

Understanding the Evaluation, Eligibility, and Individualized Education Program (IEP) Process in Maryland



Maryland State Department of Education
Division of Special Education/Early Intervention Services

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Introduction:

This guide to understanding the evaluation, eligibility, and IEP processes in Maryland has been developed by the Maryland State Department of Education (MSDE) to help you better understand your child's rights, your rights and responsibilities, and the school's responsibilities to meet the special needs of your child. This guide includes a description of the Child Find, evaluation, eligibility determination, and Individualized Education Program (IEP) processes.

Research shows that children are more successful in school when their families are involved in their children's development and education. For a child who has a disability, the importance of parental involvement can be even greater. Very often, parents are the sole or best source of information about a child's strengths and how a disability impacts their child's development or ability to learn. Parents play an important role in the education of their children. The law requires that parents and school personnel work together to provide children with appropriate educational services. As a parent of a child with a disability, you should ask questions and request help when you feel that you need it.

The Division of Special Education/Early Intervention Services of MSDE maintains a three-part network of local family support coordinators who assist parents of children with disabilities ages birth to 21 in fulfilling their role in the process of obtaining special education and early intervention services for their children. Each jurisdiction in Maryland has a family support services coordinator for families of children with disabilities for each of the following age groups:

- birth to 3 years old – Family Support Network
- 3 through 5 years old – Preschool Partners
- 5 to 21 years old – Partners for Success

These coordinators are available to discuss early intervention and special education services, foster new connections among families, provide resources and manage lending libraries, organize parent training sessions and support groups, and answer questions. They also assist parents in resolving disputes with school systems through informal facilitation or by providing information about the formal dispute resolution processes defined by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).

On the next page is a directory of family support services coordinators in your jurisdiction. All of our coordinators look forward to working with you to benefit children with disabilities.



Family Support Services

For Families of Children with Disabilities:

Directory of Local Family Support Services Coordinators

Jurisdiction	Family Support Network Ages Birth to 3	Preschool Partners Ages 3 through 5	Partners For Success Ages 3 to 21
Allegany County	240-920-6829	240-920-6829	240-920-6829
Anne Arundel County	410-222-6911	410-222-3805	410-222-3805
Baltimore City	410-396-1666	443-642-4218	443-642-4218
Baltimore County	410-887-2169	410-887-5443	410-887-5443
Calvert County	410-535-7387	410-535-7387	410-535-7387
Caroline County	410-479-3609	410-479-3609	410-479-3609
Carroll County	410-876-4437	410-751-3955	410-751-3955
Cecil County	410-996-5637	410-996-5637	410-996-5637
Charles County	301-934-7456	301-934-7456	301-934-7456
Dorchester County	410-901-6915	410-901-6915	410-901-6915
Frederick County	301-600-1617	301-600-1617	240-236-8744
Garrett County	301-334-8119	301-334-8119	301-533-0240
Harford County	410-638-3823	410-638-3823	410-273-5579
Howard County	410-313-7161	410-313-7161	410-313-7161
Kent County	410-778-5708	410-778-5708	410-778-5708
Montgomery County	240-777-4809	240-777-4809	301-279-3100
Prince George's County	301-883-7428	301-883-7428	301-431-5675
Queen Anne's County	410-827-4629, ext. 149	410-827-4629, ext. 149	410-758-3693
Somerset County	410-651-9413	410-651-9413	410-651-9413
St. Mary's County	301-231-4188	301-231-4188	301-863-4069
Talbot County	410-820-6904	410-820-6904	410-820-6904
Washington County	301-766-8221	301-766-8221	301-766-8221
Wicomico County	410-677-5250	410-677-5250	410-677-5250
Worcester County	410-632-5234	410-632-5234	410-632-5234

Statewide Family Support Services Coordinators

Maryland State Department of Education Family Support Services (including dedicated support for Maryland military families and families of detained and committed youth)	1-800-535-0182
Maryland School For the Blind	1-800-400-4519 ext. 489
Maryland School For the Deaf	443-277-8899

Family Support Services Directory Available on the Web:

http://www.marylandpublicschools.org/MSDE/divisions/earlyinterv/infant_toddlers/about/family_support_services.htm

Additional Helpful Resources

For Families of Children with Disabilities:

- **Maryland State Department of Education**
<http://marylandpublicschools.org/msde>
Information about the initiatives of the Maryland State Department of Education and Maryland public schools, including assessments and the Maryland Voluntary State Curriculum.
- **Maryland State Department of Education**
Division of Special Education/Early Intervention Services
<http://marylandpublicschools.org/msde/divisions/earlyinterv/>
Resources on Autism, Building IEPs with Maryland Families, Statewide IEP Form and Format, Resources on Dispute Resolution, and more.
- **Maryland Early Childhood Gateway**
<http://www.mdecgateway.org>
An online resource for providers and families with young children with disabilities, ages birth through five.
- **Procedural Safeguards**
This guide is not intended to replace the procedural safeguards document, or any required notice, and is not a substitute for the state's special education regulations. To help you further understand your legal rights, at certain times in the process the schools will provide parents with a copy of the procedural safeguards document entitled, Parental Rights – Procedural Safeguards Notice. An electronic copy of Parental Rights–Procedural Safeguards Notice may be obtained at: www.marylandpublicschools.org/MSDE/divisions/earlyinterv/Special_Ed_Info.htm.
- **Code of Maryland Regulations (COMAR)**
The State Division of State Documents Web site provides access to the Code of Maryland Regulations: <http://www.dsd.state.md.us/comar/>.
- **U.S. Department of Education**
The United States Department of Education provides resources related to the Individuals with Disabilities Education Act: <http://idea.ed.gov/>.

Identification of Children With Disabilities:

Child Find is the ongoing process used by local school systems, and public agencies to identify children three through 21 years of age, who are in need of special education services as a student with a disability. Maryland implements policies and procedures to ensure all children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are located, identified, and evaluated, and utilizes a practical method to determine which children are currently receiving needed special education and related services. This includes:

- Children attending private elementary schools, private secondary schools, and charter schools within the jurisdiction of the local school system;
- Highly mobile children;
- Migrant children;
- Homeless children;
- Wards of the State; and
- Children who are suspected of being a student with a disability even though they are advancing from grade to grade.

Initial Referral:

A parent or school personnel may request an evaluation of a child at any time by writing to the child's principal or the local special education administrator. A written request documents your referral and starts the referral time line. The referring source must explain the reasons that an evaluation is requested and any efforts that have been made to address the concerns.

If the public agency determines assessments are needed, they shall promptly request your consent to assess your child to determine if the child needs special education and related services. A public agency cannot conduct individualized assessments of your child without your informed written consent. A public agency is not required to obtain your consent before reviewing existing data or giving your child a test that is given to all other children, unless consent is required of the parents of all other children. If a public agency believes your child may have a disability that may require the provision of special education and you refuse to provide informed written consent, the public agency may request that you participate in mediation or a due process hearing. A public agency shall adhere to the time frames described in the Code of Maryland Regulations (COMAR), unless the student's parent and the IEP team extend the time frame by mutual written agreement.

Determination of Need for Assessment:

The public agency shall ensure assessment procedures are administered as needed and that parents receive written notice of any assessment procedure the public agency proposes or refuses to conduct. If a public agency determines that no additional data is needed or does not suspect your child of being a student with a disability or a developmental delay, the public agency is required to provide you with written notice of their refusal to assess your child. If you disagree with the decision, you may appeal by filing a due process hearing complaint with the Office of Administrative Hearings (OAH).

Assessments:

Assessments are procedures that are individualized for each student. A public agency may use a variety of assessment tools and strategies to gather sufficient relevant functional, developmental, and academic information about the child. This information may assist in determining if the child is a student with a disability and the content of the child's IEP. Academic information includes your child's progress in the general curriculum, or for a preschool child, participation in appropriate activities. Assessments include printed tests, observations, information from parents, as well as other sources of information that are:

- Selected and administered in a way that is not racially or culturally discriminatory;
- Administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to do so;
- Used for the purposes for which the assessments or measures are valid and reliable;
- Are administered by trained and knowledgeable personnel according to the instructions provided by the producer of the test;
- Tailored to identify specific areas of educational need, not merely to provide a single general intelligence quotient; and
- Selected to accurately reflect a child's aptitude or achievement, rather than the impaired sensory, manual, or speaking skills, except where these skills are the factors that the test is to measure.

Each report of assessment procedures shall include:

- A description of the child's performance in each area of suspected disability;
- Relevant functional, cognitive, developmental, behavioral, and physical information;
- Instructional implications for the child's participation in the general curriculum or, for a preschool child, participation in appropriate activities; and
- For any assessments not administered under standard conditions, a description of how it varied from standard administration procedures.

