

## Objectives

- o Participants will review and discuss the basic six principles of IDEA, as well as critical issues surrounding those principles.

## IDEA 2004

- Federal law supporting special education and related service programming for children with disabilities is called the Individuals with Disabilities Education Improvement Act (IDEA).
- Under Part B of the law, all eligible school-aged children with disabilities are entitled to receive a free appropriate public education (FAPE).



## SIX PRINCIPLES of IDEA

- Free appropriate public education (FAPE)
- Appropriate evaluation
- Individualized education program (IEP)
- Least restrictive environment (LRE)
- Parent and student active participation in educational decision making
- Procedural safeguards



## FAPE

- o “A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive”:
- o Including students with disabilities who have been suspended or expelled from school.
- o By 3<sup>rd</sup> birthday for eligible students.
- o Including students advancing from grade to grade.
- o Eligibility for FAPE ends:
  - o If student is determined no longer eligible under IDEA.
  - o Age 22.
  - o Graduation with a regular diploma.

## What Is FAPE?

- o FAPE is defined in the IDEA regulations to mean:
  - o Special education and related services that:
    - o Are provided at public expense, under public supervision and direction, and without charge,
    - o Meet the standards of the State educational agency (SEA),
    - o Include an appropriate preschool, elementary school, or secondary school education in the State involved, and
    - o Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 – 300.324.

## LEA Responsibility for FAPE

- During the IEP, parents have the right to participate in the decision-making process, but the LEA has the responsibility to provide a free, appropriate public education (FAPE) for the student.

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## Child Find

- o Consistent with requirements of IDEA and State Rules, each LEA shall ensure that all students with disabilities ages 0-21 residing in the LEA who are in need of special education and related services are identified, located, and evaluated.
- o Is an affirmative obligation on the part of the LEA.
- o Highly mobile, such as migrant and homeless.
- o Suspected of having disability even though advancing from grade to grade.
- o Suspended or expelled.
- o Didn't graduate with a regular high school diploma.
- o Home schooled students.

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## Evaluation

- o Procedures used to determine if a student has a disability and whether the student needs special education and related services.
  - o Procedural requirements specified in IDEA.
- o The initial step in the evaluation/eligibility process.
- o Provides current information for the team to consider when developing the course of special education and related services if the student is determined to be eligible.

## Evaluation Procedures

- o Full and individual evaluation.
- o Variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent.
  - o Assessments may not be racially or culturally discriminatory.
  - o Assessments must be provided/administered in the student's native language or other mode of communication unless not feasible (e.g., translated exams, interpreters).
  - o Assessments must be valid, reliable, and used appropriately, administered by trained personnel, and administration instructions followed.

## Evaluation Procedures (Cont.)

- Assessments must include those tailored to address specific areas of education need and not just provide a single general intelligence quotient.
- Selected assessments should ensure that results accurately reflect the student's aptitude, achievement level, or whatever the test purports to measure, rather than any sensory, manual, or speaking impairments, unless those are factors the test purports to measure.

## Evaluation Procedures (Cont.)

- Student must be assessed in all areas related to suspected disability.
- Evaluations must be sufficiently comprehensive to identify all of the student's special education and related service needs.
- SLD evaluations must include an observation of the student in the general education classroom.
- The selection of the particular assessments is up to the LEA.
- Evaluation/reevaluation is at no cost to the parent(s).

## Evaluation/Eligibility Team

- o Evaluation team:
  - o Review of existing data conducted by the IEP team and other qualified professionals, as appropriate.
- o Eligibility team:
  - o A team of qualified professionals and the parent determine eligibility, including:
    - o Whether the student is a student with a disability, and
    - o The educational needs of the student.
  - o SLD eligibility teams must include the student's regular teacher\* and someone qualified to conduct individual diagnostic examinations.

## Purpose of the Evaluation/Eligibility Team Members

- o Review of existing data conducted by IEP team.
  - o IEP team:
    - o Parents of the student,
    - o At least one general education teacher of the student,
    - o At least one special education teacher/provider of the student,
    - o LEA representative,
    - o Individual who can interpret the instructional implications of the evaluation results,
    - o Other individuals with knowledge or special expertise regarding the student, as the discretion of the parent or LEA, and
    - o The student, when appropriate.

## IDEA ELIGIBILITY

- o Student must be between the ages of 3-21 and must satisfy both parts of a two-part test:
  - o First, the student must meet the definition of one or more of the 13 categories of disabilities specified under the IDEA (adversely effect).
  - o Second, the student must be shown to be in need of special education and related services as a result of the disability .
    - o Special education=specially designed instruction, at no cost to the parents, intended to meet the unique needs of a child with a disability.
    - o Related service=service required for the student to benefit from special education.

