



**United States Department of the Interior  
BUREAU OF INDIAN EDUCATION**

Albuquerque Service Center  
Division of Performance and Accountability  
P.O. Box 1088  
Albuquerque, New Mexico 87103-1088

**MAY 14 2008**

Memorandum

To: Education Line Officers  
School Principals

From: Chief, Division of Performance and Accountability 

Subject: Interim Policy and Procedures for Special Education

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) requires each State, including the Bureau of Indian Education (BIE), to have policy, procedures and effective implementation of practices that are aligned with and support the implementation of IDEA 2004. The BIE has not completed the alignment of our policy and procedures with IDEA 2004. It is requested that the ELO provide each school with this memorandum to reiterate BIE's interim procedures that schools are to follow until such time that the BIE Policy and Procedures for Special Education are finalized.

Subsequent to the implementation of IDEA 2004, the BIE provided several documents on interim procedures which were previously disseminated. Following is a list of the written guidance provided:

1. Memorandum dated July 08, 2005: stated in part "the requirements of the OIEP Eligibility Document are still in effect; however, in those areas of the IDEIA 2004 where the new requirements go beyond those in the current BIA (OIEP) Eligibility Document each school must ensure that these new requirements are met." Accompanying the memorandum was a packet entitled "*GUIDANCE: Implementing the Individuals with Disabilities Education Improvement Act 2004 Changes*" and a copy of the recommended forms pertinent to the required changes.

On August 14, 2006, the IDEA Regulations, 34 CFR Parts 300 was published and became effective October 13, 2006; therefore, the Department of the Interior-Bureau of Indian Education is to adhere to all requirements in §300.707 through §300.716.

2. Memorandum dated September 09, 2005: provided additional information on revised Individualized Education Program (IEP) forms; a packet of recommended IEP forms pertinent to the required changes of IDEA 2004 was also provided.

At the time, the Native American Student Information System (NASIS) was in the initial stage of implementation and the IEP forms were to be included in the latter stages.

3. Memorandum dated August 17, 2006: provided an update on the inclusion of the special education forms in NASIS, Schools were advised to continue to utilize their current IEP forms until such time that the forms became available on NASIS.
4. IDEA Final Regulations Training-What Teachers and Administrators Need to Know: Three regional training were held in December 2006. Training was provided on forms for: *Filing for a Complaint Investigation, Request for Mediation/Resolution Session/Due Process Hearing, and Parent Agreement to Mediate*. All schools were instructed to use these forms for complaints related to identification, evaluation, educational placement, or provision of a Free Appropriate Public Education to a child with disabilities.

The aforementioned documents are the interim procedures schools are to follow to ensure compliance with IDEA 2004 and should remain in effect until further notice. Upon finalization of the BIE Policy and Procedures for Special Education, training and written guidance will be provided by the Division of Performance and Accountability. Subsequently, each school will be required to have written policies and procedures aligned with BIE's overall Policy and Procedures.

If you have questions or need further clarification, please contact Gloria Yepa, Supervisory Education Specialist-Special Education at (505) 563-5264. Thank you.

Cc: Acting ADD, East and West  
Acting ADD, Navajo  
Education Specialists, Special Education – DPA  
Files



United States Department of the Interior  
Bureau of Indian Affairs  
Office of Indian Education Programs  
Center for School Improvement  
P.O. Box 1088  
Albuquerque, New Mexico 87103-1088

**COPY**



JUL 08 2005

Memorandum

To: All Education Line Officers  
All Special Education Coordinators  
All Field Education Specialists

Through: <sup>Acting</sup> Deputy Director, Office of Indian Education Programs

From: <sup>ACTING</sup> Chief, Center for School Improvement *Jullison*

Subject: July 1, 2005 Requirements  
Re: Reauthorization of the Individuals with Disabilities Education Act

**THIS MEMORANDUM AND ATTACHMENTS SUPERSEDE THE MEMORANDUM DATED JUNE 29, 2005.**

The Individuals with Disabilities Education Act was reauthorized and signed into law on December 3, 2004, as the Individuals with Disabilities Education Improvement Act (Public Law 108-446) or the IDEIA 2004. At this time the United States Department of Education has not yet published final regulations to clarify IDEIA 2004. However, specific provisions of IDEIA 2004 become effective July 1, 2005. Therefore, OIEP would like to clarify what changes affect your schools at this time. Specifically, the requirements of the OIEP Eligibility Document are still in effect; however, in those areas of the IDEIA 2004 where the new requirements go beyond those in the current BIA Eligibility Document each school must ensure that these new requirements are met.

