



Chapter 1

Evaluation and Eligibility

Overview of Special Education and the Individuals with Disabilities Education Improvement Act of 2004

For over thirty years, federal law has required public schools to provide special education services to all children with disabilities who are eligible to receive them. The name of the law under which these services are provided to children today is the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA 2004).

IDEIA 2004 is the latest version of the law that Congress first enacted in 1975, the Education for All Handicapped Children Act (EHA or Public Law 94-142). In 1983, Congress amended the EHA. In amendments made to the EHA again in 1990, the name of the law was changed to the Individuals with Disabilities Education Act (IDEA). The IDEA was amended again in 1997 and most recently again in 2004 when the name was changed officially to IDEIA 2004.¹

One of the purposes of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs so that they are prepared for further education, employment, and independent living. Another important purpose of the IDEA is to ensure that the rights of children with disabilities and their parents are protected.

Children are eligible for services under the IDEA if they have one of 13 disabilities and if they require specially designed instruction and related services to address learning difficulties arising from their disability. The disabilities served under the IDEA include autism, deafness-blindness, young children with developmental delay (ages 3-9), emotional disturbance, hearing impairments (including deafness), mental retardation, multiple disabilities, orthopedic impairments, other health impairments, specific learning disabilities, speech or language impairments, traumatic brain injury, and visual impairments (including blindness).

What is a free appropriate public education (you'll often hear it referred to as FAPE)? Your child is receiving FAPE if she's provided with special education services designed specifically to meet her unique needs and if the services allow her meaningful (i.e., more than trivial) educational progress or advancement. These services are laid out annually in your child's Individualized Education Program (IEP).

¹ For ease of reading, IDEIA 2004 will be referred to simply as IDEA in this guide.

For a special education program to be appropriate — to meet the IDEA's FAPE standard — it must provide your child the opportunity to interact with like-age peers to the maximum extent appropriate. This is called the least restrictive environment (LRE) for your child. The IDEA requires an IEP Team to begin the LRE decision-making process for your child with the presumption that 1) she will spend all of her day in a regular education classroom with an array of appropriate supports and services designed to enable her to participate successfully and 2) she will be removed from that setting only when her IEP cannot be successfully implemented there.

When the IDEA was enacted in 1975, it authorized the federal government to fund up to 40% of the national average per pupil cost for each special education student served under the IDEA. Despite this commitment, the federal government has never funded more than approximately 17% of that cost. Most of the funding for special education comes from states and local school districts.

In January 2000, the Center for Special Education Finance (CSEF), a federal research center, studied special education funding in selected states, including Alabama. This research found that special education spending in Alabama is significantly lower than both the national average and the other studied states. For every \$1 spent to educate a general education student in Alabama, \$1.57 is spent to educate a special education student. The national rate for special education students is \$1.90.



At what age are children with disabilities entitled to special education services?

Eligible children with disabilities from birth through age 2 are provided services by Alabama's Early Intervention System, part of the Department of Rehabilitation Services. Services for children in this age range are often referred to as Part C services because of the section of the IDEA which mandates such services.



Local public school systems are responsible for providing special education to eligible children from ages 3 to 21. Services for children in this age range are often referred to as Part B services.

Your child's right to special education services ends when she receives either a regular Alabama High School Diploma or reaches the age of 21, whichever comes first. Children with disabilities who have not earned a regular Alabama High School Diploma and who have not reached their twenty-first birthday by September 1 are entitled to begin and complete the new school year even if it means that they

receive more than twelve years of instruction. Beginning July 31, 2008, the cutoff date will change to August 1.

If your child graduates with either an Alabama Occupational Diploma or a Certificate of Attendance, she's eligible for special education services coordinated by your school district until she reaches the age 21 cut-off.

The extra years of schooling that are available to older youth can really help prepare them for successful independent living and work. Think creatively with your child and her school to determine how those extra years of schooling can best be used to help your child become ready for life as an adult!

What children are eligible for special education and related services?

To be eligible for special education and related services under the IDEA, your child must be identified as a "child with a disability."

A child with a disability meets federal and state eligibility criteria for at least one of these disabilities:

- Autism
- Deaf-Blindness
- Developmental Delay (young children ages 3-9)
- Emotional Disturbance
- Hearing Impairment (including deafness)
- Mental Retardation
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment (including blindness)

She must also, as a result of her disability, need specially designed instruction and related services in order to benefit from the school's educational program.

