

CONCORDIA CHARTER SCHOOL, Inc.
A Friend of Core Knowledge



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**2022/2023 SPECIAL EDUCATION
POLICIES AND PROCEDURES**

The FAPE Mandate

Under the IDEA, all children with disabilities ages three through 21 are entitled to a *free appropriate public education* that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living. In Arizona, children with disabilities are entitled to receive a FAPE through the school in which they turn 22.

As used in this part, the term free appropriate public education or *FAPE* means special education and related services that:

- 1) are provided at public expense, under public supervision and direction, and without charge;
- 2) meet the standards of the SEA (State Educational Agency);
- 3) include preschool, elementary school, or secondary school education in the State; and
- 4) are provided in conformity with an individualized education program (IEP).

The Role of the Parent

The parents of children with disabilities must be given the opportunity to meaningfully participate in the special education process. They can provide valuable information about the child's strengths and needs, likes and dislikes, how the child learns, and his or her interests.

As part of their procedural safeguards, schools must afford the parents of a child with a disability the opportunity to participate in meetings that concern the identification, evaluation, educational placement of their children, or the provision of a FAPE. This requirement does not include the requirement for parents to participate in informal conversations among school personnel, preparatory activities among school personnel to plan for the above mentioned meetings, or pre-referral intervention meetings internal to school personnel. The law requires schools to take steps to ensure that one or both of the child's parents are present at each IEP team meeting and to take whatever action is necessary to ensure that the parents understand what is taking

place, including arranging for interpreters for parents with deafness or whose native language is other than English.

According to IDEA a parent means:

- a biological or adoptive parent
- a foster parent
- a legal guardian
- an individual acting in the place of a biological or adoptive parent (including a relative with whom the child lives or an individual who is legally responsible for the child's welfare)
- a surrogate parent

If more than one person is qualified to act as the parent, schools should presume that the biological or adoptive parent is the parent under Part B of the IDEA when that individual is attempting to act as the parent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. A surrogate parent for special education is an individual appointed by the Arizona Department of Education or a court of competent jurisdiction to ensure that a child's rights are protected when the child's parents are unable to do so. Schools are required to ensure the appointment of a surrogate parent for a child with a disability if any of the following are true:

- No parent can be identified
- After having made reasonable attempts, the school cannot determine the parents' whereabouts
- The child is a ward of the state and a parent cannot be identified or a school cannot determine the location of a parent after having made reasonable attempts¹
- The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act

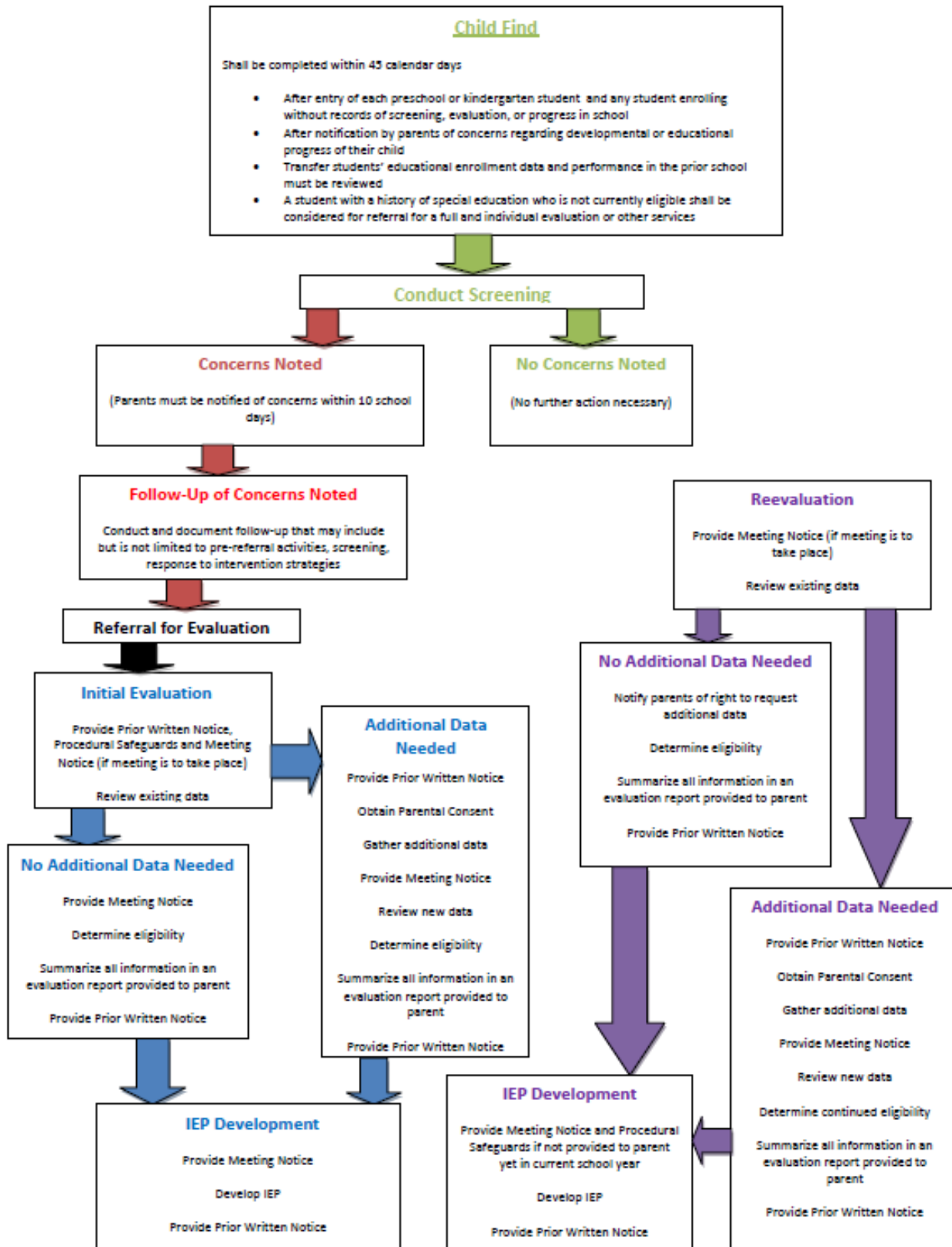
In order to be eligible to serve as a surrogate parent, the person must: (1) possess adequate knowledge and skills to represent the child, (2) may not be an employee of a state agency involved in the education or care of the child, (3) may not have an interest that would conflict with the child's best interest, and (4) must have a valid fingerprint clearance card issued by the Arizona Department of Public Safety.

