



Montana  
**Office of Public Instruction**  
Denise Juneau, State Superintendent

Special Education in Montana  
Revisions – August 2016

Page 28 – Added questions concerning IDEA/Section 504 of the Rehabilitation Act

**1. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an Individualized Education Program (IEP) under the IDEA and a Section 504 plan under Section 504?**

Answer:

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

Page 48 – Deleted:

**Does the student continue to qualify for special education and related services if the parent refuses consent to a reevaluation?**

Page 48 – Added:

**13. What options do the school district have if the parent refuses consent to a reevaluation?**

Answer:

If the school district believes a reevaluation is necessary and the parents refuse consent to reevaluate, the school district may, but is not required to, pursue the reevaluation by using the IDEA's consent override provisions included in the procedural safeguards. This would include the school district filing a request for mediation or a request for a due process hearing.

If the school district does not wish to pursue the reevaluation by using the consent override procedures, and the school district believes, based on a review of *existing* evaluation data on the child, that the child does not continue to have a disability and does not need the provision of special education and related services, the school district may determine through an evaluation report meeting to not continue the provision of special education and related services. The school district

must provide the parent with prior written notice of its intent to discontinue providing special education services. The parent may then use the procedures in the procedural safeguards if they disagree with the school district's decision.

Page 49 - Added:

**14. What steps must a district take to exit a child from Special Education?**

Answer:

The district must conduct a comprehensive reevaluation of the child and hold an evaluation team meeting to make the determination that the child no longer qualifies for special education.

Page 50 – Added a hyperlink to the Criteria Checklists.

Page 51 – Added:

**23. What is the purpose of a reevaluation?**

Answer:

The reevaluation determines whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

Page 51 – Added:

**24. When a reevaluation has been determined necessary, what is the time requirement for conducting a reevaluation?**

Answer:

Although there is not a specific timeframe, the reevaluation must be conducted within a reasonable timeframe, similar to the timeframe for an initial evaluation. Once the decision is made that a reevaluation is necessary, delaying proceeding with the evaluation to determine continued eligibility for special education and related services and whether additions or modifications to the IEP are needed, could result in the child not receiving a FAPE.

Page 56 – Added a hyperlink to the Criteria Checklists.

Page 59-60 – Added questions concerning Dyslexia.

**20. Is dyslexia considered one of the disability categories recognized by the IDEA?**

Answer:

No. Dyslexia is defined by the International Dyslexia Association (IDA) and the National Institutes of Health (NIH) as a specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling

and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge.

**21. What is the relationship between dyslexia and a specific learning disability?**

Answer:

Dyslexia can make it difficult for a child to succeed in a typical academic environment; therefore, in its more severe forms, dyslexia may be part of a specific learning disability in basic reading skills.

**22. Can the term dyslexia be used or referenced in an Evaluation Report and/or an IEP?**

Answer:

Yes. If a student has been evaluated specifically for dyslexia by an outside agency, the Evaluation Report (ER) team and/or the IEP team should consider the results. The results of the assessment can be noted in the Assessment section of the ER or in the notes section of the ER or the IEP.

**23. Can a student with dyslexia, who does not qualify for special education, be placed on a 504 plan?**

Answer:

Yes. A 504 plan refers to Section 504 of the Rehabilitation Act of 1973. If found eligible through the 504 evaluation process, a team that includes parents and school staff will determine which accommodations are appropriate to help support the student in the school setting. The accommodations will be included in the written 504 plan.

**24. Does using the label of specific learning disability, in addition to or instead of dyslexia, result in inadequate interventions for children with dyslexia?**

Answer:

No. The appropriate areas of specific need identified through the evaluation process will provide the most specificity for planning the educational program of each child. The IDA concurs that the broad term of specific learning disability, when paired with specifiers identifying the areas of skill deficit, should not have a negative impact upon children with dyslexia and may in fact “increase awareness that dyslexia typically encompasses far more difficulties than those related to decoding and spelling words.”

## **25. Does the OPI have further information concerning dyslexia?**

Answer:

Yes. The OPI has prepared an informational document concerning dyslexia. The paper can be found on the OPI Web site at:

[http://www.opi.mt.gov/Programs/SpecialEd/Index.html?gpm=1#gpm1\\_7](http://www.opi.mt.gov/Programs/SpecialEd/Index.html?gpm=1#gpm1_7) under the guides tab.

## **Page 60-62 – Added questions concerning Independent Educational Evaluations.**

### **1. What can parents do if they disagree with an evaluation conducted by the school district?**

Answer:

Parents have the right to request an independent education evaluation (IEE) at public expense. An IEE is “an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student.” At public expense “means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is provided at not cost to the parent...” If a parent requests an IEE the school district must, without unnecessary delay, either 1) file a due process complaint to request a hearing to show the district’s evaluation is appropriate or 2) ensure an IEE is provided at public expense.

