special educational needs of such children are not being met.
3. More than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity.
4. One million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers.
5. There are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected. [Education for All Handicapped Children Act, 20 U.S.C.A. § 1400(b)]

To ensure children with disabilities basic educational rights, Public Law 94-142 incorporated six tenets : (1) a free appropriate public education, (2) an individualized education program, (3) special education services, (4) related services, (5) due process procedures, and (6) the least restrictive environment in which to learn (Education for All Handicapped Children Act, 20 U.S.C.A. § 1401).

Individuals with Disabilities Education Act (IDEA)

In 1990, the statute was renamed the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1485). Congress reauthorized and amended the IDEA in 1997 and 2004. The purposes of the IDEA are: (1) to assure that all children with disabilities are provided with a “free appropriate public education” that includes special education and related services tailored to their special needs, (2) to prepare them for employment and independent living, (3) to assure that the rights of children with disabilities are protected, and (4) to assist states in providing appropriate special education and related services (20 U.S.C. § 1401).

The amendments to IDEA in 2004 rendered another name change, with the optional addition of “Improvement” added making it IDEIA, which was signed into law by President George W. Bush on December 3, 2004 (Public Law 108-446, 118 Stat. 2647, 20 U.S.C.A. § 1400-1482). Overall, the new statute refines the 1997 version, but leaves the body of law in place. The new law coordinates more closely with No Child Left Behind (NCLB).

In coordinating the IDEIA with NCLB, the new act seeks to encompass and define the requirement for a “highly qualified teacher.” The basic requirement under the new Act is that a highly qualified public elementary and secondary special education teacher must hold a full state certification or has passed a special education licensing exam, holds a license, has at least a bachelor’s degree, and has not had any licensure requirements waived [20 U.S.C.A. § 7801(11)]. (See Table 1.)

Table 1

Summary of Requirements to be a Highly Qualified Special Education Teacher

Category of Special Education Teachers	Requirements Under P.L. 108-446 (IDEA)
All special education teachers	<p><i>General Requirements</i></p> <ul style="list-style-type: none"> • Hold at least a bachelor’s degree • Must obtain full state special education certification or equivalent license • Cannot hold an emergency or temporary certificate
New or veteran <i>elementary school</i> teachers teaching one or more core academic subjects only to children with disabilities held to alternative academic standards (most severely cognitively disabled)	In addition to General Requirements above, may demonstrate academic subject competence through “a high objective uniform State standard of evaluation” (HOUSSE) process
New or veteran <i>middle or high school</i> teachers teaching one or more core academic subjects only to children with disabilities held to alternative academic standards (most severely cognitively disabled)	In addition to the General Requirements above, may demonstrate “subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach those standards”
<i>New</i> teachers of <i>two or more academic subjects</i> who are highly qualified in either mathematics, language arts, or science	In addition to the General Requirements above, has two-year window in which to become highly qualifies in the other core academic subjects and may do this through the HOUSSE process
<i>Veteran</i> teachers who teach <i>two or more academic subjects</i> only to children with disabilities	In addition to the General Requirements above, may demonstrate academic subject competence through the HOUSSE process (including a single evaluation for all core academic subjects)
<i>Consultative teachers</i> and other special education teacher who so not teach core academic subjects	Must only meet the General Requirement above
Other special education teachers teaching core academic subjects	In addition to the General Requirements above, meet relevant NCLB requirements for new elementary school teachers, new middle/ high school teachers, or veteran teachers

A second essential aspect of alignment with NCLB is a requirement for accountability and assessment. Under the new law, special education students must be tested to determine adequate yearly (AYP), as are general education students. Provision is made for alternate assessments, which would address the child's disability. Regulations would permit proficiency to be determined through alternate assessment methods allowing greater flexibility in documenting progress toward grade-level achievement.

Interpretation of IDEA

The IDEA legislation can be grouped into the following major statutory provisions (Alexander & Alexander, 2009; Imber & Van Geel, 2010):

- Free appropriate public education
- Individualized education programs
- Attention deficit hyperactivity disorder
- Least-restrictive environment
- Placement in private schools
- Related services
- Due process protections
- Discipline
- Compensatory education
- Attorney's fees and liability for reimbursement to parents
- IDEA and AIDS

Each one will be discussed briefly in turn.