## Disability Categories

- (1) Autism
- (2) Deaf-blindness
- (3) Developmental Delay (ages 3-7)
- (4) Emotional Disturbance
- (5) Hearing Impairment/Deafness
- (6) Intellectual Disability
- (7) Multiple Disabilities
- (8) Orthopedic Impairments
- (9) Other Health Impairment
- (10) Specific Learning Disability
- (11) Speech/Language Impairment
- (12) Traumatic Brain Injury
- (13) Visual Impairment (including blindness )



## Individualized Education Program (IEP)

- o IDEA 2004 defines an IEP as a written statement for each student with a disability that is developed, reviewed, and revised in a meeting.
- o It includes the essential components of an IDEA-eligible student's appropriate educational program and the collaborative process between the parents and the LEA during the design of the educational program.
- o The IEP commits resources on behalf of the student.
- o It requires a team effort including a meeting and the production of a written document.

## Required IEP Team Members

- o The IEP team is a group of individuals composed of:
  - o Parent(s).
  - o Regular Education Teacher(s) if the student is, or may be, participating in the general education environment,
  - o Special Education Teacher(s),
  - o LEA Representative,
  - o Evaluation Interpreter,
  - o Other Individuals, as needed.
    - o Other individuals in addition to those listed above who have knowledge or special expertise regarding the student, including related services personnel as appropriate, may be included as members of the IEP team "at the discretion of the parent or the agency".
    - o In the case of a child previously served under Part C, "an invitation to the initial IEP meeting shall, at the request of the parents be sent to the Part C services coordinator or other representatives of the Part C system to assist with the smooth transition of services".
    - o Also, when an IEP team intends to discuss a student's postsecondary goals and transition services, the LEA must, to the extent appropriate, invite a representative from any agency "that is likely to be responsible for providing or paying for transition services."
      - o The regulation also requires the LEA to obtain parental consent for the agency representative's presence at the meeting.
- o Student, when appropriate.

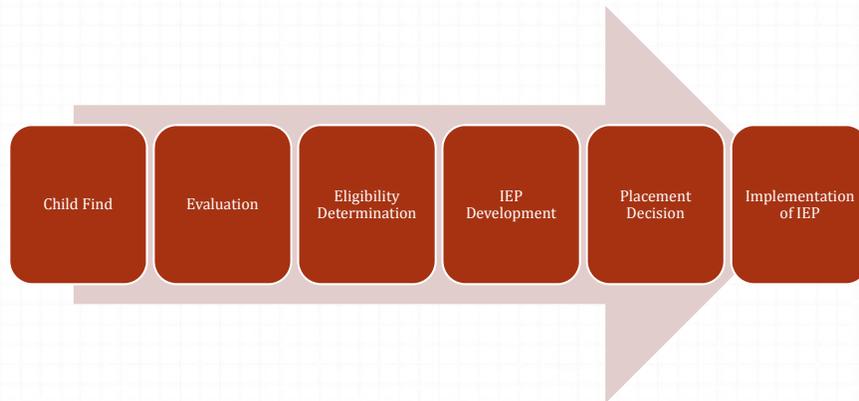
## IEP Team Member Actions

- o Review the student's:
  - o Current records (e.g., cumulative file, attendance, discipline, grades, U-PASS results).
  - o Current IEP (if any).
  - o Recent evaluation results (including any IEE results).
  - o Any other information about the student that may be relevant to the student's educational needs (e.g., health information, input from parents and teachers).
- o The team must consider the student's strengths, the parent's concerns for enhancing their student's education, and the student's academic, developmental and functional needs.

## IEP & Team Membership Purpose

- o The purpose of the IEP meeting is to provide an opportunity for parents and educators to discuss and develop an individualized educational program for the student with a disability.
- o To ensure that the team has the range of expertise required to make informed choices during the design of the educational program, the IDEA identifies specific required IEP team members.
- o To protect the parents' right to make a meaningful contribution to the design of their student's program, the IDEA also specifically addresses parental participation in the IEP process, including establishing requirements for providing notice, scheduling for mutual convenience, and facilitating understanding of the process.

## Basic Sequence of Events



## LRE

- o LRE is the legal mandate of the IDEA requiring that students with disabilities receive their education in the regular classroom environment with the least possible amount of segregation from the students' nondisabled peers and community.
- o "LRE Mandate"
  - (b) Each public agency shall ensure that –
    - (1) To the minimum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are non-disabled; and
    - (2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

## LRE

- o The decision to not select an inclusive setting for a student with a disability must be made on an individual basis.
- o Categorical decisions clearly violate the IDEA's requirement for individualized educational planning.
- o Similarly, administrative convenience or economic considerations cannot play a role in a decision to place a student with a disability in a more restrictive setting.