### **2. How many Independent Education Evaluations (IEE) is a parent entitled to?**

Answer:

A parent is entitled to one IEE at public expense each time the school district conducts an evaluation if it meets district criteria, in any decision with regard to the provision of FAPE and may be presented as evidence at a hearing in a due process complaint.

### **3. May a parent request an IEE in an area that was not previously assessed by the District?**

Answer:

Yes, if an evaluation was conducted in accordance with 34 CFR 300.304 through 300.311 and a parent disagrees with the evaluation because the student was not assessed in a particular area, the parent may request an IEE to assess the child and determine whether the child is a child with a disability and the nature and extent of the special education and related services that child needs. The school district must ensure an evaluation is sufficiently comprehensive to assess the child in all areas of suspected disability and must identify all of the child’s special needs whether they are commonly linked to the disability category to which the child has been classified. If the parent makes a request for an IEE under these circumstances, the school district must without unnecessary delay, either 1) file a due process complaint to request a hearing to show the school district’s evaluation is appropriate or 2) ensure an IEE is provided at public expense.

#### **4. Are there certain criteria that must be met for an IEE obtained at public expense?**

Answer:

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with a parent's right to an independent educational evaluation. The school district must provide the parents upon request for an IEE, information about where an IEE may be obtained and the school district criteria applicable for IEEs. School districts may establish a reasonable cost containment criteria, but the school district must allow parents to demonstrate that unique circumstances justify selection of an evaluator whose fees fall outside the school district's cost containment criteria. Similarly, OSEP has said that districts must allow parents the opportunity to prove extraordinary circumstances justify an IEE at public expense that doesn't meet district criteria.

#### **5. Must a district consider the results of an IEE?**

Answer:

Yes. The evaluation results must be considered by the school district if it meets district criteria, in any decision with regard to the provision of FAPE and may be presented as evidence at a hearing on a due process complaint.

#### **Page 73 – 23. When must IEP progress reports on the measurable annual goals be provided to parents?**

The wording has been changed:

The IDEA regulations state that parents must be notified of their child's progress "periodically." The OPI interprets this language to mean that progress reports must be sent at least two times per year. The number of progress reports sent must be in compliance with the frequency indicated in the student's IEP and with local district policy. The regulations use report cards and quarterly reports as examples of when periodic reports on the child's progress towards their IEP goals are made.

#### **Page 77 – 37. Who can serve as the "Designee" for an Administrator in the IEP meeting?**

Additional information has been added to the second paragraph:

In Montana an administrative designee, in the absence of an administrator, could be a special education director, a properly endorsed or certified special education administrator, a school psychologist, a speech language pathologist, a special education teacher, or other staff member properly endorsed or certified in one of the previous areas.

**Page 77 – 38. May the parent or district invite others to participate in the IEP meeting?**

An additional paragraph was added:

Guidance from the Office of Special Education Programs regarding the participation of the parent's attorney in an IEP meeting, indicates that a school district may not automatically reschedule an IEP meeting if the parent invites their attorney to attend without notifying the district. If the parent does not agree to reschedule the meeting or rescheduling the meeting would interfere with the timely provision of FAPE, the meeting must be held at the scheduled time.

CFR 300.321 IEP Team  
Letter to Andel

**Page 79-81 – A section for Supplementary Aids and Services was added.**

**1. What are supplementary aids and services designed to do?**

Answer:

The IEP team must identify and provide appropriate services to enable the student:

- to advance appropriately towards attaining the annual goals;
- to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- to be educated and participate with other children with disabilities and nondisabled children in extracurricular and other nonacademic activities.

34 CFR 300.320(a)(4)(i)

34 CFR 300.320(a)(4)(ii)

34 CFR 300.320(a)(4)(iii) & 300.107

**2. What is a school district's responsibility in regard to nonacademic services and extracurricular activities under the IDEA?**

Answer:

Under the IDEA districts are required to take the steps, including the provision of supplementary aides and services determined appropriate and necessary by a student's IEP Team, to afford students with disabilities an equal opportunity for participation in these activities.

**3. Do students with disabilities have the opportunity to participate in field trips and extracurricular activities?**

Answer:

Yes. Districts must supply the related aids or services necessary for a student to participate in a school program, including a field trip.

**4. Are there instances when a student with a disability can be denied the opportunity to participate?**

Answer:

Yes. Such decisions must be made on an individual basis. The district has the burden of demonstrating that the student should not participate. Such exclusion may be related to student anxiety, academic content of activity not related to student's educational program, violation of disciplinary code, or medical condition.

