



QUESTIONS AND ANSWERS FOR PARENTS ABOUT THE IDEA & PRESCHOOL IN CALIFORNIA

1. What educational rights does my child with a disability have under the IDEA?

The Individuals with Disabilities Education Act (IDEA) obligates states that receive federal funds under IDEA to make a free and appropriate public education (FAPE) available to all children with eligible disabilities.¹ Congress passed the IDEA in 1975 in response to frequent discrimination against children with disabilities in public school systems. All states must meet the minimum *federal* IDEA standards regarding the educational rights of children with disabilities. However, *state* laws can expand these rights.

2. Who is eligible for services under the IDEA? *See also Q. 18 for infants and toddlers (birth to 3 years).*

Children ages 3 to 21 with certain disabilities are eligible for special education and related services under Part B of the IDEA. Under Part B of the IDEA, grants are made available to states to extend special education services to eligible preschool aged children.² Currently, all states receive federal funds through the IDEA preschool grant.

- Under Part B, preschool and school-age children found to have mental retardation, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who as a result need special education and related services due to that disability are eligible.³

3. What is the goal of the IDEA?

The goal of the IDEA is to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE). See answer for Question 10 for a description of LRE.

Federal regulations define FAPE as special education and related services that:

- are provided at public expense, under public supervision and direction, and without charge;
- meet the standards of the state education agency (e.g., California Department of Education);
- include preschool, elementary or secondary school education in the State; and
- are provided in conformity with an Individualized Education Program (IEP) which meets the requirements set forth by the IDEA.⁴

FAPE is not tied to funding and must be based on the child's educational need.⁵

4. How do families apply?

If a parent feels her child is eligible for services under the IDEA, she should contact her local school district or county office of education (also known as the local educational agency). Local educational agencies (LEAs) have an obligation under federal law to “actively and systematically seek out” all persons aged 3 to 21 who would be eligible for special education.⁶ Preschool teachers or child care providers can refer children they think may be eligible, although the family **must consent in writing** to an assessment.

5. Does the IDEA contain specific requirements for children transitioning from early intervention services to preschool?

Federal law requires that children receiving early intervention services under Part C of the IDEA⁷ and who will participate in a preschool program receiving funds under Part B or another appropriate service, “experience a smooth and effective transition to those preschool programs.”⁸ In California, a child receiving services under Part C and who is eligible for services under Part B must have an IEP created and implemented in place by the time the child turns 3 years of age.⁹ Among other requirements,

- a child’s service coordinator must notify the parents and the school district of the upcoming transition planning 6 months prior to the child’s third birthday;
- the Individualized Family Service Plan (IFSP) must include steps to ensure transitions to the appropriate services under Part B; and
- if there is a disagreement between the parents and the school district of the services the child will be receiving under Part B, parents may request a “stay put” order so that their child will keep receiving services under his current plan (IFSP).¹⁰

6. What is an Individualized Education Program?

An Individualized Education Program (IEP) is an agreement between the parent and the school district that outlines the education plan, goals and services needed by a particular child.¹¹ An IEP is developed for preschool (ages 3 to 5) and school-age children.

7. What role do parents play in the education of their child(ren) with disabilities?

Parents play an integral role in the education of their child(ren). They must be consulted and informed about any

assessments to determine eligibility, the education placement (i.e., where the child will receive her education), the creation of the IEP and services to be provided within the IEP. The school district must obtain the written consent of a parent prior to any assessments or the implementation of the IEP.

8. How is an IEP created?

A committee or “IEP team” consists of the child’s parents,¹² regular and special education teachers, a representative from the LEA, and others the parent or local school district selects to be present. The team formulates the IEP at a collaborative meeting. For preschool children, it is recommended that the regular educator be an early childhood educator who possesses knowledge specific to young children with and without disabilities.¹³

The IEP team must review the IEP at least annually, or when either a parent or a teacher requests a meeting for a new assessment, if there is a lack of anticipated progress by the child, or if there are other reasons of concern.¹⁴