Your child may be diagnosed with one of these disabilities but may not need specially designed instruction and related services. In that case, your child would not be eligible for special education services under the IDEA. However, she may be eligible for services under Section 504 of the Rehabilitation Act of 1973. (See Chapter 6 for more information.)

What is the purpose of a special education evaluation?

An evaluation has two purposes.

First, an evaluation determines if your child is a child with a disability as defined under the IDEA and thus eligible for special education and related services.

Second, the evaluation identifies the nature and extent of the special education and related services that your child needs.

How do I get a special education evaluation for my child?

If your child is struggling in school and you suspect she may have a disability, ask to have her evaluated.



Follow up with the district's special education coordinator a few days after sending your referral letter. Ask him when the Team will meet to review your request for evaluation, reminding him that your request for evaluation must be addressed in a timely manner.

Your evaluation request does not have to be in writing. However, it's better to put your request in writing so you have a record of it. In a dated letter, set out the reasons why you believe your child has a disability which is interfering with her ability to learn and ask to have her referred for a special education evaluation. Send the letter to your school district's special education coordinator. Keep a copy of the letter. (See the Appendix for a sample referral letter.)

You can ask for an evaluation whether your child attends a public or private school. The IDEA requires a school district to seek out and evaluate for eligibility for special education services all children who go to school in that district whether they attend public or private schools. This is called the district's Child Find obligation. Your child's school may also initiate a request for an evaluation.

Children in Private Schools

A school district must identify, locate and evaluate all children within the district who may need special education services, including those attending private schools. This process is called Child Find.

The school district where a private school is located is responsible for Child Find for students in the private school - not the district where the students live. Private schools include religious schools and, in Alabama, home-schooled children. School districts must consult with private school officials and representatives of parents of parentally placed private school children to ensure that the Child Find process treats such students equitably and that parents, teachers and private school officials are informed about the process. The Child Find evaluation procedures, standards and time lines for private school students must be the same as those used for public school students in the district.

Children enrolled by their parents in private schools do not have an individual right to receive the special education and related services they would receive if enrolled in a public school. Instead, the IDEA requires school districts to create a Services Plan for a private school child who is eligible for special education services.

A Services Plan describes the specific special education and related services being offered to a private school child — what type of services will be provided, where they will be provided and by whom.

A Services Plan is different from an IEP because it doesn't necessarily plan for the full range of special education and related services needed by a child with a disability. A Services Plan is not developed in the same way that an IEP is developed; a child's parents and her teachers have little say in



determining the services — if any — to be provided to a parentally-placed private school student. The school district must develop the Services Plan with timely and meaningful input from private school officials and from representatives of parents of parentally-placed children in the district. In working with these representatives, the school district must discuss:

- types of special education services;
- how services will be allocated if there is not enough money to fund services for all parentally placed children;
- how and when Services Plan decisions will be made.

In the end, the school district has the final authority to make decisions about all aspects of the Services Plan being offered. Think of a Services Plan as “IEP Lite.”

After a referral for evaluation is made, what happens next?

In a timely manner after the evaluation referral is made, a group of qualified professionals (or an IEP Team) must meet and review the request to decide if your child should be evaluated. You are an important member of this group.

The Team may refuse to evaluate your child if it doesn't suspect that she has a disability. If the Team refuses to evaluate your child, it must



provide you written notice, explaining, among other things, why it refuses to conduct the evaluation and the information that it used to make that decision. You may challenge the Team's decision by using the conflict resolution mechanisms provided for in the IDEA. If the Team determines that she should not be evaluated, your child should be considered for eligibility under Section 504 (see Chapter 6 for more information) or referred to your school's Building Based Student Support Team (BBSST).

If the Team determines that your child should be evaluated, the school must get your written consent for the evaluation. Typically, you will sign the necessary evaluation consent forms at that meeting.

It is important that you sign and return evaluation consent forms as soon as possible; the evaluation time line that your child's school must follow (see below) doesn't start until it receives your signed consent to evaluate.

Do I have to give written consent to have my child evaluated?

For initial evaluations, whether you or your child's school initiates the process, you must provide written, informed consent before the school can assess your child.

