

**IEP-2005:  
WRITING AND IMPLEMENTING  
INDIVIDUALIZED EDUCATION  
PROGRAMS (IEPs)**

## ABOUT THE AUTHOR

**Edward Burns** received a Ph.D. from the University of Michigan in 1971. His areas of specialty include special education and psychoeducational assessment, assistive technology, and issues concerning the interpretation of and compliance with the individuals with Disabilities Education Acts amendments of 1997. He has written numerous articles in such journals as *Educational Technology*, *Journal of School Psychology*, *Journal of Learning Disabilities*, *Reading Research Quarterly*, *Journal of Special Education*, and the *American Journal of Mental Deficiency* and is the author of nine books including, *The Special Education Consultant Teacher* (Thomas, 2004), *Development and Implementation of Individualized Education Programs* (Thomas, 2001), *Test Accommodations for Students with Disabilities* (Thomas, 1998), and *The Development, Use, and Abuse of Educational Tests* (Thomas, 1979). He is currently involved in ensuring compliance with IDEA “to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.”

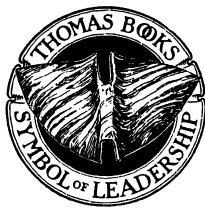
# IEP-2005

## Writing and Implementing Individualized Education Programs (IEPs)

*By*

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## PREFACE

The purpose of this book is to provide guidelines to develop appropriate Individualized Education Programs (IEP) for children with disabilities based on the Individuals with Disabilities Education Act amendments of 2004 (IDEA-2004) or Public Law 108-446. These guidelines are intended to result in IEPs that are streamlined, focused, and reasonably calculated to provide educational benefit. The overriding goal is to develop IEPs that provide every child with a free and appropriate public education, rather than to develop IEPs that merely show compliance with IDEA but which confuse rather than address educational needs.

E.B.



## PUBLIC LAW 108-446 IEP-2005 HIGHLIGHTS

The various changes to IDEA-2004 relating to IEPs have placed a great deal of emphasis on streamlining the IEP process. The following is an alphabetized listing of IDEA changes and modifications that highlight the 2004 Public Law 108-446 amendments:

- **Academic and developmental needs:** During the development of the IEP the **academic and developmental needs of the child**<sup>1</sup> has been added to the list of items the IEP Team must consider (which also includes the results of the initial or more recent evaluation, the strengths of the child, and the concerns of the parents).
- **Accommodations:** The statement of accommodations in a child's IEP in the administration of State or districtwide assessments requires any **individual appropriate accommodations that are necessary to measure the academic achievement and functional performance** of the child.<sup>2</sup>
- **Amending an IEP:** Changes to the IEP may be made by the entire IEP Team or by amending the IEP rather than by redrafting the entire IEP.<sup>3</sup>
- **Complaints:** Parents can present a complaint relating to IDEA but must do so with a two-year period before the date of the alleged violation or when the alleged violation should have been known.<sup>4</sup>
- **Consent for services:** If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615 (no change from IDEA-1997. But consent for services has undergone an extremely important change: **if the parent of a child refused to consent to services, the local educational agency shall not provide**

**special education and related services to the child** by utilizing due process procedures (e.g., mediation, due process hearing), and the local educational agency is no longer required to provide a free appropriate public education.<sup>5</sup>

- **Consolidation:** To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.<sup>6</sup>
- **Eligibility:** The **Special Rule for Eligibility Determination** states that a child is not eligible for special education because of “lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965); lack of instruction in math; or limited English proficiency.”<sup>7</sup> An IEP is not intended to solve all educational problems; every IEP has the very specific goal of providing services and accommodations related to a child’s disability.
- **Elimination of benchmarks:** A major change has been the **elimination of short term objectives and benchmarks** from the statement of measurable annual goals (including academic and functional goals).<sup>8</sup>
- **IEP Team attendance:** An IEP member is not required to a meeting if the parent and local educational agency agree that attendance **is not necessary because no modification to the member’s area of the curriculum or related services is not being modified or discussed in the meeting.**<sup>9</sup>
- **Model IEP form:** Not later than the publication of the final regulations for IDEA a model individualized education program form to States, local educational agencies, and parent and community training and information centers.<sup>10</sup>
- **Multi-year IEP:** Parents and local educational agencies may address long-term planning by offering the option (as part of a multi-year IEP demonstration pilot program) of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.<sup>11</sup>
- **Present Levels of Academic Achievement:** The IEP statement of the child’s present levels of educational performance has been changed to



**present levels of academic achievement and functional performance.**<sup>12</sup>

- **Reevaluation:** A reevaluation of a child’s IEP must be conducted if the school determines that the educational services needs warrant a reevaluation; or if the child’s parents or teacher requests a reevaluation; but a reevaluation shall occur not more than once a year, unless the parent and the local educational agency agree otherwise; and at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.<sup>13</sup>
- **Regular classroom teacher IEP input:** The regular education teacher of the child participates in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel.<sup>14</sup>
- **Services:** The statement of special education, related services and supplementary services has added the phrase “**is based on peer-reviewed research to the extent practicable.**”<sup>15</sup>
- **Streamlined IEP:** The IEP process is simplified in that additional information need not be included in a child’s IEP beyond what is explicitly required, and information included under one component of a child’s IEP need not be included under another component.<sup>16</sup>
- **Time period for evaluation:** The determination as to whether a child has a disability is made **within 60 days of receiving parental consent for the evaluation**, or, within the timeframe established by the State.<sup>17</sup> For IDEA-1997 the requirement was a “reasonable period of time” from consent to initial evaluation, and 30 days from determination of eligibility to an IEP meeting.<sup>18</sup>
- **Transition services:** The statement of transition services has been simplified to begin **not later than the first IEP to be in effect when the child is 16, and updated annually thereafter** and to include **appropriate measurable postsecondary goals based upon appropriate transition assessments.**<sup>19</sup>



