

THE INDIVIDUAL EDUCATION PLAN: UNLOCKING THE  
SCHOOLHOUSE DOORS FOR STUDENTS WITH DISABILITIES

By

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## **I. INTRODUCTION**

### **A. Presenter**

*Jeff N. Eckert, Esq.*

Jeff N. Eckert is a special education and needs attorney in Sarasota, Florida. His primary areas of practice include special education law and rights, guardian advocacy, and Agency for Persons with Disabilities (APD) matters. Jeff is a member of the Council of Parent Attorneys and Advocates (COPAA). Jeff is also on the Board of Directors for the Florida Network on Disabilities (FND) of Manasota, a nonprofit organization that provides respite services, parent mentoring, and student advocacy for families with disabilities. Jeff is also a member of The Florida Bar Education Law Committee. Prior to becoming an attorney, Jeff was a special education teacher in Manatee and Sarasota Counties and worked with adults and children with developmental disabilities for more than twenty years in Pennsylvania and Florida.

### **B. Abstract**

The purpose of this document is to describe the primary purpose, function, and parts of an Individual Education Plan (IEP). The IEP is both a document and a process to help achieve the Individuals with Disabilities Education Act's (IDEA) legislative purpose of meeting the unique needs of students with disabilities and preparing them for further education, employment, and independent living.<sup>1</sup> The IEP has been described by Supreme Court Justice William J. Brennan as the "centerpiece of the statute's education delivery system for disabled children."<sup>2</sup> IEP's also provide relevant critical and relevant documentation to enable families of a child (or adult child) with a disability to access essential public benefits and services they will need to live as independently as possible in their homes and communities.

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<sup>1</sup> 20 U.S.C. 1400(d)(1).

<sup>2</sup> Honig v. Doe, 484 U. S. 305, 311 (1988).

## **II. BRIEF HISTORY OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)**

### **1. The IDEA was landmark legislation based on the segregation of students with disabilities in the public school system.**

In 1954, The U.S. Supreme Court decided in the historic *Brown v. Board of Education of Topeka* case that it was unconstitutional for educational institutions to segregate children by race.<sup>3</sup> This consequential judicial ruling would have far-reaching implications in the special education sector. Two subsequent cases would use the overturning of the “separate but equal” doctrine to extend this application to the disability sector. In 1972, the U.S. District Court for the Eastern District of Pennsylvania sided in favor of students with intellectual and learning disabilities in state-run institutions.<sup>4</sup> *PARC v. Penn* called for students with disabilities to be placed in publicly funded school settings that met their individual educational needs, based on a proper and thorough evaluation. Also, in 1972, the U.S. District Court for the District of Columbia first classified students as “exceptional,” including those with mental and learning disabilities and behavioral issues.<sup>5</sup> The district court’s ruling made it unlawful for the D.C. Board of Education to deny these students access to publicly funded educational opportunities.

The federal courts’ rulings led to a Congressional investigation, in 1972, which found that a significant percentage of students with disabilities were not having their educational needs adequately met or were excluded from school entirely. In 1975, President Ford signed the

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<sup>3</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>4</sup> *P.A.R.C v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972).

<sup>5</sup> *Mills v. Board of Education of the District of Columbia*, 358 F. Supp. 866 (D.D.C. 1972).

Education for All Handicapped Children Act, otherwise known as Public Law 94-142. This law required all states that accepted money from the federal government to provide equal access to education for children with disabilities.

Subsequent amendments to the law ensured compliance within all of the public school systems, required services to families of children with disabilities from birth, and gave parents more say in the development of their child's IEP. In 1990, autism and traumatic brain injury were added as new disability categories and Congress mandated that as a part of a student's IEP, an individual transition plan, or ITP, must be developed to help the student transition to post-secondary life. In 2004, Congress reauthorized the IDEA and most recently amended the IDEA through Public Law 114-95, the Every Student Succeeds Act, in December 2015. The 2004 amendment called for early intervention for students, greater accountability, and improved educational outcomes, and raised the standards for instructors who teach special education classes.

In the law, Congress states:

“Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”<sup>6</sup>

## **2. Important IDEA case law.**

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<sup>6</sup> 20 U.S.C. 1400(c)(1).

The following are some of the significant decisions by the federal courts clarifying the scope and parameters of the IDEA:

### *Burden of Proof*

- In Schaffer, the Supreme Court considered whether parents or school districts have the burden of proof in special education due process hearings.<sup>7</sup> The Court determined that whichever party files a due process complaint has the burden of proof. So, if a parent files a complaint alleging a denial of FAPE, the parent must prove the denial.

### *Free and Appropriate Public Education (FAPE)*

- In Rowley, the Court elaborated on what is deemed appropriate under FAPE. The Court held “the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education ... We conclude that the “basic floor of opportunity” provided by the act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the child.” Thus, the *Rowley* decision clarified that children with disabilities were entitled to “access” to an education that provided an “educational benefit.” A school district does not have to “maximize” each disabled child’s potential.<sup>8</sup>

Note: The *Rowley* decision also held that the “Procedural Safeguards” of the IDEA are just as equally important as the substantive program offered to the disabled child.