ChildFind

The school is responsible for identifying, locating and evaluating all children with disabilities, within the community they serve, including children aged 3 to 21 and for referring children from birth through 2 years of age to Arizona Early Intervention Program (AzEIP) for evaluation and appropriate services.

¹The term "ward of the state" does not include a foster child.

Special Education Process



The Individualized Education Program (IEP)

Schools must provide eligible children with disabilities special education and related services in accordance with the child's individualized education program (IEP). An IEP is defined as a written statement for a child with a disability that is developed, reviewed, and revised in accordance with the specific guidelines set forth in the IDEA. The program described in the IEP document must be reasonably calculated to enable the child to receive educational benefit.

While an IEP is not a performance contract and does not constitute a guarantee by the school and/or the teacher that a child will progress at a specified rate, schools and teachers are required to make a good faith effort to assist children in achieving the goals set forth in the IEP and to enable them to access and make progress in the general curriculum. Schools must follow the program outlined in the IEP by providing the services, accommodations, modifications, and other supplementary items described within the document.

The law specifies what information must be included in each IEP, but it does not specify what the IEP document must look like. In Arizona, schools decide what the IEP form will look like.

Implementing the IEP

Each child's IEP should be implemented as soon as possible following the IEP meeting at which the IEP is developed. An IEP must be in effect before a school can provide special education and related services. Schools must ensure that IEPs are accessible to each regular education teacher, special education teacher, related service provider, or other service provider who is responsible for implementing that IEP, and that each of those individuals is informed of his or her specific responsibilities related to the implementation of the IEP. Indeed, all relevant school personnel must be informed of the specific accommodations, modifications, and supports that must be provided to each child in accordance with his or her IEP.

Review and Revision

The IEP team is required to **review** each child's IEP periodically, but not less than annually, to determine if the child is making progress toward achieving annual goals, and **revise** the IEP as appropriate to address: (1) any lack of expected progress in the general curriculum or toward meeting the annual goals, (2) the results of a re-evaluation, or (3) the child's anticipated needs.

In Arizona, if a parent or the school requests an IEP review *in writing* and identifies the basis for requesting the review, the review must occur within 45 school days of receipt the request at a mutually agreed upon date and time.

If the IEP needs to be revised at any time after the annual review, the parents and the school may agree to make necessary changes to the IEP without convening an IEP team meeting, and may instead develop a written document to modify or amend the IEP. If changes are made in this manner, the school must ensure that the IEP team is informed of those changes. Upon request, the school must give the parent a copy of the revised IEP with the amendments incorporated.