Evaluation:

Evaluation means procedures used in accordance with federal and State regulations concerning procedures for evaluation and determination of eligibility, to determine whether a child has a disability, and the educational needs of the child. A full and individualized evaluation is conducted **before** the initial provision of special education and related services to a student with a disability under the IDEA. An evaluation occurs at a meeting of the IEP team and, as appropriate, other qualified professionals to review:

- Existing data and assessment results;
- Evaluations and information provided by parents;
- Current classroom-based assessments, including State and district-wide assessments and observations, and
- Observations by teachers and related services personnel to determine:
 - Whether the child is a student with a disability;
 - The child’s educational needs;
 - Present levels of academic achievement and developmental needs;
 - The child’s special education and related service needs whether or not commonly linked to the disability category in which the child has been classified; and
 - Any additions or modifications needed for the child to meet the goals of the IEP and to participate, if appropriate, in the general curriculum.

Initial Evaluation:

The initial evaluation shall be comprehensive enough to ensure a child is assessed in all areas related to the suspected disability, including, if appropriate:

- Academic performance
- Communication
- General intelligence
- Health, including hearing and vision
- Motor abilities
- Social, emotional, and behavioral status

No single procedure is used to determine if a child is a student with a disability and to determine an appropriate educational program for the child.

A child may not be identified as a student with a disability in need of special education and related services if the determinant factor is:

- A lack of appropriate instruction in reading, including the essential components of reading instruction, which are:

- phonemic awareness
 - phonics
 - vocabulary development
 - reading fluency, including oral reading skills
 - reading comprehension strategies
- A lack of instruction in math
 - The child's limited English proficiency, unless the child otherwise qualifies as a child with a disability.

Time Frame for Completion of Initial Evaluation:

A child's parents or the public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. The initial evaluation must be completed no later than 60 days from the date of receiving written parental consent to assess the child. The 60-day time frame shall not apply to a local educational agency if:

- A child enrolls in a school served by the public agency after the parents provided consent for the initial assessment in another public agency and before the former public agency determined if the child was a child with a disability. This exception only applies if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time frame in which the evaluation will be completed;
- The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
- The public agency and parent mutually agree in writing to extend the 60-day evaluation time line.

If at the initial evaluation, the IEP team determines that the child has a disability and needs special education and related services, the IEP team must meet within 30 days of the initial evaluation to develop the child's IEP. The public agency will provide parents with a copy of the IEP team evaluation decision.

Transition from an Infants and Toddlers Program:

A public agency shall convene an IEP team meeting to determine if a child in transition from a local Infants and Toddlers Program has a disability that requires the provision of special education and related services. If the child was previously served under Part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. If the IEP team determines the child is a student with a disability or developmental delay, the IEP Team shall develop an IEP for the child. The child's IEP must be in effect on the child's third birthday.

Reevaluation:

A public agency must ensure that a reevaluation for each child with a disability is completed if:

- The public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If the child's parent or teacher requests a reevaluation.

A reevaluation shall not occur more frequently than once a year, unless the parent and public agency agree otherwise; and must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child. The IEP team will review existing evaluation data, including information from parents, classroom-based assessments, State and district-wide assessments, and observations to decide if any additional data are needed to determine:

- Whether the child continues to have a disability that requires the provision of special education and related services;
- The child's present levels of academic achievement and related developmental needs; and
- Whether there any additions or modifications needed for the child to meet the measurable annual goals of the child's IEP and to participate, if appropriate, in the general curriculum.

If the IEP team determines that additional data are needed, assessments will not be conducted until parents are notified and parental consent has been requested. The IEP team will review the results of assessments within 90 days of the date the assessments were recommended by the IEP team. If the IEP team determines that no additional data is needed, the public agency will notify the parents of that fact, and the reasons for that determination. The public agency is not required to conduct assessments, for reevaluation purposes, unless requested to do so by the child's parents.

Termination of Services:

A public agency must reevaluate a student with a disability in accordance with federal and State regulations before determining that the child is no longer a student with a disability. This reevaluation is not required before the termination of a child's eligibility under Part B of the IDEA due to graduation with a regular high school diploma, or exceeding the age eligibility for a free appropriate public education (FAPE) under State law.