Attached you will find a packet titled *GUIDANCE: Implementing the Individuals with Disabilities Education Improvement Act 2004 Changes* and a copy of the recommended forms pertinent to the required changes. The use of these newly developed and revised forms is **required for all bureau-operated schools** and provided as models for all Tribally Controlled Schools. The schools within your agency must receive a copy of this memo and the attachments by **COB July 12, 2005**. It is critical that these changes are reviewed and understood by all bureau funded schools. ELOs must ensure that all BIA operated schools review, understand and implement all required changes. OIEP would also like to remind all schools that **all individualized education programs (IEPs) previously developed that will be in effect on July 1, 2005, or developed from this date forward must be amended or written to include the information outlined in the attached guidance.**

The information disseminated on the new requirements of the IDEIA 2004 can be accessed on the BIA's web site at [www.oiep.bia.edu](http://www.oiep.bia.edu) including the newly developed and revised forms. If you should have questions or need clarification, please contact Louie Magdalena at (505) 248-6958 and he will direct you to the appropriate Program Education Specialist (Special Education) assigned to your region.

#### Attachments

Cc: Director, Office of Indian Education Programs  
Supervisory Education Specialist for Special Education

**GUIDANCE: Implementing the Individuals with Disabilities Education Improvement Act 2004 Changes**

*The following is a brief description of the areas where new requirements of IDEIA 2004 are effective on July 1, 2005. It does not address any changes that may be made by the final regulations.*

**POLICY AND PROCEDURES TO PREVENT INAPPROPRIATE OVERIDENTIFICATION OR DISPROPORTIONATE REPRESENTATION (P.L. 108-466 Sec. 612 (a)(24))**

Because the BIA is unitary, there has not been a concern relative to differences between ethnic groups in their placement in special education. The BIA has been tracking the overall placement of students in special education by disability and placement utilizing U. S. Department of Education, Office of Special Education Programs tables, Table 1 (Report of Children with Disabilities Receiving Special Education) and Table 3 (Individuals with Disabilities Education Act Implementation of FAPE Requirements). OIEP will provide technical assistance to schools where overidentification of students with a particular impairment appears to be occurring.

**PROHIBITION OF MANDATORY MEDICATION (P.L.108-466 Sec. 612(a)(25))**

IDEIA 2004 and the BIA prohibits the local education agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substance Act (21 U.S. C. 801, et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 614, or receiving services under this title.

**EVALUATIONS AND REEVALUATIONS (P.L. 108-466 Sec. 614)**

- Either a parent of a child, the SEA, or school may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- While schools/agencies may utilize mediation or due process to override a parent's refusal to consent to an evaluation or reevaluation, if a parent refuses to consent to an initial placement and provision of special education and related services, the school/agency may not utilize mediation or a due process hearing to override a parent's refusal to initially place the child. **Written documentation of informed consent or refusal of services is required.**
- When reviewing the existing evaluation data for both initial evaluations and reevaluations, the IEP team and other qualified professionals, as appropriate must identify the educational needs of the student, as well as present levels of academic achievement and related developmental needs. Refer to the form *Exceptional Education Review of Existing Data Initial Evaluations or Reevaluations*. This form shall be used by all BIA operated schools and is provided as a model for the

BIA funded schools to document this change due to the enactment of IDEIA 2004.