**5. Is a lack of district funds an allowable reason to deny a student the opportunity to participate?**

Answer:

No.

**6. Is the district obligated to provide accommodations, related services or services needed for a student to participate?**

Answer:

Yes.

**7. Can a district require a parent or family member accompany a student during an activity?**

Answer:

No.

**8. Must notice of field trips and extracurricular activities be given equally to all students?**

Answer:

Yes. Failure to provide equal notice about planned activities can result in illegal exclusion of students with disabilities.

**Page 83 – An additional question was added concerning revocations.**

**12. May a school district consider a student for a section 504 plan after a parent has revoked consent for special education under IDEA?**

Answer:

Yes, a school district may consider a student for a 504 plan, by following the relevant procedural requirements under Section 504 of the Rehabilitation Act of 1973, after the parent has revoked consent under IDEA.

The IDEA regulations only implement provisions of the IDEA and do not attempt to address any overlap between the protections and requirements of IDEA and Section 504. Additionally, after a parent revokes services under IDEA for their

child, the school district still has an ongoing child find responsibility for that student. A parent may choose however, to continue to refuse special education and related services.

*Letter to McKethan*, 25 IDELR 295 (OCR 1996), stated the rejection of IDEA services amounts to a rejection of services under Section 504. However, there seems to be some debate as to if it still applies following the comments of the 2008 amended IDEA regulations and subsequent legal decisions. The courts appear split on this matter and the Ninth Circuit has not ruled on this issue. The OPI Special Education Division has been advising districts that that they may be subject to a due process complaint for denial of a FAPE under section 504 if they do not offer a 504 plan following parental revocation of special education and related services under the IDEA.

**Page 86 – An additional question was added concerning IEP amendments.**

### **3. How much of an IEP can an amendment change?**

Answer:

The IDEA does not place a limit on what an IEP amendment can change. However, substantive changes to services, placements, goals, etc. would likely benefit from meaningful participation of the whole IEP team. Changes of placement because of disciplinary removals must always be made by the IEP team.

**Page 88 – 5, What if a student enrolls and the parent states that the student has received special education services, but there is no documentation of eligibility available (no Evaluation Report or IEP)?**

The second through the fourth sentence of the response was deleted and a new sentence and reference was added:

There is nothing in the IDEA regulations that would prevent the receiving public agency from providing special education services to the child while the determination of the child's eligibility is pending, subject to an agreement between the parent and the receiving public agency.

34 CFR 300.323 When IEPs must be in effect  
OSEP IEP Q and A, 2011

**Page 90 – Added questions concerning Pre-Employment Transition Services (Pre-ETS) – Montana Vocational Rehabilitation and Blind Services.**

**1. If a school receives Pre-ETS funding, does it raise the district's maintenance of fiscal effort (MOE) level?**

No. Pre-ETS funds are federal monies. Only state and local funds are used to calculate MOE.

## **2. What can Pre-ETS funds be used for?**

Pre-ETS funds must be used to support the specific activities that are identified in the school's Pre-ETS work plan. Each district develops a work plan as part of their contract with Vocational Rehabilitation and Blind Services. The funds that the district receives can pay expenses incurred to provide the services in their plan or to expand their school's capacity to provide Pre-ETS services. This may include staff time, curriculum that supports the delivery of the Pre-ETS service, transportation to participate in a Pre-ETS activity or the school can also use their funds to subcontract with an outside entity to provide any of the Pre-ETS services.

## **3. What can Pre-ETS funds not be used for?**

The intention of the funds is to expand what the school is currently doing to increase career and college readiness for ALL of their students with disabilities. These funds must not supplant IDEA funds to provide special education and related services as identified in the IEP.

Page 147 - 148 – Added questions concerning Functional Behavioral Assessments (FBA).

## **9. What is an Functional Behavioral Assessment (FBA)?**

Answer:

A functional behavioral assessment is a comprehensive and individualized strategy to:

- Identify the purpose or function of a student's problem behavior(s).
- Develop and implement a plan to modify variables that maintain the problem behavior.
- Teach appropriate replacement behaviors using positive interventions.

## **10. When is a FBA required during disciplinary actions?**

Answer:

If it is determined that the conduct that resulted in the student's suspension/expulsion was a manifestation of the student's disability(ies), the IEP team is required to conduct a FBA unless one has previously been completed regarding the same or similar conduct.

## **11. If the IEP team determines that the behavior was a manifestation of the student's disability(ies), what other step must be taken by the school district?**

Answer:

The school district must develop and implement a positive behavior intervention plan or review an existing positive behavior support plan and modify it, as necessary to address the behavior.