Transfer Students

In the case of a child with a disability who has an IEP in effect and who, during the school year, transfers to a different school district or charter school within the *same* state, the receiving school, in consultation with the parents, is required to provide that student a FAPE, including services comparable to those in the IEP from the sending school until such time as the receiving school adopts the previous school's IEP or develops and implements a new IEP.

In the case of a child with a disability who has an IEP in effect and who transfers during the school year to a *different* state, the receiving school, in consultation with the parents, is required to provide that student with a FAPE, including services comparable to those in the IEP from the sending school until such time as the receiving school conducts an evaluation, if determined to be necessary, and develops and implements a new IEP.

In either case, the receiving school must take reasonable steps to promptly obtain the child's records (including the IEP and supporting documentation) from the sending school. Specifically, in Arizona, the receiving school has five school days to request records from the child's previous school and that school has 10 school days to send the records. [A.R.S. § 15-828(G)]

IEP Team

The IEP team is a group of individuals charged with developing, reviewing, and revising the IEP and is required to consist of the following members:

- 1) not less than one of the child's parents, or the adult student, if legal rights have transferred (which, in Arizona is at age 18);
- 2) not less than one of the child's regular education teachers (if the child is or may be participating in the regular education environment);
- 3) not less than one of the child's special education teachers, or where appropriate, not less than one of the child's special education providers;
- 4) a representative of the child's school who:
 - a. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - b. is knowledgeable about the general curriculum; and
 - c. is knowledgeable about the availability of the school's resources;
 - d. may be a member of the IEP team serving in another role as long as he or she meets the criteria described in letters a - c.
- 5) an individual who can interpret the instructional implications of evaluation results— who may be one of the team members already serving in another role;

- 6) at the parent's or school's discretion, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;²
- 7) whenever possible, the child with a disability;
- 8) if postsecondary transition services are being discussed, the student and representatives of other agencies who are likely to be responsible for paying for or providing transition services;
- 9) if the public agency is considering a private school placement, a representative of the private school; and
- 10) If a child with a disability was previously served under Part C of IDEA (early intervention related to infants and toddlers), if the parent requests, the child's Part C service coordinator, to assist in the smooth transition of services at the initial IEP meeting.

Excusals

A member of the IEP team is not required to attend an IEP meeting, in whole or in part, if the parent and the school agree that the particular member's attendance at the meeting is not necessary because the member's area of the curriculum or related service **is not** being discussed or modified. In this case, the parent must agree *in writing* prior to the meeting that the particular member is not required to attend the meeting.

A member of the IEP team may be excused from attending an IEP meeting, in whole or in part, when the member's area of the curriculum or related service **is** being discussed if the parent and the school consent to the excusal prior to the meeting, and the member submits written input into the development of the IEP prior to the meeting. The parent's consent to the excusal must be in writing. It is important to remember that consent is more than just an agreement; it means that the parent has been fully informed of all relevant information in his or her native language or other mode of communication. Further, consent means that the activity for which his or her consent is being sought has been described and that the parent understands and agrees in writing to the carrying out this activity.

IEP Team Meetings

Schools are responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEPs of children with disabilities.

Schools are responsible for taking steps to ensure that one or both parents of a child with a disability are present at each IEP meeting or are, at least, given the opportunity to participate. Parents should be notified through the use of a "**meeting notice**" early enough so that they will have an opportunity to attend the meeting, which is required to be scheduled at a mutually agreed on time and place. The IDEA does not require the school to schedule an IEP meeting outside regular school hours to accommodate parents or their experts. [*Letter to Thomas*, 51 IDELR 224 (OSEP 2008)]

²The determination of knowledge or special expertise lies solely with the party who invites the individual to the meeting.

The meeting notice must indicate the purpose, time, and location of the meeting and who will be in attendance, and it must inform parents of their right to bring to the meeting any individual with knowledge or special expertise about the child. Additionally, if the purpose of the meeting is to discuss postsecondary transition services, the meeting notice must inform the parents that the school is inviting the student, and identify any other agency that will be invited to send a representative. Consent of the parents or adult student is required to invite an outside agency representative.

If neither parent can attend the meeting, the school may use other methods to ensure their participation, such as individual or conference call, or video conferencing. The school may conduct an IEP meeting without the parents if it is unable to convince the parents to attend. The 9th Circuit Court of Appeals recently held that a school's failure to ensure the parent's participation in an IEP meeting following the parent's request to delay the meeting, as opposed to an affirmative refusal to participate, amounted to a denial of FAPE for the student. If the school holds an IEP meeting without the parent, it must have a record of its attempts to arrange a mutually agreed on time and place, such as detailed phone records, copies of correspondence sent to the parents and responses received, and/or detailed records of visits made to the parents' home(s) or place(s) of employment and the results of those visits.