If you refuse to consent to an initial evaluation, or if you don't respond to a request for consent, the school may choose to use the IDEA's mediation and due process procedures to pursue an evaluation of your child. However, these override procedures may not be used to compel your consent if your child attends private school or is home-schooled at your expense.

When you consent to have your child evaluated, you are not consenting to have her receive special education and related services; separate written consent is required from you before the school can provide your child with services.

What is a Building-Based Student Support Team (BBSST)?

BBSST services seek to improve general education programming to help struggling children so that referral to, and placement in, special education programming is not necessary.

Under Alabama law, before a child is evaluated for special education eligibility, intervention strategies should be implemented in the general education program and monitored by a school's BBSST for a minimum of eight weeks. If these interventions are determined to be unsuccessful, then the child can be referred for evaluation.

However, Alabama law allows for certain important exceptions.

First, the law allows for these interventions to be waived for a child who:

- has severe problems that require immediate attention;
- is three, four, or five years old and hasn't been in kindergarten;
- has only articulation, voice, or fluency problems;
- has a medical diagnosis of traumatic brain injury, or
- has been referred by her parent for evaluation.

Second, Alabama law also allows for these interventions to be done concurrently during the evaluation process. So, your child can be undergoing evaluation for special education eligibility and be provided interventions by the BBSST at the same time.

When you meet with your child's IEP Team to discuss your request to evaluate, remind the Team that BBSST interventions can be done at the same time as the special education evaluation process. When these interventions are done at the same time, they produce a wealth of diagnostic information that can be used by your child's IEP Team to determine special education eligibility and to identify your child's educational needs.

What evaluations will my child be given and who will pay for them?

Federal law requires that your child be evaluated in all areas of suspected disability. When evaluations are conducted, it's important that all areas of your child's functioning be considered, including health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

Alabama law lays out the minimum evaluations that have to be given to determine eligibility for special education services. (See the Appendix for the relevant section of the Alabama Administrative Code.) However, it's up to the IEP Team to determine if other evaluations are needed.

Often a child's eligibility team focuses only on one aspect of her learning difficulties, missing other factors that may affect her ability to learn. For example, your child may be identified as having a specific learning disability but, in the evaluation process, her attention difficulties or emotional problems were ignored. If those disability-related needs are not identified and planned for, how can your child succeed in school? Make sure your child's Team fully discusses — and evaluates — all factors that may be affecting her ability to learn.

Your child's school must arrange and pay for any evaluations needed to determine eligibility and the nature and extent of the special education and related services that your child may require.

The evaluation process includes the administration of assessments and testing, observations, and collecting information from any available outside professionals. And, of course, information from you — her parent!

Evaluations must not discriminate by race or culture and must be given in your child's primary language unless it's clearly impossible to do so.

All tests must be selected and given so that your child's suspected disability does not affect the test results, unless a particular test is designed to measure the nature or degree of the disabling condition. For example, the intelligence of a child with visual problems cannot be evaluated by means of a written test. However, if the child is being tested to determine if a visual problem exists, a written test may be appropriate.

No single assessment may be used as the sole reason for determining whether your child has a disability or for determining the appropriate educational program for her.

As part of the evaluation, professionals may observe your child in a variety of settings and interview individuals who know and/or work with her.

If you provide the evaluation team any assessment information from private medical or mental health professionals who treat your child, this information must be considered in making eligibility decisions.



How long does the evaluation process take?

Your child's school has 60 calendar days from the date you provide written consent to complete the evaluation and determine eligibility. This timeline runs regardless of any scheduled interruptions in the school year or a scheduled summer vacation.

Let's say you refer your child for an evaluation on May 1st. In a timely manner, you and the rest of your child's IEP Team meet and decide that your child should be evaluated and you sign evaluation consent forms. School officials tell you that they will begin the evaluation process at the start of the new school year in the fall.

Can they do that? No.

From the date you sign the consent forms, your child's school has 60 calendar days to complete the evaluation process and determine if she's eligible for services. This timeline runs even though the school will soon be out for summer vacation.

Why is this timeline important? If your child is eligible for services, every day that this eligibility determination is put off means one less day that your child is receiving FAPE.

How is my child's eligibility under the IDEA decided?

