

*A Handbook for Parents:*  
The Individuals with  
Disabilities Education Act

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— from a declaration of the American Bar Association

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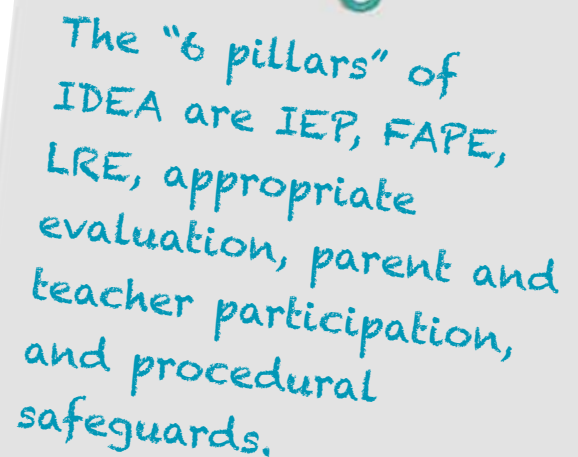


# The Individuals With Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) provides federal funding to states and local school districts for special education of infants, toddlers, pre-school, and school-age children. In return, participating states must meet certain requirements and standards. Although states do not have to participate, all of them currently do. States often vary in how they implement IDEA, so you should contact your state's education agency if you have specific questions.

Under IDEA, every disabled child is entitled to a "free and appropriate public education" (FAPE), meaning that education is paid for by the government and meets standards set by the state's educational agency. The education must be provided in the "least restrictive environment" (LRE), which means a child with a disability should be educated with children who do not have disabilities. Special classes or schools should be used only when the nature and severity of the child's disability prevents education in the regular classroom setting, even with supplementary assistance. In addition, the child is entitled to free "related services" that will benefit the child's education, including:

- ◇ Transportation
- ◇ Speech-language pathology and audiology services
- ◇ Psychological services
- ◇ Physical and occupational therapy
- ◇ Recreation, including therapeutic recreation
- ◇ Early identification and assessment of disabilities
- ◇ Counseling services, including rehabilitation counseling
- ◇ Orientation and mobility services
- ◇ Medical services for diagnostic or evaluation purposes
- ◇ School health services
- ◇ Social work services in schools
- ◇ Parent counseling and training



The "6 pillars" of IDEA are IEP, FAPE, LRE, appropriate evaluation, parent and teacher participation, and procedural safeguards.

## Infants and Toddlers

IDEA's "Part C" provides federal grants to states so that the states can provide early intervention services (EIS) to infants and toddlers with disabilities and developmental delays. EIS helps such children learn basic skills that are typically developed in a baby's first three years of life, including:

- ◇ Physical skills (crawling, walking, rolling over)
- ◇ Cognitive skills (problem-solving)
- ◇ Communication skills (listening, talking, understanding)
- ◇ Social/emotional skills (playing)
- ◇ Self-help skills (eating, getting dressed)

Early intervention services can vary by state but may include:

- ◇ Speech and language services
- ◇ Hearing services
- ◇ Occupational therapy
- ◇ Physical therapy
- ◇ Medical services
- ◇ Nutrition services
- ◇ Assistive technology (devices for your child)
- ◇ Counseling/psychological services
- ◇ Social work services
- ◇ Transportation

Eligibility for EIS is based on the state's determination of whether the child has a developmental delay. States often rely on the opinions of clinical professionals to make this determination. Check with your local school or child care facility to learn about your state's specific eligibility requirements.

### How is developmental delay determined?

IDEA allows each state to define developmental delay and determine how a child will be evaluated by using appropriate diagnostic instruments and procedures to measure physical, cognitive, communicative, social/emotional, or adaptive development. The presence of a developmental delay is often detected as early as the child's birth, at which time the parent may be referred to a local early intervention program. Talk to your pediatrician or contact your local early intervention office and request an evaluation if you feel your child might benefit from such testing. Conducting an internet search with the key words "early intervention services" and the name of the county or city in which the infant or toddler resides should help you locate your local early intervention office.