Consensus

In making decisions about a child's educational program, the IEP team should work toward consensus, but if it is unable to do so, the school has the ultimate responsibility to ensure that the child receives a FAPE. It is not appropriate for the IEP team to make decisions based upon a majority "vote." If the team is unable to reach consensus, the individual acting as the school representative must make the final decision and the school must state its proposal or refusal regarding the child's educational program in a prior written notice (PWN) to the parent. The parent may seek resolution of any disagreement by filing a due process complaint or requesting mediation with the school.

IEP Development

At the beginning of each school year, schools must have an IEP in effect for each child with a disability. Schools are required to give the parent a copy of the child's IEP free of charge. In developing IEPs, teams must consider the following:

- 1) the child's strengths;
- 2) the parents' concerns for enhancing their child's education;
- 3) the results of the child's most recent evaluation; and
- 4) the child's academic, developmental, and functional needs.

The IEP document must contain:

- 1) PLAAFP: A statement of the child's present levels of academic achievement and functional performance including how the child's disability affects his or her involvement and progress in the general curriculum (the same curriculum taught to nondisabled children).
- 2) Measurable annual goals: A statement of measurable goals, including academic and functional goals, designed to meet the child's needs that result from the disability

- 3) and meet the child's other educational needs. For children who take alternate assessments include benchmarks or short-term objectives.
- 4) Progress reports: A statement of how the child's progress toward meeting annual goals will be measured and a description of how parents will be regularly informed of the child's progress toward meeting those goals.
- 5) Services & supports:
 - a. A statement of the special education and related services and supplementary aids and services—based upon peer-reviewed research to the extent practicable—that the school will provide to the child.
 - b. Any program modifications or supports for school personnel so that the child can make progress towards achieving annual goals, be involved in and make progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and participate with both disabled and nondisabled children in these activities.
 - c. Although IDEA does not define the term "supplementary aids and services," the United States Department of Education suggests several possibilities including, but not limited to, modification of the regular class curriculum, behavior management techniques, assistance of an itinerant teacher with special education training, special education training for the regular class teacher, use of assistive technology, provision of note-takers, and use of a resource center or a combination of these.
- 6) An explanation of the extent, if any, to which the child will participate with nondisabled children in the regular classroom setting and in other activities.
- 7) Accommodations for assessments: A statement of any individual accommodations that are necessary to measure the child's academic and functional performance on State and district-wide assessments.
 - a. Although the IDEA does not specifically require IEPs to include classroom accommodations, the United States Department of Education advises that IEPs include classroom accommodations for children whose IEP teams determine those accommodations to be necessary to ensure those children receive a FAPE. [*Letter to Wilson*, 43 IDLER 165 (OSEP 2004)]
- 8) Alternate assessments: If the IEP team determines that the child will take an alternate assessment, the IEP must include a statement of why the child cannot participate in the regular assessment and what particular alternate assessment the child will take.
- 9) Implementation date: The projected date that services and modifications will begin and the anticipated frequency, location, and duration of those services and modifications.
- 10) Postsecondary transition: Beginning with the first IEP to be in effect when the child turns 16, appropriate measurable postsecondary goals that:
 - a. are based on age appropriate transition assessments that take into account the child's strengths, interests, and preferences;
 - b. include the areas of employment and education and/or training, and independent living skills where appropriate;
 - c. are accompanied by a coordinated set of transition activities aimed at assisting the child in reaching those goals, which are specifically designed as an outcomes oriented process that promotes movement from school to post-school life.
- 11) Transfer of majority rights: Beginning no later than one year before the child reaches the age of majority (18 in Arizona), a statement that the child has been

- 12) informed of the rights, if any, that will transfer to him or her upon reaching the age of majority.

The following special factors must also be considered and documented:

- 1) In the case of a child whose behavior impedes the child's learning or that of others, the IEP team needs to consider the use of positive behavioral interventions and supports, or other strategies, to address the behavior.
- 2) In the case of a child who is limited English proficient, the team must consider the child's language needs as they relate to the IEP.
- 3) In the case of a child who is blind or visually impaired, the IEP team must consider the use of Braille, as appropriate for the child.
- 4) In the case of a child who is deaf or hard of hearing, the IEP team must consider the child's communication needs.
- 5) The IEP team must consider whether a child needs assistive technology devices and services.

