

Law Trends

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Reauthorization of the Individuals with Disabilities Education Act

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School districts, local educational agencies and educators should be aware that significant changes to the Individuals with Disabilities Education Act (IDEA) took effect as of **July 1, 2005**. The purpose of IDEA has always been to insure that disabled students are entitled to a free and appropriate public education (FAPE). To that end, IDEA sets forth the procedural and substantive guidelines for drafting and implementing individualized education plans (IEP) for students with disabilities.

The changes clarify certain language of IDEA that was once ambiguous. For example, the new law specifies that each public school district is responsible for providing special education services to children enrolled by their parents in private schools located in the geographic jurisdiction of the school district. The law goes on to clarify that while a school district can challenge a parent's decision to not have a child evaluated, the school district may not challenge a parent's decision to refuse special education or related services. The law also explicitly states that schools may not deny enrollment, evaluation or services because a parent refuses to medicate a disabled child.

A significant area of change is found in the due process hearing procedure. The new law places precise requirements on the content of hearing requests made by either party. After a school district receives a hearing request from a parent, it must now file a response to the request **within ten days of its receipt**. This response requires significant specificity regarding the school or agency's action and must provide certain background information about the student. This requirement may be particularly burdensome for school districts due to the brief amount of time schools are given to respond. The new statute also allows an opposing party to move for dismissal of a hearing request if it fails to satisfy the requirements.

Another interesting change in the law is the preliminary meeting, which is also referred to as the resolution session. These meetings are to be held by the school prior to the due process hearing and **within 15 days of receiving the parent's complaint**. This meeting can be waived with the written agreement of both parties, or if the parties agree to mediation. The parents, relevant members of the IEP team, and a representative of the school or agency with decision-making authority are required to attend. **The school may not have an attorney present unless the parent is accompanied by an attorney**. The purpose of the meeting is to allow the parents to discuss their complaint and the facts that form the basis of the complaint. The school or local education agency will then have the opportunity to resolve the parent's concerns.

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In addition to the changes described above, the new statute impacts the IEP process and the procedure for disciplining disabled students. Significant changes were also made regarding teacher and paraprofessional qualifications and other personnel issues, measures were taken to avoid over-identification of disabled students, several key definitions were amended or clarified and additional paperwork is mandated in some instances.

The magnitude of these revisions is open to debate. For a significant period of time, the application of IDEA may be inconsistent with state and federal regulations because those rules have not yet been revised. When faced with issues involving IDEA, FAPE and IEPs, school districts and local education agencies should take into account the new statute and its implication on existing procedures. For further information, please contact us at 419-241-6000.

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