### How will my child be evaluated?

Once you have connected with an early intervention program near you, a service coordinator will help you understand the process of having your child evaluated for a developmental delay. Individuals who are qualified in developmental training will observe and interact with your child to identify specific developmental areas that will need additional help. The results from your child's evaluation will help determine your child's eligibility. All evaluations require parental or family member consent and are generally free of charge as such services are usually covered by federal and state government programs related to children's health. An eligibility evaluation may not be necessary in every situation. For example, if your child has already been diagnosed with a physical or mental condition with a high probability of

developmental delay, the child will be automatically eligible. Conditions with a high probability of developmental delay include: chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome. Once eligibility is determined, a more in-depth evaluation will be conducted to identify your child's specific needs, the family's ability to provide resources, and any concerns and priorities the family may have about the child's development.



Of the 53.9M school-aged children aged 5-17 in the U.S. civilian non-institutionalized population, about 2.8M (5.2%) were reported to have a disability in 2010

### What happens if my child is eligible for EIS?

Once your child is considered eligible for EIS, the evaluators will work with you to create a plan of action called an Individualized Family Service Plan (IFSP) that is specifically tailored for your child. Generally, the IFSP outlines your child's specific care plan and must be reviewed at least every six months and updated annually, if not more often. IFSP requirements vary by state, so your service coordinator will be able to explain in greater detail the requirements that are specific to your state. The IFSP will include several pieces of information about your child, including:

- ◇ Your child's developmental needs and the severity of those needs
- ◇ Information about your family's resources, priorities, and concerns about your child's development
- ◇ The goals expected to be achieved for your child and family
- ◇ The services your child will receive
- ◇ Where the services will be provided
- ◇ The time and place your child will receive services
- ◇ The number and length of engagements with the child through which the services will be provided
- ◇ Who will pay for the services
- ◇ Your service coordinator's name and contact information
- ◇ The steps that will be involved when your child transitions from early intervention at age three to another program that is more appropriate given the child's older age and progress





### How long does the EIS evaluation process take?

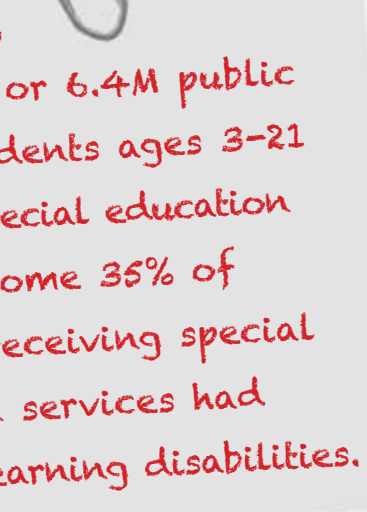
When the local office that is responsible for providing early intervention services (EIS office) receives a referral for a child with a suspected developmental delay, it has 45 days to conduct, screen, evaluate, and create an IFSP for the child.

### How do I pay for EIS?

The initial evaluations, your service coordinator's time, and the written IFSP are free of charge, as these services or items are covered by state and federal funds. Depending on your state's program, however, you may be charged for other services and costs associated with early intervention that may yet be covered under your private or public health insurance. Your EIS office must obtain your written consent to bill your health insurance provider for the services.

### Transitioning from pre-school to school-age services

IDEA's Part C covers your child only until his or her third birthday, so it is important to plan your child's transition from EIS to school-age services through an Individualized Education Program



In 2012-13,  
about 13% or 6.4M public  
school students ages 3-21  
received special education  
services. Some 35% of  
students receiving special  
education services had  
specific learning disabilities.

(IEP), as required under IDEA's Part B. In fact, IDEA requires transition planning for children moving from Part C to Part B.

### Is my Part C-eligible child automatically eligible for Part B benefits?

Not every child who was eligible for and received EIS under IDEA's Part C will be automatically eligible to receive secondary education services under Part B. If your child is determined ineligible for Part B, you should discuss with your service coordinator and care team the availability of other community-based services.