At a meeting, you and a group of qualified professionals (or your child's IEP Team) must determine:

- if your child is a child with a disability;
- your child's educational needs;
- your child's present level of academic achievement and related developmental needs; and
- whether your child needs special education and related services.

As you prepare for an eligibility meeting, familiarize yourself with the definitions, required evaluations and eligibility criteria for the IDEA's 13 disability categories. (See the Appendix for the relevant sections of the Alabama Administrative Code.)

The Team makes these determinations by drawing upon the information gathered through the evaluation process. Eligibility decisions must be decided at a Team meeting.

The Team must be carefully consider the information presented to it and document the information in a report called a "Notice and Eligibility Decision Regarding Special Education Services." This report must include documentation of the eligibility determination. Is your child eligible or not? Under which disability category has she been found eligible? The report must include each team member's signature indicating whether he agrees with the conclusions written in the report. The school must provide you a copy of the report.

If your child is found eligible to receive special education services, an IEP must be written and implemented for her within 30 calendar days. If she is not found eligible and you disagree with that decision, you may challenge the Team's finding by using the the IDEA's conflict resolution mechanisms.

A few points to remember about eligibility:

- To be eligible for special education and related services under the IDEA, your child must fit the eligibility criteria for at least one of the IDEA's 13 disability categories and, as a result of her disability, need specially designed instruction and related services in order to benefit from the school's educational program.

- Your child cannot be found eligible under the IDEA if she has lacked appropriate instruction in reading or math or has limited English proficiency.
- If your child has one of the identified IDEA disabilities but only needs related services — and not specialized instruction — then she cannot be found eligible under the IDEA.

One of the IDEA's disability categories is called Emotional Disturbance (ED). ED is not an official psychiatric diagnosis. Rather, it's an eligibility term used in the IDEA and by schools to describe children who may have a psychiatric disorder (like depression, bipolar disorder, anxiety disorder, etc.) or who may have other emotional problems that are affecting their educational performance.

Eligibility Teams may focus on only your child's grades in deciding whether her educational performance is affected by an ED. This is improper. Under Alabama law, educational performance includes your child's academic, social/emotional, and/or communication skills. The Team must consider how your child's ED is affecting all these areas of need when it's considering her eligibility for services.



If you believe your child has emotional problems that are affecting her educational performance, the school has to assess them as part of the eligibility and IEP planning process. This assessment may require your child's school to arrange and pay for psychological or psychiatric evaluations.

What is a reevaluation?

Once an initial evaluation has been held and eligibility determined, any later evaluation is considered to be a reevaluation.

Reevaluations may be done to consider your child's continuing eligibility status — does she continue to be eligible for services and, if so, under which disability category?

Reevaluations may also be done to ensure that your child's IEP Team has up-to-date information on her educational needs so that it can plan better for her.

When are reevaluations done?

The IDEA requires that your child be reevaluated at least once every three years.

A reevaluation is also required before your child can be determined no longer eligible for special education services and before her eligibility category is changed. However, no reevaluation is required before your child's eligibility for services under the IDEA terminates at age 21 or because she graduates from school with an Alabama High School Diploma.

A reevaluation may be conducted anytime your child's school determines that her educational needs warrant a reevaluation or if you or one of her teachers request one. A reevaluation should not occur more than once a year, unless you and the school district agree that one is needed.

Why would I want to request a reevaluation?

If your child's current special education program is not working, a reevaluation may help identify the problem and what should be done about it by revealing changes to your child's academic, functional and developmental strengths and needs. (See the Appendix for a sample letter requesting a reevaluation.)

What does the Team do with reevaluation results?

Depending on the reason for the reevaluation, the Team will review the collected information and:

- Consider your child's continuing eligibility for special education — does she continue to be eligible for services and, if so, under which disability category?

and/or

- Consider whether any additions or modifications to your child's special education program are needed to enable her to meet the measurable annual goals set out in her IEP and to participate, as appropriate, in the general education curriculum.

Can a decision to reevaluate happen outside of a meeting?

No. Just like in an initial evaluation, the Team must decide to do a reevaluation at a meeting. However, like with any IEP meeting, you and the school may agree to use alternative means of meeting participation, such as conference calls.

If I ask to have my child reevaluated, can the school refuse?

Yes. But if your child's school refuses to conduct a reevaluation, it must provide you with written notice of its refusal that explains, among other things, why it refuses to conduct the reevaluation and your rights to contest the decision.