Free Appropriate Public Education

To qualify for federal funds under IDEA, each state must adopt a policy "that assures all handicapped children the right to a free appropriate public education (FAPE)." IDEA defines a FAPE as special education and related services that (a) have been provided at public expense, under public supervision and without charge, (b) meet the standards of the state education agency, (c) include an appropriate preschool, elementary, or secondary education in the state involved, and (d) are provided in conformity with the individualized education (IEP) required under Section 1414 (a) (5) of this title [20 U.S.C. § 1401 (18)]. A free appropriate public education must be specifically designed to meet the unique needs of the child.

Individualized Education Programs

The individualized education program (IEP) is the centerpiece of the statute's education delivery system for disabled children:

The term “individualized education program” means a written statement for each child with a disability developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities ... (20 U.S.C.A. § 1400)

The requirements for the child’s IEP statement include the following:

1. The child’s present level of performance must be stated, requiring the school district to specifically indicate “how the child’s disability affects the child’s involvement and progress in the general curriculum.”
2. The annual goals must be “measurable,” and the child must “progress in the general curriculum.”
3. Program modifications must be provided that will enable the child to “advance appropriately” toward attaining annual goals.
4. Provision must be made for the child to participate in state or school district student achievement assessments.
5. Evaluation procedures must relate to IEP objectives and measure the child’s progress toward annual goals.
6. Parents must receive periodic report cards indicating the child’s progress and the extent to which the progress is sufficient to achieve annual goals. [20 U.S.C. § 1414(d) (1) (A)]

Attention Deficit Hyperactivity Disorder

A disability not specifically listed under the IDEA is Attention Deficit Hyperactivity Disorder (ADHD). It is most commonly defined by the criteria of inattention, hyperactivity, and marked impulsiveness (Graham, 2011). Focus cannot be kept on any one topic long enough for a detailed assessment.

Although not specified, ADHD children may be covered under the IDEA, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 (ADA). An ADHD child may be eligible for IDEA services under one of three categories: (1) other health impaired, (2) specific learning disability, and (3) seriously emotionally disturbed [C.F.R. § 300.7(a) (1)].

Least-Restrictive Environment

The IDEA advances the general philosophy that children with disabilities should be educated with typically developing children in the normal educational setting whenever possible. What precisely the “least-restrictive environment” requirement means operationally has been fertile ground for speculation. Terms commonly used to define least-restrictive environment are “inclusion,” “full inclusion,” and “integrated services.”

Neither of these terms is found in Public Law 94-142 (EAHCA, 1975), Public Law 101-476 (IDEA, 1990), or their implementing regulations. The inclusion movement came out of the U.S. Department of Education in the early 1980’s under the “regular

education initiative.” Other terms include “least-restrictive environment” and “mainstreaming.” Integrating children with disabilities in regular classrooms is commonly known as “mainstreaming” or “inclusion” (Gore, 2010; Karten, 2010).

Placement in Private Schools

The IDEA 2004 amendments stipulate congressional intent to fund special education programs in private schools. The public school district must provide services for children with disabilities who are currently attending private schools and allocate a pro-rata share of federal money for such services [20 U.S.C.A. § 1412 (a)(10)(i)(I)]. The state must ensure the following:

That, to the extent consistent with the number and location of children with disabilities in the state who are enrolled in private elementary and secondary schools, provision is made for participation of such children in the program assisted or carried out under this subchapter by providing for such children special education and related services. [20 U.S.C. § 1413(a)(4)]

These services are provided and paid for from federal funds whether or not the actual educational process takes place in private, religious, or public school facilities. The constitutional justification for public funding of special education services is found in *Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 113 (1993), in which case the U.S. Supreme Court held that providing public funding for a sign-language interpreter for a student attending a Catholic high school did not violate the Establishment Clause of the First Amendment.

Related Services

Under Public Law 94-142, related services that enable special-needs children to benefit from special education must be made available without cost to the parents. The IDEA defines “related services”:

The term “related services: means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purpose only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. [20 U.S.C. § 1401(17)]

This list of related services is illustrative not exhaustive.