### How long does the transition from Part C to Part B take?

Transition planning can start as early as when your child turns two, but planning typically begins at least three months before your child's third birthday. You will be involved in one or more transition meetings with your child's care team where you will develop an exit plan from Part C and discuss your child's needs and educational options. The transition plan will be a part of your IFSP.

### How can I prepare my child for the transition?


Once you have made transitional decisions with your child's care team, start preparing your child for the transition. Talk to him or her about the transition and provide opportunities to interact with other children who are the same or similar age. Update your child's medical, assessment, and educational records. You also may want to talk to other parents who have transitioned their child from EIS to pre-school and school-age services.

## Educational Assistance for Pre-school and School-age Children

IDEA's Part B is the federal law that addresses educational assistance for pre-school and school-age children. Part B requires that education be conducted according to an IEP. Children with disabilities who are between the ages of 3-21 are eligible for educational assistance under Part B, although certain exceptions may exist for those between 3-5 or 18-21. A disability may include an intellectual disability, hearing impairment (including deafness), speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, a specific learning disability, multiple disabilities, or "other health impairment." The disability must impact the child's educational performance and do so in a way that requires special education.

## Practical Tips About Evaluations and Eligibility

- ◇ Start and attempt to keep every interaction and relationship with the school district positive, professional, and moving towards achievement of the mutually agreed upon goals in the child's IEP and IFSP.
- ◇ Document in writing all of your significant communications with the school district. For example, your request for an evaluation should be in writing, dated, and hand-delivered or mailed by certified mail, return receipt requested. Keep the signature card showing receipt. If hand-delivered, take an additional copy to have date-stamped and signed as received.
- ◇ Keep a log or diary of all communications you have with the school district, including conversations with teachers and administrative personnel at the child's school. Document dates, times, names of persons with whom you communicated, and their titles or positions.
- ◇ If the school district refuses your request for evaluation, request a written notice of refusal (often called a Notice of Action Refused). This is required by law.
- ◇ Provide evaluators with copies of any medical records or evaluations that may be helpful in obtaining special education and related services for your child. Keep a copy of everything you provide to the evaluators.
- ◇ Ask the child's health care provider(s) to write a letter explaining the child's medical diagnosis and recommendations for assistance at school. Keep in mind, however, that the school is not required to provide the best or most ideal options for your child—the school is only required to provide education and services designed to provide some educational benefit. Therefore, the health care provider should avoid statements of “ideal recommendations” or “best options” for your child. Ask your child's health care provider to consider the school environment when writing the letter. Your child's health care provider may charge you for this service.
- ◇ If you do not agree with the school's evaluation, request an independent educational evaluation.



About 1 in 6 (or 15%) of children aged 3-17 have one or more developmental disabilities.

### How is my child's eligibility for Part B services evaluated?

The state is required to identify and evaluate a child who has a disability, even if the child is homeless or enrolled in a private school. The programs designed for this purpose are generally referred to as "Child Find." A parent or public agency—such as the school system—may request an evaluation, although the public agency/school system must usually obtain parental consent to evaluate a child's disability and educational needs.

The evaluation must be conducted within 60 days of receiving parental consent unless the state has established a different time limit. The evaluation must include multiple assessments that are administered by trained personnel; occur in the child's native language; take into account any sensory, motor or language impairment; and cover all areas of suspected disability.

If the situation changes at some point after the initial evaluation, a reevaluation may be requested by the parent, teacher or public agency/school system to determine if the child continues to have a disability. Reevaluations may not occur more than once per year or less than once every three years unless the parents and public agency/school system agree otherwise.

If you do not agree with your child's evaluation or a reevaluation, you are entitled to an "independent educational evaluation" and can also request that the public agency/school system pay for the independent evaluation. If the public agency/school system does not agree to pay for the evaluation, it must schedule a "special education hearing." If the hearing determines that the agency's evaluation was not appropriate, the school must pay for the independent educational evaluation. If the hearing determines that the public agency/school system's evaluation was appropriate, you may still have an independent educational evaluation conducted, but you will have to pay for it yourself.