Does a reevaluation mean that my child will be tested?

Reevaluations do not necessarily mean more testing for your child.

After careful review of her educational records (including classroom observations, current classroom-based assessments, grade transcripts, etc.) the IEP Team will decide if additional data are needed. If the Team decides that additional data are needed to determine continued eligibility or to identify educational needs, then testing will need to be conducted.

If the IEP Team decides that no additional data are needed to effectively program for your child or to continue her eligibility for services, then no testing will be required. A written record of this decision and the reasons for it must be made and added to your child's school records and provided to you. The school will not be required to conduct assessments to determine continued eligibility, unless you request it to do so.

Do I have to give written consent before my child undergoes further testing in a reevaluation?

A school district must give you written notice before testing your child and must make reasonable efforts to obtain your written consent before it conducts reevaluation assessments on your child.

If you refuse further testing, the district may, but is not required to, pursue the reevaluation through mediation or due process.

If the district makes reasonable efforts to obtain your consent and you do not respond, it can go ahead and conduct any necessary reevaluation assessments.

How do schools document reasonable efforts to contact parents?

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parents and any responses received; and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

When is my consent not required for an evaluation or reevaluation?

Your consent is not required for the IEP Team to simply review existing data as part of an evaluation or a reevaluation.

Your consent is also not required before the school administers a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

What if my child is found ineligible for special education services as a result of a reevaluation?

If you disagree with the Team's decision, you may challenge its finding by using the IDEA's conflict resolution mechanisms. Regardless, the evaluation Team should consider if services are appropriate for your child under Section 504. Students not eligible under IDEA or Section 504 should be referred to the BBSST for additional assistance and monitoring.

Do I have to give written consent before my child receives special education and related services?

Yes. You must provide written consent before your child's school can provide her with services.

If your child has been found eligible for services under the IDEA and you do not agree to have her receive services or if you do not respond to a request for consent to provide services, the school may not use the IDEA's mediation or due process procedures in order to obtain agreement or a ruling that services be provided to your child.

Does my child's school have to provide me information about my child's rights under the IDEA?

Once a year, your child's school must provide you a copy of the procedural safeguards available to you as a parent of a child with a disability under the IDEA.

A copy must also be given to you:

- upon your child's initial referral for special education evaluation or your request for evaluation;
- upon receipt of the first state administrative complaint and due process complaint in a school year that you may file;
- upon a decision to change the placement of your child because of a violation of code of conduct; and
- upon your request.

What is an independent educational evaluation?

An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for your child's education.

You have a right to an IEE at your school district's expense if you disagree with any of the district's individual evaluations of your child.

If you request an IEE, your child's school must provide you with information about where an IEE may be obtained. It must also provide you with the school district's evaluation criteria. While the district may provide you a list of suggested evaluators, you are not required to use any proposed by district.

Does my child automatically get an IEE if I ask for one?

Not necessarily. If you request an IEE, your child's school district must, without unnecessary delay, provide the IEE at its expense or file a due process hearing request to show that its evaluation is appropriate.

If the final decision in the due process hearing is that the school's evaluation is appropriate, you still have a right to an IEE but not at the school's expense. Also, if the district later shows in a due process hearing that the IEE you obtained does not meet school district criteria, the IEE will not be at public expense.

How do I request an IEE?

Like any communication between you and your child's school, it's a good idea to ask for an IEE in a dated letter. Send the letter to your school district's special education coordinator. (See the Appendix for a sample letter requesting an IEE.)

When I request an IEE, do I have to explain why I disagree with the school's evaluation and why I want the IEE?

No. The school district may ask for an explanation, but you are not required to give one. If you choose not to give an explanation, the school district may not delay providing the IEE at public expense or initiating a hearing.

Are there any conditions or timelines I have to meet in order to get an IEE?

Aside from meeting the school criteria (noted above) the district may not impose any other conditions or timelines related to obtaining an IEE.

Who else can request an IEE?

A due process hearing officer may request an IEE as part of a due process hearing. If so, the cost of the evaluation must be at public expense.

How are the results of an IEE used?

If you obtain an IEE of your child, whether at public expense or your own, those results must be considered by the school in any decision made with respect to the provision of FAPE for your child.