Therefore, a court’s inquiry under the IDEA has two parts. First, whether the state

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<sup>7</sup> Schaffer v. Weast, 546 U.S. 49 (2005).

<sup>8</sup> Board of Education v. Rowley, 458 U.S. 176 (1982).

complied with the procedural safeguards of the act. Second, whether the child’s IEP is reasonably calculated to enable the child to benefit from his educational plan. The Court also held that under the IDEA, the burden of proof is a preponderance of the evidence standard.

- FAPE is denied only if: 1) the procedural flaw impeded the child’s right to FAPE, 2) significantly infringed the parents’ opportunity to participate in the decision-making process, or 3) caused an actual deprivation of educational benefits.<sup>9</sup>
- In Endrew F., the Supreme Court revisited the standard for FAPE. The Endrew F. case delivered a landmark ruling that clarified the substantive standard for determining whether a student’s IEP—the centerpiece of each child’s entitlement to FAPE under IDEA—is reasonably calculated to enable child to make progress appropriate in light of the child’s circumstances.<sup>10</sup> The Court also emphasized the requirement that “every child should have the chance to meet challenging objectives.”<sup>11</sup>

Note: For a student who is “fully integrated in the regular classroom,” an IEP should be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”<sup>12</sup> For a student not fully integrated in the regular classroom or with significant cognitive disabilities, an IEP must aim for progress that is “appropriately ambitious in light of [the student’s] circumstance, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.”<sup>13</sup>

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<sup>9</sup> Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007).

<sup>10</sup> Endrew F. v. Douglas County School District, 137 S. Ct. 988 (2017).

<sup>11</sup> 137 S Ct. at 1000.

<sup>12</sup> 137 S. Ct. at 999.

<sup>13</sup> 137 S. Ct. at 1000.

- In enacting the IDEA, Congress sought to “ensure that all children with disabilities have available to them FAPE that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”<sup>14</sup>

*Individual Education Plan (IEP)*

- When reviewing an IEP, “[t]he ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials,” and that “[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.”<sup>15</sup>
- The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.”<sup>16</sup>

*IEP Appropriateness Three-Part Test:*

1. The assessment of an IEP’s substantive propriety is further guided by several principles, the first of which is that it must be analyzed in light of circumstances as they existed at the time of the IEP’s formulation; in other words, an IEP is not to be judged in hindsight.<sup>17</sup>

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<sup>14</sup> 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th Cir. 2012).

<sup>15</sup> Endrew F., 137 S. Ct. 988, 999 (2017).

<sup>16</sup> Rowley, 458 U.S. 176, 181 (1982).

<sup>17</sup> M.B. v. Hamilton Se. Sch., 668 F.3d 851, 863 (7th Cir. 2011) (holding that an IEP can only be evaluated by examining what was objectively reasonable at the time of its creation); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990) (“An IEP is a snapshot, not a retrospective. In striving for ‘appropriateness,’ an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.”).

2. An assessment of an IEP must be limited to the terms of the document itself.<sup>18</sup>
3. Deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP.<sup>19</sup>

### *Stay Put Protection*

- The Supreme Court in Honig v. Doe held that the “stay-put” provision of the IDEA prohibits state or local school authorities from excluding a child with a disability from the classroom for dangerous or disruptive conduct that relates to the child’s disability. The stay-put provision also requires that a child remain in his then-current placement while formal, statutory “proceedings” to resolve a dispute about the placement are pending.<sup>20</sup> The Court created what is now known as the “ten-day rule,” which allows a school to only suspend a child for up to ten days without parental consent or court intervention, absent special circumstances.<sup>21</sup>

## **III. THE IEP AS CENTERPIECE OF THE IDEA**

### **A. Eligibility for Exceptional Student Education (ESE) services in Florida.**

Eligibility for ESE services and an IEP are driven by medical and educational evaluations and based on student’s educational needs. The school district or local education agency (LEA) is responsible for identifying all students with a disability or suspected disability within its boundaries, an obligation known as Child Find, and for conducting all initial evaluations

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<sup>18</sup> Knable v. Bexley Cty. Sch. Dist., 238 F.3d 755, 768 (6th Cir. 2001); Sytsema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1315-16 (8th Cir. 2008) (holding that an IEP must be evaluated as written).

<sup>19</sup> Endrew F., 13 S. Ct. at 1001.

<sup>20</sup> Honig, 484 U.S. 305 (1988).