Extended School Year

Schools are required to ensure that extended school year services are available to students, as necessary, in order to provide a FAPE. Extended School Year (ESY) services are defined to mean special education and related services that are provided to a child with a disability beyond the school's normal school days, in accordance with the child's IEP, at no cost to the parent. A child's need for ESY services is to be determined on an individual basis by the IEP team. Schools are not permitted to limit ESY services to particular categories of disability or to unilaterally limit the type, amount, or duration of the services. Moreover, eligibility for ESY services cannot be based on need or desire for day care or respite care, an educational program to maximize the student's academic potential, or a summer recreation program.

ESY services are necessary if either: (1) the benefits that the student gained during the regular school year would be significantly jeopardized if he or she is not provided educational services, or (2) the student would experience severe or substantial regression if he or she is not provided educational services during short or long recesses or summer months and the regression would result in substantial skill loss of a degree and duration that would seriously impede the student's progress toward educational goals. The IEP team shall determine if the student is eligible to receive ESY services no later than 45 days prior to the last day of the school year.

The determination of whether a student is eligible for ESY services must take into account least restrictive environment considerations and be determined by the IEP team, using a multifaceted inquiry based on the following criteria: (1) retrospective data, such as past regression and the rate of recoupment, and (2) predictive data, when empirical data is not available, which may be proven by expert opinion based upon a professional individual assessment.

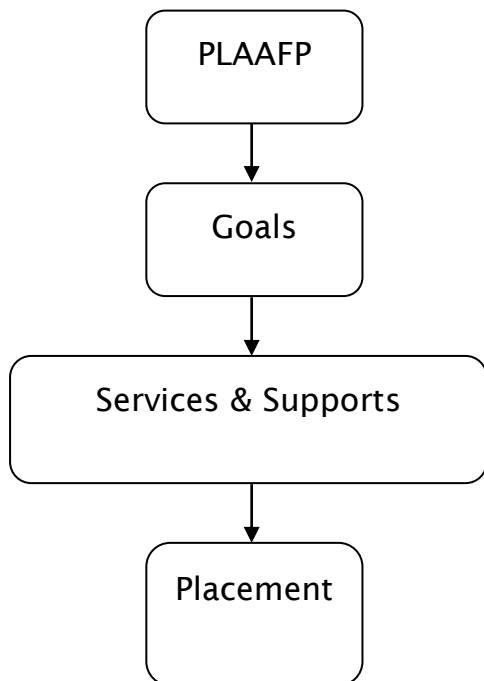
Transportation

Schools must provide transportation as a related service if it is necessary to assist a child with a disability to benefit from special education. The determination of whether a child

needs transportation is to be made by the IEP team, taking into account whether the child's disability prevents the child from using the same transportation as nondisabled children, or from getting to school in the same manner as nondisabled students. It is presumed that most children do not require transportation as a related service, particularly if integrated transportation can be achieved by providing accommodations, such as lifts, or other equipment adaptations on regular school vehicles. If transportation is a required related service, the transportation arrangement must be clearly described in the IEP, and the service must be provided at no cost to the parent.

The IEP Process

In consideration of all the required IEP content, the development of an IEP is meant to follow a particular process wherein the team first examines what they currently know about a child's performance and educational needs. Using that knowledge the team can decide what goals are appropriate for the child. Based on the child's educational needs and appropriate goals, the IEP team can then determine the services, supports, and modifications that will assist the child in accessing the general curriculum and making progress toward annual goals. Finally, knowing the child's strengths and needs, the goals he or she will work on, and the types and amounts of services and supports to be delivered, the team can determine what educational placement will provide the child with the least restrictive environment in which to access a free appropriate public education.



Delivery of Services

Specially Designed Instruction

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. “Specially designed instruction” means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from his or her disability, and to ensure the child access to the general curriculum so that he or she can meet the educational standards that apply to all children. Special education is meant to provide a child with a disability skills, techniques, and strategies designed with the unique needs resulting from their particular disabilities in mind and aimed at mitigating the effects of those disabilities. Specially designed instruction does not merely provide momentary access to information, but rather creates knowledge in a child with a disability by teaching a transferrable set of skills that can be used across settings and time.

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, school nurse services designed to enable a child with a disability to receive a FAPE, early identification and assessment of disabilities in children, counseling services, including rehabilitative counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. The term does not include a medical device that is surgically implanted or the maintenance or replacement of such a device.

Schools, teachers, and parents commonly misunderstand the difference between providing special education and providing accommodations. Accommodations are the provisions made to allow a student to access and demonstrate learning. Accommodations do not substantially change the instructional level, the content or the performance criteria, but are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known. Accommodations do not alter the content of the curriculum or a test, or provide inappropriate assistance to the student within the context of the test. Accommodations are task or situation dependent, whereas specially designed instruction should be portable and useful in mitigating the impact of the disability across all circumstances or in any situation.