- The school has a 60 day timeline to complete initial evaluations. According to the BIA Eligibility Document May 2005, page 45 (Website), "The total time frame from the receipt of consent to assess to the implementation of the IEP cannot exceed 60 calendar days, excluding periods when school is not in session for five or more consecutive school days." There are **two** exceptions to the 60-day time frame. One is when the parent of the child repeatedly fails or refuses to make the child available for evaluation. The second is when the child transfers to another school and the evaluation was not completed prior to transferring. The parent and the new school must agree, in writing, to a specific time when the evaluation will be completed. Refer to the form, *Exceptions to the Mandatory Evaluation Timeline*, which shall be required for the BIA operated schools and is provided as a model for the BIA funded schools to document the exception to the timeline requirements.

#### **PROCEDURAL SAFEGUARDS AND DUE PROCESS (P.L. 108-466 Sec. 615)**

The procedures and model forms for "Procedures for the Investigation and Resolution of Special Education Complaints", "Mediation in Special Education", "Parents Rights and Procedure", and "Due Process Hearing/Resolution Session" is being updated. Schools will be notified when they become available. Until such time, sample instructions and forms are included in the packet.

- A party receiving a due process hearing request may challenge the sufficiency of the due process hearing request within fifteen days of receiving the request. The recipient of the due process hearing request must, **within ten days of receiving the request**, send the party requesting the due process hearing a response that specifically addresses the issues raised in the request.
- Prior to the opportunity for an impartial due process hearing under Section 615(f)(1)(A), the school must convene a meeting (**resolution session**) with the parents and the relevant member or members of the individualized education program (IEP) team who have specific knowledge of the facts identified in the due process hearing request:
  1. Within 15 days of receiving notice of the parents' complaint;
  2. Which shall include a representative of the school who has decision-making authority on behalf of the school;
  3. Which may not bring an attorney of the school unless the parent is accompanied by an attorney; and
  4. Where the parents of the child discuss their due process request and the facts that form the basis of the due process hearing request, and the school is provided an opportunity to resolve the due process hearing request.

5. The parent and the school may agree **in writing** to waive the resolution session, or agree to use the mediation process. **Refer to the *sample letter (resolution session)*.**
6. When resolution is reached, the parties must execute a written legally binding agreement enforceable in any state or federal court.

## **INDIVIDUALIZED EDUCATION PROGRAM (IEP) (P.L. 108-466 Sec. 615)**

### **1. Changes regarding present levels of educational performance.**

IEPs must include:

- ✓ Present levels of academic achievement and functional performance; and
- ✓ A statement of measurable annual goals, including both academic and functional goals
- ✓ IEPs must include a description of benchmarks, or short-term objectives only for children who take alternate assessments aligned to alternate achievement standards. [614(d)(1)(A)(i)(I)]

### **2. Changes regarding assessments in the IEP.**

**A statement of any individual appropriate accommodations that is necessary to measure:**

- ✓ Academic achievement and functional performance on statewide and districtwide assessments.
- ✓ If the IEP team determines that the child will take an alternate assessment, a statement must be provided that indicates why the IEP team selected a particular alternate assessment, and why it is appropriate for the child.  
[614(d)(1)(A)(i)(VI)(aa), (bb)(BB)]

### **3. Changes to annual goals.**

**IEPs are required to include:**

- ✓ A statement of measurable annual goals, including academic and functional goals. [614(d)(1)(A)(i)(II)]
- ✓

### **4. Changes to measuring progress and reporting.**

**IEPs are required to include:**

- ✓ A description of how the child's progress toward meeting the annual goals will be measured; and
- ✓ A description of when periodic progress reports will be provided to the parents.