### What is an IEP and how is it created?

The IEP is a personalized plan for your child's educational needs that describes the special education and services your child will receive from the school. The IEP must be created within 30 days after your child has been determined eligible for Part B services. The IEP is written by an IEP team that must include at minimum:

- ◇ The parents
- ◇ A regular education teacher
- ◇ A special education teacher
- ◇ An individual who can interpret evaluation results
- ◇ The child (if appropriate)





You and the school may invite others to the IEP meeting who may have knowledge or expertise about your child, such as a family member or the child's health care provider.

The IEP must address the following issues:

- ◇ The child's present level of performance
- ◇ Annual goals regarding the child's progress
- ◇ The special education and related services to be provided
- ◇ How progress will be measured
- ◇ The extent (if any) to which the child will not be able to participate with children who do not have disabilities
- ◇ Participation and modifications for standardized testing
- ◇ Transition services for post-school goals

The school is required to provide reports on the child's progress towards the goals that have been defined in the IEP, and the IEP must be reviewed and revised at least annually. The IEP can, however, be updated more often if you or the child's school requests it.

## Parents' Rights Under IDEA

Parents have the right to be informed of and to participate in all special education decisions about the child. These rights include receiving a written "notice of action taken" or "notice of action refused;" accessing the child's education record; being informed of findings made in the evaluations; and consenting to evaluation and placement decisions.

Parents may file complaints or disputes with the "state education agency," and the information on how to do so must be available by phone or through the agency's website. The state education agency—also known as the state department of education—is the agency that oversees educational funding and policies. The complaint or dispute must receive "due process," which typically involves a hearing. Some states, however, allow informal meetings or mediation instead of a formal hearing. The school must provide a notice explaining the procedural safeguards, including the complaint and appeals process, at least once per year.

## Behavioral Problems and School Discipline

In general, a school district may not discipline a child with a disability in any manner that involves removing the child from his or her current educational placement for more than 10 days unless the child's behavior is not a "manifestation" of the disability. To determine if the child's behavior was a manifestation of his or her disability, a manifestation review—also referred to as a manifestation hearing—is conducted.

The manifestation review is conducted by the IEP team and involves the parent. If the review shows that the behavior was a manifestation or symptom of the child's disability, the child may not be removed from her current educational placement unless her behavior involved weapons, drugs, or serious bodily harm. If the child's behavior did involve weapons, drugs, or serious bodily injury, the child may be removed for up to 45 days. If the review determines the child's behavior was not a manifestation or symptom of her disability, she may be disciplined in the same manner as a child without a disability would be disciplined. In addition to the manifestation review, the school must conduct a behavioral assessment or review the child's existing assessment.



## Practical Tips About Your Child's Individualized Education Program

- ◇ Feel free to invite family members and health care providers to your child's IEP meeting who can provide information about your child, take notes, or otherwise offer support.
- ◇ Do not be intimidated to ask questions. You are your child's best advocate.
- ◇ Bring someone who can take notes for you during the IEP meeting, or notify or ask the school about audio-recording the meeting for your reference later.
- ◇ Bring records or documentation about your child that may be helpful during the IEP meeting.
- ◇ Do not feel obligated to sign the IEP if you still have questions or do not agree with everything in your child's IEP.
- ◇ If the school does not agree to something you think is necessary for your child, ask for a Notice of Action Refused.
- ◇ Keep copies of all documents used or referenced during your child's IEP meeting.

# College Age Students and Post-secondary Education

## The ADA and the Rehabilitation Act of 1973

IDEA does not apply to individuals entering post-secondary education; rather, the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) protect older individuals for whom IDEA's Part B no longer applies. The Rehabilitation Act and ADA prohibit discrimination in post-secondary education on the basis of one's disability.