Placement

Least Restrictive Environment

The IDEA’s least restrictive environment (LRE) provision requires that, to the maximum extent appropriate, children with disabilities, including children in preschool, public or private institutions, or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the child’s disability is such that education in regular classes with the use of

supplementary aids and services cannot be achieved satisfactorily. However, this does not mean that the LRE will be the same for every child with a disability. In each case, the IEP team must decide the most appropriate educational setting in which the child can receive a FAPE given his or her unique needs. The IEP team must determine which environment puts the least amount of restrictions on the child's opportunity to learn.

Additional rules regarding educational placement require that children with disabilities be educated as close to home as possible, and in the same school he or she would attend if not disabled, unless the IEP specifies some other arrangement. In a situation where a child will not participate fully with peers without disabilities, the IEP must include an explanation of why and to what extent.

Continuum

The law requires schools to ensure that there is a "continuum of alternative placements" available to meet the needs of students with disabilities who cannot be educated in the regular classroom for part or all of the school day. The *continuum* must be designed to ensure that there is an appropriate setting for each child with a disability, based on the child's specific needs, and includes general education classes, special education classes, special schools, home instruction, and instruction in hospitals or institutions. Ensuring the availability of this continuum does not require public agencies to have every possible placement option at all campuses, but rather these options may be available through locating students at other schools within the public agency, placement at private schools, or placement at other public agencies if such financial and logistical relationships exist. Lack of an appropriate placement within a given school does not eliminate a public agency's obligation to ensure a child is educated in his or her LRE.

The Placement Decision

The placement decision must be made by a group of people, including the parents and other people knowledgeable about the child, the meaning of the evaluation data, and the placement options. Placement is generally the last in a series of decisions, and occurs only after a child is evaluated and an IEP is developed. Thus, the appropriate goals, services, and supports should be determined before deciding where they will be provided. Placement must be reviewed annually and must be individually determined for the child based on the IEP goals and services to be provided rather than developing goals and services to "fit" the placement. Factors that may be considered in determining placements include the educational benefits to the child with a disability, the non-academic and social benefits to the child, and the degree of disruption that the child will cause to his or her learning and the learning of others. Factors that may not be considered in determining placements include the child's category of disability, the severity of the disability, and the availability or cost of placements or special education and related services.

Procedural Safeguards

When Congress enacted the IDEA, they included a system of procedural safeguards to protect the rights of children with disabilities and their parents.

The IDEA requires that public schools provide written notice to parents that includes a full explanation of the procedural safeguards. This procedural safeguards notice (PSN) must be written in a manner that is easily understandable to the general public and must be written in the parent's native language or other mode of communication, unless it is clearly not feasible to do so. If the parent's native language or other mode of communication is not a written language, the school must take steps to ensure that the notice is translated orally and that the parent understands the content of the notice; the school must maintain written evidence that these steps were undertaken.

In accordance with IDEA, procedural safeguards shall be given to parents once a year and: (a) upon initial referral for evaluation by the school or parental request for an evaluation; (b) upon receipt of the first State administrative complaint and the first due process complaint in the school year; (c) when a school removes a student for disciplinary reasons and the removal constitutes a change of placement; and (d) upon request by the parent. The procedural safeguards notice must provide an explanation of the following topics:

- Independent educational evaluations (IEE)
- Prior written notice
- Parental consent
- Access to education records
- The opportunity to use the due process complaint system and the State complaint system, including the time period for filing a complaint, the opportunity for the school to resolve the complaint, and the difference between a due process complaint and a State complaint
- The availability of mediation
- A child's placement during the pendency of any due process complaint
- Procedures for students who are subject to placement in an interim alternative educational setting
- Requirements for unilateral placement by parents of children in private schools at public expense
- Due process hearings, appeals, civil actions, and attorneys' fees

Prior Written Notice

The IDEA requires schools to provide written notice to the parents of a child with a disability a reasonable time before the school *proposes* or *refuses* to initiate or change the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child. This notice, called a "prior written notice" or "PWN" is provided to parents *prior* to the school acting on the proposals or refusals described in the notice.

A PWN must include the following content:

- 1) A description of the action proposed or refused by the school;

- 2) An explanation of why the school proposes or refuses to take the action;
- 3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- 4) A statement that the parents of a child with a disability have protection under the procedural safeguards provided in the IDEA and how a copy of those procedural safeguards may be obtained;
- 5) Sources for parents to contact to obtain assistance in understanding the IDEA;
- 6) A description of other options considered by the IEP team and the reason why those options were rejected; and
- 7) A description of other factors relevant to the school's proposal or refusal.