9. What must the IEP include?

The IEP must include, among other things, a description of the child’s present levels of performance, how the disability affects the child’s participation in appropriate activities, measurable long- and short-term goals, and the child’s specific education plan and related services.¹⁵ If a child will not participate in the regular classroom or in general nonacademic and extracurricular activities, the IEP must explain why.¹⁶ If the child will participate in the regular classroom, the IEP must also list the supports, aides and/or program modifications that would allow for successful participation in the general classroom.¹⁷ A parent must provide written consent for the services to be provided.¹⁸

10. What role can child care providers play in the IEP process?

At the discretion of the parent or lead educational agency, other individuals with “knowledge or special expertise regarding the child,” may participate in the IEP meeting and planning.¹⁹ This may include child care providers as well as direct services providers (e.g., physical, occupational or speech therapist). These individuals can give input on a variety of issues, including the services or technology that would enable the child to participate in the appropriate preschool program.

11. Under the IDEA, where may services for a preschool child with a disability be delivered?

The IDEA is designed to guarantee children with disabilities of all ages the opportunity to participate, learn, interact, and succeed in the school setting. The educational placement is based on the child's individual needs and skills as outlined in her IEP, and not on her disability.²⁰

- The inclusion of children with disabilities into regular classroom educational settings where their typically developing peers are present is an important goal of the IDEA. Also, for both *preschool* and *school-age children* with disabilities, the IDEA requires that they be placed in the *least restrictive environment (LRE)* for school.²¹ LRE requirements apply to extracurricular and nonacademic activities as well,²² which can include recreational activities, athletics, transportation, counseling services, and child care.
- The LRE placement decision must be made by persons knowledgeable about the child, based on the evaluation data, and the placement options. The child's parents must be included as decision makers. The placement must be redetermined at least annually, be based on the IEP, be as close as possible to the child's home and in the school the

child would have attended if she had no disability.²³

- When the child is not placed in the school or classroom she would have attended if she did not have a disability, California law requires documentation from the IEP team of why the child's needs cannot be met in the regular classroom even with the addition of supplementary aids or services (e.g., specialized equipment, assistive technology or a one-to-one aide).²⁴

For many children with disabilities the educational setting that is most appropriate given the child's needs and abilities will be with their typically developing peers in a preschool program that offers a typical preschool curriculum. Most public school systems historically have not offered general education preschool programs, and therefore it has been a challenge to find places for preschool children with disabilities to be educated with their typically developing peers. In order to provide placement in the least restrictive environment, school districts without public preschool programs have at times been obligated to pay for private preschool slots as well as the special education services needed by children in that setting.

12. Can a family get reimbursed for tuition if their child attends a private preschool?

Children with disabilities, *from ages 3 to 5*, may receive preschool services in a private program as part of their IEP.

Some school districts may try to limit reimbursement for placement in private preschools where there is no public preschool, but this is not allowed if the IEP states that the least restrictive environment is a preschool program with the child's typically developing peers and there is no public preschool program.²⁵

13. What “related services” can families and children obtain under the IDEA?

Families and children can receive any service that is necessary to help a child

benefit from her special education program.²⁶ All services under the IDEA for children ages 3 to 21 are free²⁷ and based on each child's educational need,²⁸ not on her disability.²⁹ Some examples of these services are transportation, speech pathology, psychological services, physical and occupational therapy, counseling services, and school health services.³⁰ In order for the "related services" necessary for the child to benefit from her special education program to be covered by IDEA they must be written into the IEP.

14. Can a child receive child care or afterschool care through her IEP?

A child with a disability may receive child care services through her IEP if it is determined by the IEP team that it is an appropriate setting for the child to receive her special education services or it is a related service which is necessary for the child to benefit from her special education program and it is written into the IEP document.

If afterschool care or extended day is a related service that is necessary for a *school-age child* to benefit from her special education program, then a family could receive afterschool care if determined by and written into the IEP document.³¹ The related service must be connected to the child's educational needs, not family or other issues.³²

15. How do children with disabilities obtain assistive technology under the IDEA?

Assistive technology means any equipment, including customized equipment, used to increase, maintain or improve the functional capacities of children with disabilities.³³ Some examples of assistive technology are computers, transportation aids (e.g., a device for loading/unloading students from a bus), glasses, and hearing aids.