## Dighton-Rehoboth Regional Sch. Dist., 4 ECLPR 721 (SEA MA 2006)

- o In the words of one impartial hearing officer "The LRE mandate does not trump the requirement that a child receive an appropriate education, however. If a child's placement does not provide 'significant learning' or 'meaningful benefit' to the child, and a more restrictive program is likely to provide such benefit, then the child is entitled to be placed in that more restrictive program."

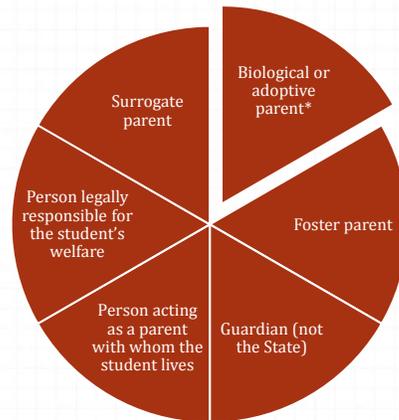
## FAPE and LRE

- FAPE “overrides” LRE.
  - Congress based the IDEA on the fundamental premise that every student is entitled to a free appropriate public education.
  - In providing FAPE, the IDEA and all legal and administrative interpretations of the law stress the importance of meeting every student with a disability’s unique, individual needs.
  - Thus, where an inclusive placement interferes with the provision of FAPE, it will not be an appropriate placement for the student.
  - Where these two interests compete, the FAPE mandate ultimately “qualifies and limits” the requirements of LRE.
  - LRE is relative to the individual needs of the student.



## Meaningful Parent and Student Involvement

## IDEA Definition of a Parent



\* The biological or adoptive parent, when attempting to act as the parent and when more than 1 party is qualified to act as the parent, must be presumed to be the parent unless they do not have the authority to make educational decisions for the student.

## Parent Participation in Meetings

- o Parents must be afforded an opportunity to participate in meetings with respect to identification, evaluation, educational placement, and the provision of FAPE to the student.
- o LEAs must notify parents and schedule meetings at mutually agreeable times and places.
  - o Consider the use of alternate methods of participation, including conference calls or video conferences.

## Parent Role in an IEP Meeting

- o Active role for parents:
  - o Provide information regarding their student's strengths.
  - o Express concerns for enhancing the education of their student.
  - o Participate in the discussion of the student's need for special education and related services and supplementary aids and services.
  - o Join other team members in deciding how the student will be involved and progress in the general curriculum, participate in State and LEA-wide assessments, and services that will be provided by the LEA in what setting.



## Procedural Safeguards (PS)

- o Procedural safeguards are the formality requirements of the IDEA that are “designed to afford parents or guardians of [children with disabilities] meaningful involvement in the educational placement of their children.”
- o The IDEA 2004 statute identifies a list of eight procedural safeguards required.

## Procedural Safeguards to Parents

- o The IDEA 2006 regulations require an LEA to provide the parents of a student with a disability with a copy of the procedural safeguards available to them “only one time a school year,” except that a copy also must be given to the parents:
  - o Upon initial referral,
  - o Upon parental request for evaluation,
  - o Upon receipt of the first state complaint and the first due process complaint from the parent in a school year,
  - o In accordance with discipline procedures (where a removal constitutes a change of placement), and/or
  - o Upon parental request.

## Procedural Safeguards Notice

- o The contents of the notice must include a full explanation of the Part B procedural safeguards and must cover:
  - o Independent educational evaluations,
  - o Written prior notice ,
  - o Parental consent (new revocation piece as of 12/31/08),
  - o Access to educational records,
  - o The opportunity to present and resolve complaints through due process and state complaint procedures, including the time period in which to file a complaint, the opportunity for the LEA or SEA to resolve the complaint, and the difference between the due process and state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures,
  - o The availability of mediation,
  - o The student’s placement during the pendency of any due process complaint,
  - o Procedures for students who are subject to placement in an interim alternative educational setting,
  - o Requirements for unilateral placement by parents of students in private schools at public expense,
  - o Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations,
  - o State-level appeals,
  - o Civil actions, including the time period in which to file such actions, and
  - o Attorney’s fees.
- o Failure to include mandatory information could amount to a procedural violation of the IDEA.
- o Current procedural safeguard notice available from LEA and USOE at [www.schools.utah.gov](http://www.schools.utah.gov).

## Utah Dispute Resolution Options

- Problem Solving Facilitation
- Formal State Complaint
- Mediation
- Due Process Hearing
  
- These options are not sequential.
- Facilitators and mediators do not provide legal representation or counseling.

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Questions?