The notice must be written in language understandable to the general public and provided in the parent's native language or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the parent's native language or other mode of communication is not a written language, the school must take steps to ensure that the notice is translated orally and that the parent understands the content of the notice; the school must maintain written evidence that these steps were undertaken.

Schools must give parents PWN to document their proposals and refusals to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

- **Identification:** A PWN must be provided to the parents of a preschool or school-aged child who is *identified* through child find measures and referred by the school for an initial evaluation.
- **Evaluation:**
 - Collection of additional data: Schools must provide PWN *before* collecting additional evaluation data. **OR** Schools must provide PWN refusing to collect additional data after the IEP team determines that no additional evaluation data is needed to complete the evaluation process.
 - Eligibility: PWN must be provided after the IEP team has determined whether the child is or is not eligible as a child with a disability as this completes the evaluation process. This PWN would document either a school's proposal to make the child eligible for special education or the school's refusal to make the child eligible.
- **Educational placement:** Schools must provide PWN when there is a proposal or refusal to initiate or change a child's educational placement, including:
 - Initial placement of a child into special education upon initial eligibility for special education and related services

- Exiting a child from special education altogether when the child's IEP team determines the child is no longer eligible as a child with a disability
 - Graduation from high school with a regular high school diploma
 - Disciplinary removals that constitute a change of placement
 - A decision about the educational placement of a child along the continuum of alternative placements
- **Free Appropriate Public Education (FAPE):** PWN must be provided when there is a proposal or refusal to initiate or change the provision of a FAPE, such as before implementation of the initial IEP, or before a revised IEP can be implemented. When an IEP team decides to add to, subtract from, or otherwise alter what constitutes a FAPE for a child, parents must be provided PWN documenting the resulting proposals and refusals.

Dispute Resolution

The IDEA and its implementing regulations mandate that states make available formal processes for families of children with disabilities age 3 through 21 and public schools to resolve special education-related disputes. State Educational Agencies (SEA) are required to offer mediation, a due process hearing system, and a State administrative complaint system.

Mediation

Mediation is a part of parents' procedural safeguards under the IDEA. It is an informal process during which an impartial mediator helps parents and schools experiencing conflict reach agreement about a student's special education program. Mediation is a problem-solving process rather than an adversarial process. It allows the parties to communicate directly with each other as they work toward a mutually agreeable solution. The goal of mediation is for parties to reach a compromise regarding disputes over special education matters and to memorialize that compromised solution into a written agreement signed by both parties.

Either a parent of a child with a disability or a public education agency may request mediation as a way to resolve disputes involving any matter that arises under the IDEA or its implementing regulations. Mediation may be used to resolve issues in a due process complaint or it may be requested, by the parent or the school, as a stand-alone process to address concerns or disputes that arise. Mediation is offered at no cost, must be voluntary on the part of both parties, and may not be used to deny or delay a parent's right to a due process hearing. The Arizona Department of Education maintains a list of qualified mediators who are trained annually in the area of special education law and are knowledgeable about current trends in mediation and mediation techniques.

Due Process Hearing System

Like mediation, the due process hearing system is part of parents' procedural safeguards under the IDEA. The most formal of the dispute resolution options, a due process hearing may be used to resolve any matter relating to the identification, evaluation, educational placement of a child, or the provision of a free appropriate public education to the child. Only parents or adult students and schools can be parties to a due process hearing. One of the parties must file a due process complaint to begin the process, and there is a two-year statute of limitations on requests for a due process hearing. The filing party bears the burden of proof in the hearing.

In 2004, Congress added a mandatory 30 calendar day resolution period, which commences the day the complaint is received by the non-filing party. Within 15 calendar days of receiving the due process complaint notice and before a hearing may occur, the school must convene a meeting with the parent and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the complaint. The purpose of this meeting—called a resolution session—is for the parties to discuss the complaint and attempt to resolve the issues without the need for a hearing.

This meeting must occur unless waived in writing by both parties, or unless both parties agree to mediation. The resolution session must include a representative of the school who has decision-making authority on behalf of the school, but may not include the school's attorney unless the parents are accompanied by an attorney. The parent and the school determine the relevant members of the IEP team to attend the meeting. The resolution session *must* occur before a due process hearing can be held, unless it is waived in writing by both parties, or the parties agree to participate in mediation.

If the school has not resolved the due process complaint to the parent's satisfaction within 30 calendar days of receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur. The 45 calendar day timeline for issuing a final decision begins at the expiration of the 30 day resolution period; upon the parties agreeing in writing to waive the resolution meeting; or after the resolution meeting or mediation if the parties agree in writing that they are unable to resolve the dispute.