- If assistive technology helps a student benefit from her special education placement, including child care, and *is written into the IEP* then the technology is

to be provided by the school district.³⁴ Parents do not have to pay for the equipment.³⁵

- The need for assistive technology must be considered in every child's IEP.³⁶ If the IEP team decides that the child needs access to those devices in non-school settings, such as child care, in order to achieve a free and appropriate public education, the LEA must allow the child to use a school-purchased assistive technology device, in child care or in other settings, including the home.³⁷

16. What rights do parents have if the school district denies a child services or a parent does not like her child's placement?

Parents or the child's representative have the right to a "due process hearing" if they disagree with their child's IEP or on any matter relating to the child's assessment, placement and services under the IDEA.³⁸ In California, hearings are conducted in the child's school district by an independent hearing officer from the McGeorge School of Law. A parent can disagree in whole or in part with the IEP and request a hearing. See the resource box for agencies you can contact for more information or assistance.

17. Does the IDEA contain specific requirements for children transitioning from preschool to kindergarten?

Although the federal law does not specify requirements for the transition of preschool children into kindergarten or first grade, the California special education law does. California law requires:

- reassessment of a child before she moves to kindergarten or first grade to determine what services the child may still need and that any gains made are not lost by "too rapid a removal" of programs or supports;³⁹
- that the transition process must allow the IEP team to monitor the continued success in kindergarten of the child who is eligible for less intensive services;

- that the regular teacher is made aware of the child's present performance level and style of learning;⁴⁰ and
- that at the request of the educational agency enrolling the child, records be transferred within five working days.⁴¹

18. What are "early intervention services"?

Infants and toddlers up to age 3 are eligible for early intervention services under Part C of the IDEA. In California, early intervention services are referred to as Early Start. Early intervention services developmental services that are provided:

- "under public supervision,

- provided at no cost to the family except where federal or state law provides for a system of payments,
- and are designed to meet the developmental needs of an infant or toddler with a disability."⁴²

Unlike Part B of the IDEA, early intervention expressly considers the family's needs and strengths as well as the child's.⁴³ For additional information about Part C and early intervention services call (800) 515-BABY or see the California Department of Developmental Services website at: www.dds.ca.gov/EarlyStart/ESHome.cfm.

This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of 11/10/04, but the law changes often. At the time this document went to print, IDEA was under reauthorization at the federal level and therefore, changes in the law may occur. This document is made available with the understanding that it does not render legal or other professional advice. If you need legal advice, you should seek the services of a competent attorney. For more detailed information on the IDEA and Preschool please see the CCLC article entitled, Preschool Inclusion Series: Individuals with Disabilities Education Act.

Useful Resources

- **Call the Child Care Law Center** at (415) 394-7144 if you would like information about child care legal issues. We are a national and California child care support center for legal services programs. We also provide counsel and advice over the telephone. The following are some of our legal services:
 - Answer legal questions regarding child care during our telephone intake hours: Monday, Tuesday and Thursday from 12p.m. to 3p.m.
 - Write many useful publications. Visit our website at www.childcarelaw.org.
 - Conduct trainings for parents, teachers, community agencies, and others on the Americans with Disabilities Act and other disability laws.
 - We only provide legal representation in impact cases.
- **In California, contact the Procedural Safeguards Referral Service, California Department of Education**, for more information on Parents' Rights under Part B of the IDEA at 800-926-0648. For more information about parents' rights under Part C, contact the Early Start program at 800-515-BABY.
- **Call the National Association of Protection and Advocacy Systems, Inc.**, for more information about the rights of an individual with a disability and to find the disability rights office and client assistance program in your area (202) 408-9514 or visit their website at www.protectionandadvocacy.com.
- **Contact the Parent Training and Information Centers and Community Groups**, for training and information for parents of infants, toddlers, school-aged children, and young adults with disabilities and the professionals who work with their families in your state. To reach the parent center in your state, call the **Technical Assistance Alliance for Parent Centers (the Alliance)** at (612) 827-2966 or visit their website at www.taalliance.org.
- **Call Disability Rights Education and Defense Fund, Inc. (DREDF)** for information about national law and policy for protection and advancement of the civil rights of people with disabilities, at (510) 644-2555 or visit their website at www.dredf.org.
- **To file a complaint with the California Department of Education send complaint to:** Special Education Hearing Office, Institute for Administrative Justice, McGeorge School of Law, 3200 Fifth Avenue, Sacramento, CA 95817.