The Individualized Education Program (IEP) Process:

IEP Team Meetings:

The public agency uses a team process to decide whether a child is a student with a disability as defined by the IDEA and the educational needs of the child. Each public agency is responsible for initiating and conducting meetings for the purposes of developing, reviewing, and revising the IEP of a student with a disability, and determining the child's educational placement. The parents of each student with a disability must be notified and afforded the opportunity to participate in any IEP team meeting conducted for their child.

Parents are members of the IEP team that makes decisions regarding the child's educational placement. The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is not English.

Once the IEP team determines the child requires special education and related services, the IEP team must meet within 30 days to develop the child's IEP. As a member of the IEP team, parents have the right to request a review of their child's IEP at any time.

Parent Participation in Meetings:

Each public agency shall take steps to ensure that one or both of the parents of a student with a disability are present at each IEP team meeting, or are afforded the opportunity to participate. Parents are to be notified of meetings early enough to ensure that they will have an opportunity to attend, and meetings should be scheduled at a mutually agreed on time and place. The notice must indicate the purpose, time, location of the meeting, and who will be in attendance. The notice must also inform parents that at the discretion of the parents or the public agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate on the IEP team. The determination of the knowledge or special expertise of any individual shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

For a student with a disability beginning at age 14, or younger if appropriate, the notice must also indicate that one purpose of the meeting will be the development of a statement of the transition services needs of the student and that the agency will invite the student and identify any other agency that will be invited to send a representative. Before a public agency can invite another agency representative, parental consent is required.

Notice of any IEP team meeting to develop, review, or revise a child's IEP, including the determination of a child's educational placement must be given at least ten (10) calendar

days before the meeting unless an expedited meeting is convened to:

- Address disciplinary issues;
- Determine the placement of the child, if the child is a student with a disability and is not currently receiving educational services; or
- Meet other urgent needs of the child to ensure the provision of FAPE.

If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. The IEP team may make a placement decision without the involvement of the parents, if the public agency is unable to obtain the parental participation in the decision. In this case, the public agency must have a record of its attempts to arrange the meeting at a mutually agreed on time and place, such as 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.

A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent's proposal that will be discussed at a later meeting.

The IEP Team:

The IEP team includes:

- The child's parents, guardian, or parent surrogate;
- Not less than one of the child's general education teachers, if the child is or may be participating in the general education environment. If the child does not have a general education teacher or is younger than school age, an individual qualified to teach a child of that age;
- Not less than one of the child's special education teacher, or if appropriate, a service provider of the child;
- A representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the needs of students with disabilities and knows the general curriculum and public agency resources available;
- An individual who can interpret the instructional implications of evaluations. This person can be one of the public agency team members listed above;

- If parents or the public agency choose, other individuals who have knowledge or special expertise regarding the child;
- To the extent appropriate, with the consent of the parents, the public agency must invite a representative of any participating public agency that may be responsible for providing or paying for transition services; and
- If appropriate, the child. The child shall be invited to, and is expected to attend and participate in the IEP team meeting if the purpose of the meeting is to consider postsecondary goals for the child and the transition services needed to assist the child in reaching those goals.

IEP Team Attendance:

A member of the IEP team is not required to attend all or a part of an IEP meeting if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

A member of the IEP team may be excused from attending the whole IEP meeting or a part of the IEP meeting when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

- The parent and the public agency consent to the excusal, in writing; and
- The member being excused submits written input into the development of the IEP to the parent and the IEP team, prior to the meeting.

IEP Content:

The IEP is developed by the IEP team and includes:

- A statement of the child's present levels of academic achievement and functional performance, including—
 - How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- A statement of measurable annual goals, including academic and functional goals designed to—
 - Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - Meet each of the child's other educational needs that result from the child's disability.

- A description of benchmarks or short-term objectives.
- A description of how the child's progress toward meeting the annual goals will be measured, and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.
- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—
 - To advance appropriately toward 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;
- An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular education environment and in activities;
- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments; and
- If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why—
 - The child cannot participate in the regular assessment, and
 - The particular alternate assessment selected is appropriate for the child;
- The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.

A public agency shall provide special education and related services to a child in accordance with the child's IEP and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP. A public agency, teacher, or another individual shall not be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives.

IDEA 2004 does not require that additional information be included in a child's IEP beyond what is explicitly required by the IDEA statute or the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

If a child requires extended school year services, the IEP must include the specific special education and related services to be provided beyond the regular school year.