### How will my rights differ from the rights I had during secondary education?

Post-secondary schools such as colleges and universities are not required to provide free and appropriate public education to students with disabilities. A post-secondary school is, however, required to provide appropriate academic accommodations, which means modifications or services that provide the student the same opportunity it would provide to a non-disabled student. For example, if your school provides housing for non-disabled students, it must provide similar, accessible housing for students with disabilities.

### Can I be denied admission to a post-secondary school because of my disability?

A post-secondary institution may not deny you admission simply based on your disability if you meet the essential requirements for admission.

### Do I have to inform the school of my disability?

You are not required to inform the school of your disability, but you should consider informing the school prior to attending if you need special accommodations, such as convenient and accessible facilities and housing.

### What academic accommodations must the post-secondary institution provide?

Academic accommodations are determined based on your disability and individual needs. For example, some individuals may need extra time for testing while others may need voice recognition software or a sign language interpreter. Although your school is required to make necessary accommodations, it is not required to do anything that would fundamentally alter the nature of the program or activity. For example, the school is not required to change the substantive content of an exam because of a student's blindness, although the school might be required to provide the test so that the student can listen to the questions on an audio device and submit the answers on a computer.



### If I need an academic accommodation, what steps should I take?

To request and receive an academic accommodation, you must first inform your school of your disability status. Your school may have a specific process, such as requiring that your request for an academic accommodation be made in writing. Most schools have a specific person or office that manages services for students with disabilities. You should contact that person or office for information about the school's specific procedure for making the request. The school's website may also provide additional information.

### What if the academic accommodation provided by the school is not working?

If you do not feel the academic accommodation is working for you, inform your school as soon as you become aware of the problem. If you wait too long, it may be too late to correct the issue.

### Do I have to pay for the academic accommodation provided to me?

Your school is not allowed to charge you more than it would charge a student without a disability to participate in the same program or activity.

### What can I do if I believe the school has discriminated against me?

Generally, a post-secondary institution will have a person or office that coordinates disability services and ensures that the school is complying with federal and state disability laws. If you feel you are being or have been discriminated against, you should contact this individual or office to express your concerns. Your school is required to have a grievance or complaint process in place. The process will vary by school, but it must give you the opportunity to express your concern and provide a resolution to your complaint. If you are dissatisfied with your school's determination or you wish to use an alternative grievance procedure, you can file a discrimination complaint with the U.S. Department of Education's Office of Civil Rights.

## Accommodations by Testing Entities

The ADA requires that reasonable testing accommodations be made by testing entities or testing centers for individuals with documented disabilities. An example of a testing entity might be the Law School Admission Council, which administers the Law School Admission Test or LSAT. Such testing entities generally define a disability as a physical or mental impairment that substantially limits a major life activity. Major life activities generally include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Each testing entity has specific requirements, such as documentation of a disability that supports your need for an accommodation or that your request be made in writing and within a specific period of time so that the testing service has sufficient time to make the accommodation for you. Contact the testing entity to understand its requirements for requesting and receiving an accommodation.

## Financial Aid

Several financial aid options are available to students with disabilities through private and public grants and scholarships or from the federal government. To obtain financial assistance from the federal government, you will need to complete a Free Application for Federal Student Aid. Visit [www.fafsa.ed.gov](http://www.fafsa.ed.gov) for more information.



## A Handbook for Parents: The Individuals with Disabilities Education Act

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This publication owes much of its content and expertise to the original authors of *Considerations for People with Disabilities and Their Families*, which the American Health Lawyers Association published in 2008. This *Handbook for Parents* provides updated information in a reader-friendly format that is intended to provide general guidance regarding the most commonly encountered issues for parents who have children with disabilities. AHLA is grateful to the original authors for their significant contributions.

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The contents of this *Handbook for Parents* are excerpted from the chapter on education in AHLA's *Guidebook for People with Disabilities*. Visit [www.healthlawyers.org/PublicInterest](http://www.healthlawyers.org/PublicInterest) to download this and other Public Interest resources.

# Factoid Sources

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