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- ¹20 U.S.C. § 1412(a)(1).
- ²20 U.S.C. § 1419.
- ³20 U.S.C. § 1401(3); see also 34 C.F.R. § 300.7 (further specifying eligibility criteria for special education).
- ⁴34 C.F.R. § 300.13. See also 5 C.C.R. § 3001(o).
- ⁵34 C.F.R. Part 300, App. A.
- ⁶20 U.S.C. § 1412(a)(3).
- ⁷In California, early intervention services are referred to as “Early Start.”
- ⁸Id. at § 1412(a)(9).
- ⁹Cal. Ed. Code § 56426.9; 17 CCR § 52111 and 52112(a).
- ¹⁰*Nicholas Johnson v. Special Education Hearing Office, State of California; Clovis Unified School District*, 287 F.3d 1176, 1179 (9th Cir.2002).
- ¹¹20 U.S.C. § 1414(d) (IEP); 20 U.S.C. § 1436 (IFSP).
- ¹²Agencies must take extra steps to include parents if they cannot attend, such as enabling them to participate via conference call.
- ¹³34 C.F.R. § 300.345.
- ¹³Walsh, S., Smith, B. and Taylor, R., *IDEA Requirements for Preschoolers with Disabilities: IDEA Early Childhood Policy and Practice Guide*. Council for Exceptional Children. p. 14. (Sept. 2000). Document available at www.ideapractices.org.
- ¹⁴20 U.S.C. § 1414(d)(4).
- ¹⁵20 U.S.C. § 1414(d)(A).
- ¹⁶20 U.S.C. § 1414(d)(1)(A)(iv).
- ¹⁷20 U.S.C. § 1414(d)(1)(A)(iii)(III).
- ¹⁸20 U.S.C. § 1436(e).
- ¹⁹20 U.S.C. § 1414(d)(B) (IEP); 34 C.F.R. § 303.343(a)(1) (IFSP).
- ²⁰34 C.F.R. § 300.300(a)(3)(ii).
- ²¹20 U.S.C. § 1412(a)(5).
- ²²20 U.S.C. § 1414(d)(1)(A)(iii) and 34 C.F.R. § 300.553.
- ²³34 C.F.R. § 300.552.
- ²⁴5 C.C.R. § 3042(b).
- ²⁵Id. § 1412(a)(10)(B); see also 34 C.F.R. § 300.401.
- ²⁶34 C.F.R. § 300.24(a).
- ²⁷20 U.S.C. § 1401(8)(A).
- ²⁸34 C.F.R. Part 300, App. A.
- ²⁹34 C.F.R. § 300.300(a)(3)(ii).
- ³⁰34 C.F.R. § 300.24(a).
- ³¹34 C.F.R. § 300.24(a).
- ³²20 U.S.C. §§ 1436(a)(1), (2).
- ³³20 U.S.C. § 1401(1); see also 34 C.F.R. § 300.5.
- ³⁴34 C.F.R. Part 300, App. A, Q. 36.
- ³⁵Id.
- ³⁶20 U.S.C. § 1414(d)(3)(B)(v); see also 34 C.F.R. § 300.346(a)(2)(v).
- ³⁷34 C.F.R. Part 300, App. A, Q. 36.
- ³⁸34 C.F.R. § 300.507.
- ³⁹Cal. Ed. Code § 56445(a)-(b).
- ⁴⁰Id. at § 56445(c)-(d).
- ⁴¹5 C.C.R. § 3024(a).
- ⁴²20 U.S.C. § 1432(4)(C).
- ⁴³Id.