Transition Services:

Transition services are a coordinated set of activities designed to promote movement from school to post-school activities, including post-secondary education, career and technology education, integrated employment, adult services, independent living, or community participation. This set of activities is based on a child's needs, takes into consideration the child's preferences and interests, and includes the course of study, related services, and community activities.

- Beginning when a child is 14, or younger, if appropriate, and updated annually, the IEP must include a statement of the child's transition service needs that focuses on the child's course of study.
- Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include—
 - Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - The transition services (including courses of study) needed to assist the child in reaching those goals.
- The requirement to provide transition services does not apply to a student with a disability who is convicted as an adult under State law and incarcerated in an adult correctional facility and whose eligibility for special education and related services will end before the student is eligible for release.

Summary of Performance:

For a child whose eligibility terminates, a public agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

Providing Consent for Initiation of Special Education Services:

A public agency shall obtain written parental consent before the initial provision of special education and related services to a student with a disability. A public agency may not provide special education and related services if a student's parent refuses to give the public agency informed written consent for the initiation of special education and related services, or fails to respond to a request by the public agency to provide consent for the initiation of special education and related services. If a parent refuses to provide consent for the initiation of special education and related services, the public agency **cannot** provide the child with special education and related services. If a parent of a child with a disability refuses to provide the initial consent, the public agency is not considered to be in violation of the requirement to make FAPE available, and is not required to convene an IEP team meeting or develop an IEP for the student.

Revoking Consent for Special Education Services:

As of December 31, 2008, the Individuals with Disabilities Education Act (IDEA) provides parents with the authority to revoke consent for the provision of special education and related services, thereby ending the provision of special education and related services to their child. While this change reverses the longstanding interpretation of the U.S. Department of Education, it provides consistency with IDEA's emphasis on the role of parents in protecting their child's rights and the Department's goal of enhancing parent involvement and choice in their child's education.

If at any time after a public agency begins to provide special education and related services to a child with a disability, the parent of the child may **in writing** revoke consent for the continued provision of special education and related services. The public agency **may not** continue to provide special education and related services to that child, but must provide the parent with prior written notice before stopping the provision of special education and related services. A public agency **may not** use mediation or a due process hearing to obtain agreement or a ruling that the services may be provided to the child. The public agency will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services, and is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services. While a parent may revoke consent for the continued provision of special education and related services, the public agency is not required to amend the child's education records to remove any reference to the child's receipt of special education and related services because of the revocation of consent.

IEP Development, Review, and Revision:

In developing, reviewing, or revising a child's IEP, the IEP team will consider and document:

- The child's strengths and parental concerns for enhancing their child's education;
- Results of the initial or most recent evaluation of the child;
- The academic, developmental, and functional needs of the child;
- Results of the child's performance on State or district-wide assessment programs, as appropriate;
- Communication needs;
- Assistive technology devices and services needs of the child.
- Consideration of special factors, specific to the child, such as:
 - As in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports and other strategies to address that behavior;
 - As in the case of a child with limited English proficiency, consider the language needs of the child as they relate to the child's IEP;

- In the case of a child who is blind or visually impaired, provide for instruction in Braille, including textbooks in Braille, and the use of Braille unless the IEP team determines after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child, including textbooks in Braille; and
- In the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communication with peers and professional personnel in the child’s language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the child’s language and communication mode.

If through consideration of the special factors above, an IEP team determines the child needs a particular device, service, intervention, accommodation, or program modification in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child’s IEP.

As a member of the IEP team, a general education teacher of the child shall, to the extent appropriate, participate in the development of the child’s IEP. Participation includes assisting in the determination of appropriate positive behavioral interventions and supports and other strategies for the child, as well as supplementary aids and services, program modifications, and supports for school personnel.

The IEP team reviews the child’s IEP periodically, but not less than annually, to:

- Determine whether the annual goals for the child are being achieved; and
- Revise the IEP, as appropriate, to address—
 - Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
 - The results of any reevaluation;
 - Information about the child provided to, or by, the parents;
 - The child’s anticipated needs; or
 - Other matters relevant matters to the child’s program.

Amendments:

The child’s parents and the public agency may agree not to convene an IEP team meeting to make changes to the IEP. In making changes to a child’s IEP after the annual IEP meeting for a specific school year, the parent of a child with a disability and the public agency may agree to develop a written document to amend or modify the child’s current IEP. Upon request, a parent shall be provided a revised copy of the IEP with the amendments incorporated.