In a due process hearing, an administrative law judge will consider the parties' arguments and evidence and will issue a decision. Once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless the complainant and the school agree otherwise, the child must *stay put* in his or her current (that is, last agreed upon) educational placement.

**** EXPEDITED DUE PROCESS HEARING**

The parent of a child with a disability may file a request for an expedited due process hearing if he or she disagrees with: (1) any decision regarding placement made under the special education discipline provisions; or (2) the manifestation determination. A school may request an expedited due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Unless the parents and the school agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days of receiving notice of the expedited due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint. An expedited due process hearing must be conducted within 20 school days of the date the hearing request is received, and the administrative law judge has 10 school days after the hearing to issue a decision.

The student stays put in the Interim Alternative Educational Setting (IAES) pending the judge's decision or until the disciplinary period expires, whichever occurs first, unless the parties agree otherwise.

State Administrative Complaint System

Unlike mediation and due process, the State administrative complaint system is not part of the system of procedural safeguards outlined in the IDEA, but rather falls under the SEA's general supervision responsibilities and is outlined in the regulations that implement the IDEA. The SEA is responsible for ensuring that public schools comply with Part B of the IDEA and a complaint is a way for members of the community to notify the SEA that there is or may be noncompliance with the IDEA in a public school. A formal complaint is considered a request for the SEA to investigate an alleged failure by a public school to comply with a legal requirement of the IDEA or an alleged violation of a right of a parent and/or child with disabilities who is eligible, or believed to be eligible, for services based on federal and state laws and regulations governing special education.

Because the State complaint system is not a procedural safeguard, any individual or organization may file a State administrative complaint. The SEA can only investigate allegations of violations of Part B of the IDEA that occurred within the past year. The SEA has 60 calendar days from the date it identifies the complaint to conduct an investigation into the allegations presented in the complaint and to issue written findings. Every investigation includes a thorough review of information presented within documentation and via interviews with relevant parties in the particular case. The investigation concludes with the issuance of a formal written report, which is

the SEA's independent determination as to whether the public school has violated a requirement of Part B of the IDEA. In accordance with 34 C.F.R. § 300.152(a), the report must address each allegation in the complaint and includes the findings of fact, conclusions of law, and the reasons for the SEA's final decision.

If the SEA identifies noncompliance with State and/or federal special education requirements it will dictate corrective action that the school must undertake to correct any noncompliance and mitigate the likelihood of the reoccurrence of the noncompliance. Corrective action must be completed in accordance with the schedule prescribed by the SEA, but in no case may take more than one year to complete.

Citations to relevant State and Federal statutes, regulations, and rules

Definition of FAPE: 20 United States Code (U.S.C.) § 1401(9);
34 C.F.R. § 300.17; A.R.S. § 15-764(A)(1)

The Role of the Parent

Definition of parent: 34 C.F.R. § 300.30; A.R.S. § 15-761(22)
Surrogate parent: A.R.S. § 15-763.01
Parent Participation: 34 C.F.R. § 300.322; 34 C.F.R. § 300.501(b)

IEP: 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-328

IEP team: 34 C.F.R. § 300.321
IEP meetings: 34 C.F.R. § 300.322; 34 C.F.R. § 300.328
IEP development: 34 C.F.R. § 300.324
ESY: 34 C.F.R. § 300.106; A.R.S. § 15-881;
A.A.C. R7-2-408

Delivery of Services

Special education: 20 U.S.C. § 1402(29); 34 C.F.R. § 300.39
Related services: 20 U.S.C. § 1402(26); 34 C.F.R. § 300.34
Accommodations: A.A.C. R7-2-401(B)(1)

Placement

Least Restrictive Environment: 34 C.F.R. § 300.114

Continuum of alternative placements:	34 C.F.R. § 300.115
Placement decision:	34 C.F.R. § 300.116
Unilateral placements:	20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148; <i>Burlington Sch. Comm. V. Dep't of Educ.</i> , 471 U.S. 370 (1985)
Implementing the IEP:	34 C.F.R. § 300.323
Review/revision:	34 C.F.R. § 300.324(b); A.A.C. R7-2-401(G)
Transfer students:	34 C.F.R. § 300.323(e); A.R.S. § 15-828(F)
Procedural Safeguards Notice:	34 C.F.R. § 300.504
Prior Written Notice:	34 C.F.R. § 300.503
Dispute Resolution:	
Mediation:	34 C.F.R. § 300.506; A.A.C. R7-2-405.02
Due Process Hearing System:	34 C.F.R. §§ 300.507 through 300.513; A.A.C. R7-2-405
State Administrative Complaint System:	34 C.F.R. §§ 300.151 through 153; A.A.C. R7-2-405.01