Due Process Protections

The IDEA provides significant due process protections. The procedural safeguards in IDEA include the following:

- (1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;
- (2) procedures to protect the rights of the child whenever the parents of the child are not known . . . ;
- (3) written prior notice to the parents of the child whenever such agency—
 - A. proposes to initiate or change; or
 - B. refuses to initiate or change; the identification, evaluation, or educational placement of the child . . . or the provision of a free appropriate public education to the child.
- (4) procedures designed to ensure that the notice required . . . is in the native language of the parents, unless it clearly is not feasible to do so;
- (5) an opportunity for mediation . . . ;
- (6) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child (20 U.S.C. § 1415). The written prior notice referred to in Section 1415 of the IDEA must include:

- A. a description of the action proposed or refused by the agency;
- B. an explanation of why the agency proposes or refused to take the action;
- C. a description of any other options that the agency considered and the reasons why those options were rejected;
- D. a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;
- E. a description of any other factors that are relevant to the agency's proposal or refusal;
- F. a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- G. sources for parents to contact to obtain assistance in understanding the provisions of the part. (20 U.S.C. § 1415)

A document describing these procedural safeguards must be given to parents on initial referral, on notification of an IEP meeting, and on registration of any complaint by a parent. The IDEA requires that this document must contain a full explanation of the rights of students with disabilities related to:

- (A) independent educational evaluation;
- (B) prior written notice;
- (C) parental consent;
- (D) access to educational records;
- (E) opportunity to present complaints;
- (F) the child's placement during the pendency of due process proceedings;
- (G) procedures for students who are subject to placement in an interim alternative educational setting;
- (H) requirements for unilateral placement by parents of children in private schools at public expense;
- (I) mediation;
- (J) due process hearings, including requirements for disclosure of consultation results and recommendations;
- (K) State-level appeals (if applicable in that State);
- (L) civil actions; and
- (M) attorneys' fees. (20 U.S.C. § 1415)

One of the most significant procedural due process protections in the reauthorized IDEA is the right to an impartial due process hearing. Under the IDEA, any party to a hearing shall be given:

1. the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problem of children with disabilities;
2. the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and
4. the right to written, or, at the option of the parents, electronic findings of fact and decisions. (20 U.S.C. § 1415)

Discipline

All students are guaranteed due process of law, including notice and hearing prior to significant infringements of their property rights and liberty interests. However, special concerns exist in disciplining children with disabilities. When school officials seek to suspend or expel children with disabilities, the IDEA imposes significant legal protections for these children, including a "stay-put" provision to protect them from being removed from their current placements. The United States Supreme Court addressed the issue of removing children with disabilities for disciplinary reasons and the effect of the "stay-put provision in *Honig v. Doe*, 484 U.S. 305 (1988).

The Court held that the language of the stay-put provision states that during the pendency of any proceedings initiated under IDEA, unless the state or local educational agency and the parents or guardian of a disabled child agree, "the child shall remain in the then current educational placement." The Court did recognize a "dangerousness" exception to the stay-out provision by stating "while the child's placement may not be

changed during any complaint proceeding, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves and others,” ... including the use of study carrels, timeouts, detention, or restriction of privileges. More drastic measures may be taken, where a student poses an immediate threat to the safety of others. In such situations, school officials may temporarily suspend the disabled student for up to 10 schooldays.

With recent concerns over school violence and drug use, the revised IDEA provides school principals with additional authority to change the placement of special education students who carry weapons; sell or use drugs, or are a danger to themselves or others. The IDEA amendments state:

School personnel under this section may order a change in the placement of a child with a disability—

- (i) to an appropriate educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and
- (ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days—
- (iii) the child carries a weapon to school or to a school function . . .
- (iv) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. [20 U.S.C. § 1415(k)]

If students with disabilities present a serious danger to themselves and others, school authorities may request a disciplinary transfer of the student to an alternative setting. The reauthorized IDEA provides that:

A hearing officer . . . may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

- (a) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
- (b) considers the appropriateness of the child’s current placement;
- (c) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of supplementary aids and services; and
- (d) determines that the interim alternative education setting meets (other requirements of the IDEA). [20 U.S.C. § 1415(k)]

School officials, however, must establish by “substantial” evidence that maintaining the current placement of the student will likely result in injury.