Placement:

As a member of the IEP team, parents are included in decisions regarding placement of their child. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled. Annually, the child's IEP team will:

- Determine the child's educational placement, based on the IEP; and
- Validate that the child is educated in the school the child would attend if not disabled, unless the child's IEP requires some other arrangement.

If the child convicted as an adult under State law, is incarcerated in an adult correctional facility, and the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated, the IEP team may modify the child's IEP or placement.

IEP Implementation:

The public agency must ensure:

- The child's IEP is implemented as soon as possible after it is developed, except if the meeting is held over the summer or a vacation period, or when there are circumstances that require a short delay, such as arranging transportation.
- An IEP is in effect for the child at the beginning of the school year.
- The IEP is accessible to every teacher, related services provider, and other service provider who is responsible for implementing the child's IEP.
- Each individual identified as providing a service to the child must be informed of their responsibilities related to implementing the child's IEP and the accommodations, modifications, and supports that must be provided.
- Parents receive a copy of their child's IEP at no cost.

Children Who Transfer to Another Public Agency:

Transfer within the same State–

In the case of a child with a disability who transfers public agencies within the same academic year, who enrolls in a new public agency with an IEP that was in effect in the same state, the public agency shall:

- Provide the child with a free appropriate public education that includes services comparable to those described in the previously held IEP, in consultation with the parents until the public agency adopts the previously held IEP; or
- Develop, adopt, and implement a new IEP consistent with federal and state law.

To facilitate the transition for a child who transfers within the same state, the new public agency in which the student enrolls shall take reasonable steps to promptly obtain the student's records from the previous public agency including:

- The IEP and supporting documents; and
- Any other records relating to the provision of special education or related services to the child

Transfer from outside the State–

In the case of child with a disability who transfers public agencies within the same academic year, who enrolls in a new public agency with an IEP that was in effect in another state, the public agency shall:

- Provide the child with a free appropriate public education that includes services comparable to those described in the previously held IEP, in consultation with the parents until the public agency conducts an evaluation, if determined necessary by the public agency; and
- Develop a new IEP, if appropriate, that is consistent with federal and state law.

To facilitate the transition for a child who transfers outside the state, the previous public agency in which the child was enrolled shall take reasonable steps to promptly respond to requests from the new public agency for educational records.

Graduation Requirements:

The public agency shall inform parents of the State and local graduation requirements and their child's progress toward meeting those requirements. When a student with a disability graduates from high school with a regular high school diploma, the public agency is to provide the parents notification of their child's pending graduation. Graduation with a regular high school diploma constitutes a change in placement and terminates the child's right to FAPE.

Extended School Year Services (ESY):

Extended school year services (ESY) means the individualized extension of specific special education and related services that are provided to a student with a disability beyond the normal school year of the public agency, in accordance with the IEP, at no cost to the parents, and that meets the standards of the MSDE. ESY services are only necessary to FAPE when the benefits that a student with a disability gains during a regular school year will be significantly jeopardized if the student is not provided with an educational program during the summer months. A public agency may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

ESY services are provided if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE. Parents are to be notified of the availability of ESY services that may be necessary to meet the unique needs of a student with a disability. At least annually, the IEP team shall determine whether the student requires ESY services. This determination should be made early enough in the school year to allow the parent sufficient time to exercise their procedural safeguard rights if they

disagree with the proposal made by the public agency. However, it should not be made so early as to not have sufficient information in order to make an informed decision.

To determine whether the benefits a student with a disability gains during a regular school year will be significantly jeopardized if the child is not provided an educational program during the summer months, the IEP team shall consider the following factors:

- Whether the child's IEP includes annual goals related to critical life skills;
- Whether it is likely that the child would suffer a substantial regression of critical life skills caused by the normal school break and would fail to recover those lost skills in a reasonable time;
- The child's progress toward mastery of IEP goals and objectives;
- The presence of emerging skills or breakthrough opportunities;
- Interfering behaviors;
- The nature and/or severity of the disability; and
- Special circumstances.

The IEP team is to consider each factor independently to determine the impact on the student's ability to receive educational benefit from the program. In consideration of the need for ESY services, this standard must be individually applied for each student. The IEP team must document the consideration of factors and the outcome of those considerations in determining whether or not the benefits and gains made during the regular school year will be significantly jeopardized if the student is not provided extended school year services.

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