**Reporting may include:**

- ✓ Quarterly reports; or
- ✓ Other periodic reports concurrent with issuance of report cards.  
[614(d)(1)(A)(i)(III)]

**5. Changes to statement of services.**

- ✓ Adds to the statement of the special education and related services and supplementary aids and services, for the child or on behalf of the child—**that they be based on peer-reviewed research, to the extent practicable.**

[614(d)(1)(A)(i)(IV)]

**6. Transition requirements.**

**Beginning not later than the first IEP to be in effect when the child turns 16 [note: eliminates age 14 requirements] and then updated annually thereafter, the IEP must include:**

- ✓ Appropriate measurable postsecondary goals based upon age-appropriate **transition assessments** related to training, education, employment and independent living skills, where appropriate;
- ✓ Transition services needed to assist the child in reaching those goals, including courses of study;
- ✓ For a student whose eligibility terminates due to graduation from secondary school with a regular high school diploma, or due to exceeding the age of eligibility for FAPE, the school **must** provide the student with a summary of his/her academic achievement and *functional* performance, which must include recommendations on how to assist the student in meeting his or her postsecondary goals. *Refer to form Exceptional Education Summary of Performance Exit Report.*
- ✓ Beginning not later than one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to him or her on reaching the age of majority. [614(d)(1)(A)(i)(VIII)]

**7. Requirements for children with disabilities transferring within a state and between states.**

**Within-state transfers:**

- ✓ In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same state, the new local educational agency (LEA) must provide such child with a free appropriate public education (FAPE), including services consistent with the previous district's IEP, in consultation with parents, until it adopts the previously held IEP or develops and implements a new IEP that is consistent with federal and state law. [614(d)(2)(C)(i)(I)]

**Between-state transfers:**

- ✓ In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another state, the new LEA must provide such child with FAPE, including services consistent with the previous IEP, in consultation with parents, until the new LEA conducts an evaluation pursuant to Section 614(a)(1), if determined to be necessary by such agency, and develops a new IEP that is consistent with federal and state law. [614(d)(2)(C)(i)(II)]

**Transmittal of records**--to facilitate the transition for a child described above, the new school shall take reasonable steps to promptly obtain and transfer the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school; and the previous school must take reasonable steps to promptly respond to such request. [614(d)(2)(C)(ii)]



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SEP 09 2005

Memorandum

To: All Education Line Officers  
All Special Education Coordinators

Through: <sup>ACTING</sup> Deputy Director, Office of Indian Education Programs 

From: <sup>ACTING</sup> Chief, Center for School Improvement 

Subject: Revised Individualized Education Program (IEP) Forms

Attached you will find a revised packet of the recommended IEP forms pertinent to the required changes of Individual with Disabilities Education Improvement Act (IDEIA). The Individual with Disabilities Education Act-Student Information System forms will be revised spring 2006. Until then, the use of these forms will address the changes in the requirements.

If you should have questions or need clarification, please contact Louie Magdalena at (505) 248-6958 and he will direct you to the appropriate Program Education Specialist (Special Education) assigned to your region.

Attachments

Cc: Director, Office of Indian Education Programs  
Supervisory Education Specialist for Special Education



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Bureau of Indian Education  
Division of Compliance, Monitoring, & Accountability  
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AUG 17 2006

Memorandum

To: Education Line Officers

Through: ~~acting~~ Deputy Director, Bureau of Indian Education *LS/KS*

From: Chief, Division of Compliance, Monitoring, & Accountability

*Stanley R. Holder*  
Stanley Holder

Subject: Special Education – IEP Forms

As you are all aware, we are in the beginning phases of implementation of the Native American Student Information System (NASIS). Included with this comprehensive student data management system will be the capacity to generate Individualized Education Programs (IEP's) for students with disabilities. However, this capacity will not be realized until Phase Three of the project which is projected to begin in January 2007. Until this time, we are recommending that schools continue to utilize whatever IEP forms they have been using (IDEASIS, State IEP forms, Agency forms, etc.).

In January 2007, the NASIS will have available the recommended IEP forms for all schools to use. These forms will be developed using the federally recommended format in order to ensure all required elements are included in order to be in compliance with IDEIA 2004. Please be patient with us as we develop/modify the forms for BIE purposes and make them available as a part of the NASIS. Technical assistance will be provided when this phase of implementation is ready. If there are questions/concerns about the IEP forms currently being used in your schools, please contact your regional special education contact person at DCMA.

bcc: surname/chron/deputy director/  
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