Compensatory Education

A free appropriate public education under the IDEA extends to age 21 and beyond if a student with a disability has suffered from earlier deprivation of a free appropriate public education.

Attorney's Fees and Liability for Reimbursements to Parents

Attorney's fees were permitted by a 1986 amendment to the Education for All Handicapped Children Act of 1975. This amendment was considered necessary because Congress observed that the burden of heavy attorney's fees could conceivably make parents reluctant to raise valid complaints challenging school district actions. Furthermore, the Supreme Court in *Florence County School District v. Carter*, 510 U.S. 7 (1993) affirmed that local school districts may be liable for reimbursement to parents for tuition associated with alternative placement in private schools.

IDEA and AIDS

Are children with AIDS covered by the IDEA? The IDEA defines "handicapped children" as

mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or *other health impaired children*, or children with specific learning disabilities who by reason thereof *require special education and related services*. [20 U.S.C.A. § 1401(a) (1)]

In the case of Aids students, the category that would most closely fit is "other health impaired children." This phrase is defined as

[l]imited strength, vitality or alertness due to chronic or acute health problems such as heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, *hemophilia*, epilepsy. Lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance. [34 C.F.R. § 300.5(b) (7)]

AIDS is not listed as an example of an acute or chronic health problem by the IDEA. In October 1984, the Department of Education addressed the applicability of the IDEA to AIDS victims. The Department stated that an AIDS child is not considered to be "handicapped" as defined in IDEA unless the child needs special education. The policy states:

Children with Aids could be eligible for special education programs under the category of "other health-impaired," if they have chronic or acute health problems which adversely affect their educational performance (*Doe v. Bellville Public School District No. 118*, 672 F. Supp. at 344-345). (S.D. Ill. 1987)

Conclusion

Special teaching practices, materials, equipment, and facilities may be required for children with disabilities to achieve their full potential. To that end, Congress passed four landmark pieces of legislation: Section 504 of the Rehabilitation Act of 1973, the Education for All Handicapped Children Act of 1975 (EAHCA), the Americans with Disabilities Act of 1990 (ADA), and the Individuals with Disabilities Education Act (IDEA). Of these four laws, the EAHCA and later the IDEA have had the most significant impact on public schools. Congress reauthorized IDEA in 1997 and 2004, adding new amendments and extending federal funding for special education services.

References

- Alexander, K., & Alexander, M. D. (2009). *American public school law* (7th ed.). Belmont, CA: Wadsworth/Cengage Learning.
- Doe v. Belleville Public School District No. 118*, 672 F. Supp. at 344-345 (S.D. Ill. 1987).
- Florence County School District v. Carter*, 510 U.S. 7 (1993).
- Friend, M. (2011). *Special education: Contemporary perspectives for school professionals*. Upper Saddle River, NJ: Prentice Hall.
- Gore, M. C. (2010). *Inclusion strategies for secondary classrooms: Keys for struggling learners*. Thousand Oaks, CA: Corwin Press.
- Graham, L. (2011). *Deconstructing ADHD: Critical guidance for teachers and teacher educators*. New York, NY: Peter Lang.
- Haines, S. (2011). *Education, disability, and social policy*. Cambridge, MA: Policy Press.
- Honig v. Doe*, 484 U.S. 305 (1988).
- Imber, M., & Van Geel, T. (2010). *Education law* (4th ed.). New York, NY: Routledge.
- Karten, T. J. (2010). *Inclusion strategies that work: Research-based methods for the classroom*. Thousand Oaks, CA: Corwin Press.
- Kaufman, R., & Wandberg, R. (2010). *Powerful practices for high-performing special educators*. Thousand Oaks, CA: Corwin Press.
- Norwich, B. (2011). *Special education needs: A new look*. London, England: Continuum International Publishing Group.
- Obiakor, F. E. (2011). *Current issues and trends in special education: Research, technology, and teacher preparation*. Bingley, UK.
- Webber, M. (2011). *Reflective practices in mental health: Advancing psychosocial practice with children and adults*. London, UK.
- Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 113 (1993).