



Summary of Significant Changes to:

Individuals with Disabilities Education Improvement Act: IDEIA 2004

This is a summary of the most significant changes affecting children with disabilities and their families in IDEIA 2004. (Virginia regulations may provide more rights than federal regulations.)

IEP Process

- Short-Term Objectives - IEP teams no longer have to create short-term objectives for meeting each child's IEP goals. Such short-term objectives are only required for a very small number of children, those who are taking alternate assessments. This is generally less than one percent (1%) of students with disabilities. Even if these short-term objectives are not required by law, all parents may still request their child's IEP team to include them.
- Transition Information in IEP - The amendments state that the transition process for a student with a disability now begins at age 16. Other programs may be required to start sooner.
- IEP Attendance and Participation - A new section allows IEP team members not to attend the meeting if their area is not being discussed. Also, IEP members may participate by conference call. Remember, parental consent is needed for both of these actions.
- Pilot Program for Multi-Year IEPs - Up to 15 states may allow school districts to offer, with parental consent, a multi-year IEP. This multi-year IEP may not be longer than three (3) years.
- Transfers Between School Districts Both In-State and Out-of-State - IEP services from the "old" school must be provided at the "new" school until a new IEP is in place.

Due Process

- Procedural Safeguards Notice - The new law does not require that the procedural safeguards information be provided to parents as often as the old law. However, parents may request a copy at any time.
- Statute of Limitations - Parents have two years in which to use their due process rights after they knew or should have known that an IDEIA violation occurred.

- Due Process Complaint Notice Requirements - A Due Process Notice must be provided to the school and VDOE before a due process hearing. The new law states a lot of specifics that must be included in this Notice. Please contact VOPA if you would like further details.
- Resolution Session - Parents must go through a “resolution session” before due process.
- Attorney’s Fees - Parent’s attorneys may be responsible for paying the school system’s attorney fees when the parent’s due process request was unreasonable or without foundation. Parents may be responsible for the school system’s attorney fees if a due process was brought for an improper purpose, such as to harass.
- Qualifications for Hearing Officers - A positive change is that there are now very specific qualification requirements for Hearing Officers.

Discipline

- Manifestation Determination Review - Before IDEIA 2004, the burden was on the school district to show that the behavior resulting in a disciplinary action was not a manifestation of the child’s disability. Now, the burden is on the parent to show the behavior is a manifestation.
- Functional Behavioral Assessments - The requirements for Functional Behavioral Assessments and Behavioral Intervention Plans are still in the discipline provisions.
- Case-By-Case Determination - School personnel may now consider any unique circumstances on a case-by-case basis when deciding whether to change the placement of a child with a disability who violates a school code of conduct. It serves to remind the school personnel that common sense should be used and all circumstances should be considered.

Important Notice

Virginia State Regulations are still in effect. VOPA’s position is that if a Virginia State Regulation gives a child with a disability more rights than Federal law, the State Regulation must be followed.

You may call VOPA at our toll-free number (800) 552-3962 for more information.

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