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## Chapter 1

### IEP-2005

*There is “a presumption that children with disabilities are to be educated in regular classes.”<sup>20</sup>*

The Individuals with Disabilities Education Act amendments of 2004 (IDEA-2004) was signed into law as Public Law 108-446 (P.L. 108-446) on Friday, December 3, 2004 by President Bush. Public Law 108-446 provides the basis for providing children with disabilities an appropriate education. The Individualized Education Plan (IEP) is the cornerstone of IDEA-2004 and outlines the accommodations, goals and services a child needs to receive an appropriate education. As stated in *Honig v. Doe* the IEP is “the centerpiece of the statute’s educational delivery system for disabled children”<sup>21</sup> so that a free and appropriate public education or FAPE is predicated on the development of a document “that 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 curriculum”<sup>22</sup> Although IDEA was signed into law in 2004, the IEP requirements became effective July 1, 2005 and thus IDEA will be referred to as IDEA-2004 and the IEP as IEP-2005.

#### The “Centerpiece”

**Envisioning the IEP as the centerpiece of the statute’s education delivery system for disabled children, and aware that schools had all too often denied such children appropriate educations without in any way consulting their parents, Congress repeatedly emphasized throughout the Act the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness.**

**–Honig v. Doe, 484 U.S. 305 (1988)**

The motivation for the IEP described in Public Law 94-142 in 1975 was “the movement toward the individualization of instruction, involving the child, the parent and other educational professionals” to construct an individualized program based on the following tenets:<sup>23</sup> (1) each child requires an educational plan that is tailored to achieve his or her maximum potential; (2) all principals in the child’s educational environment, including the child, should have the opportunity for input in the development of an individualized program of instruction; (3) individualization means specifics and timetables for those specifics, and the need for periodic review of these specifics—all of which produce greatly enhanced fiscal and educational accountability.<sup>24</sup>

When Congress first considered the need for individualized education programs before the passage of P.L. 94-142 (Education for All Handicapped Children Act or EAHCA) in 1975 there was some debate as to whether individualized programs should be developed by emphasizing the development of an Individualized Education Program document or whether a series (at least three) of individualized instructional planning conferences that would yield a written statement of “appropriate educational services.”<sup>25</sup> Congress agreed that the IEP was of primary importance, but this plan must be the result of a collaborative planning effort between school and parent.

The IEP, as described in the regulations for IDEA-1990, centers on the IEP meeting, decision making, and an IEP document which is “a written record of the decisions made at the meeting.” The IEP and the IEP process has a number of purposes relating to communication between school and parents, conflict resolution, a commitment of resources, management, compliance and evaluation:

**Communication:** The IEP meeting serves as a communication vehicle between parents and school personnel, and enables parents, as equal participants, to jointly decide what the child’s needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

**Resolution:** The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning a child’s special education needs; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

**Commitment:** The IEP sets forth in writing a commitment of resources necessary to enable a child to receive needed special education and related services.



**Management:** The IEP is a management tool that is used to ensure that each child is provided special education and related services appropriate to the child's special learning needs.

**Compliance:** The IEP is a compliance/monitoring document which may be used by authorized monitoring personnel from each governmental level to determine whether a child is actually receiving the free appropriate public education agreed to by the parents and the school.

**Resolution:** The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.<sup>26</sup>

Much of the litigation involving IEPs, and disagreements regarding educational placements, is the result of IEPs developed to **show compliance** but IEPs which do not provide an appropriate education. As a result, many IEPs are filled with regulatory guidelines, bureaucratic lists and checkboxes, and IEP content that does not outline a reasonably calculated plan much less provide educational benefit. For example, many IEPs include a checklist for the special factors that the IEP must consider. However, what should be included in the IEP are any services and accommodations that result from this consideration and not a list to show that these factors have been considered. The primary purpose of the IEP is often ignored in lieu of the single-minded quest to produce a *legally* acceptable IEP, an IEP that *ostensible* shows compliance, but an IEP that is not a real plan to provide appropriate goals, services and accommodations.

### IEP Criticisms

The criticisms of IEPs have been many and often center about required IEP content and/or the process used to develop IEPs. For every IEP both **content** and **process** are critical factors and the foundation for developing an **appropriate** and **reasonably calculated** IEP. The IEP Team must consider each component of the IEP so that each IEP element is an integral part of the overall planning document. In addition, the IEP Team must be deliberate in developing IEPs that are logically consistent and are based on a collaborate effort between IEP Team members and the parents.<sup>27</sup>

One of the more disturbing criticisms of IEPs is the disconnection between the IEP and every other aspect of the special education process. A child's IEP appears to follow the regulations; the IEP contains all the required components (and a good deal more); and the IEP has been dutifully signed by the parents and a host of IEP members. But the IEP is stored