<sup>21</sup> 34 C.F.R. § 300.530(g) (special circumstances include carrying weapons, possessing illegal drugs, or inflicting serious bodily injury while at school, on school premises, or at a school function).

necessary to determine if the student is eligible for ESE, and to determine the educational needs of the student. In Florida, parental consent must be obtained for an initial evaluation, and must then be completed within sixty (60) school days (cumulative) of receipt of parent's consent for the evaluation.<sup>22</sup>

To be found eligible for special education, the child must meet the specific criteria under the recognized disability categories, and “who, by reason thereof, needs special education and related services.”<sup>23</sup> Typically, this requires a showing that the child's disability adversely affect the student's performance in the educational environment and the student needs special education as defined in paragraph 6A-6.03411(1)(kk), F.A.C..<sup>24</sup>

There are thirteen distinct categories of disability under IDEA including: 1) autism, 2) deaf-blindness, 3) deafness, 4) emotional disturbance, 5) hearing impairment, 6) intellectual disability, multiple disabilities, 8) orthopedic impairment, 9) other health impairment, 10) specific learning disability, 11) speech or language impairment, 12) traumatic brain injury, and 13) visual impairment.<sup>25</sup>

In conducting an evaluation, the school district: 1) must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining whether the student is eligible for ESE and the content of the student's IEP, including information

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<sup>22</sup> F.A.C. Rule 6A-6.0331(3)(f).

<sup>23</sup> 34 C.F. R. 300.8(a)(1).

<sup>24</sup> See F.A.C. Rule 6A-6.030152(4)(a); 6A-6.03411(1)(kk).

<sup>25</sup> Id. at 300.8(c).

related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities); 2) must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and 3) must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.<sup>26</sup>

In interpreting evaluation data for the purpose of determining if a student is an exceptional student and the educational needs of the student, each school district shall: 1) draw upon data and information from a variety of sources, such as aptitude and achievement tests, the student's response to interventions/instruction implemented, parent input, student input as appropriate, teacher recommendations, and information about the student's physical condition, social or cultural background, and adaptive behavior; 2) ensure that information obtained from all of these sources is documented and analyzed by the team as part of the problem solving process; and 3) determine eligibility in accordance with the criteria and procedures specified in these rules.<sup>27</sup>

### **B. Meaningful parent input and participation.**

As discussed above, the reauthorized IDEA recognized the importance of meaningful parent input and participation, and that certain procedural safeguards were in place to protect parents in the IEP eligibility, evaluation, and development process.

Accordingly, the Florida regulations require the following:

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<sup>26</sup> Id. at (5)(a).

<sup>27</sup> Id. at (6)(b).

- An IEP must be developed, reviewed, and revised for each eligible student or child with a disability annually.
- A written notice of the meeting must be provided to the parents and must indicate the purpose, time, and location of the meeting, and who, by title or position, will be attending
- The IEP meeting must be scheduled at a mutually agreed on time and place.
- Parents may invite other individuals who have “knowledge or special expertise regarding the student,” including related services personnel as appropriate.
- The District must give provide copy of the IEP at no cost to the parents.<sup>28</sup>

Also, the role of parents in developing IEPs includes: 1) providing critical information regarding the strengths of their student; 2) expressing their concerns for enhancing the education of their student so that their student can receive FAPE; 3) participating in discussions about the student’s need for special education and related services; 4) participating in the determination of how the student will be involved and progress in the general curriculum, including participation in the statewide assessment program and in district-wide assessments; 5) participating in the determination of what services the school district will provide to the student and in what setting; and, 6) participating in the determination of which course of study leading towards a standard diploma the student will pursue.<sup>29</sup>

**C. The IEP development process and collaborative approach (at least in theory, if not always in practice).**

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<sup>28</sup> F.A.C. Rule 6A-6.03028.

<sup>29</sup> Id.

The IEP team participants that are required to attend are: 1) The parents of the student; 2) Not less than one (1) regular education teacher of the student, if the student is or may be participating in the regular education environment; 3) Not less than one (1) special education teacher of the student, or where appropriate, not less than one special education provider of the student; 4) A representative of the school district who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the school district; 5) An individual who can interpret the instructional implications of evaluation results who may be a member of the IEP Team; 6) The student, if appropriate, and in all cases where a purpose of the meeting will be the identification of the student's transition services needs or consideration of postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.<sup>30</sup>

NOTE: A member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parent of a student with a disability and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting or if the parent, in writing, and the school district consent to the excusal and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

There are specified timelines for development of the initial IEP and subsequent IEP's:

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<sup>30</sup> Id. at (3)(c).

1. An IEP must be developed within thirty (30) calendar days following the determination of a student's eligibility for special education and related services and be in effect prior to the provision of these services.
2. Meetings shall be held to develop, review and revise the IEP. A meeting shall be held at least annually to review each IEP and, as appropriate, revise its provisions in accordance with all aspects of this rule.
3. An IEP, which has been reviewed, and if appropriate, revised periodically, but not less than annually, must be in effect at the beginning of each school year for each eligible student with a disability within its jurisdiction.<sup>31</sup>

Some of the considerations in IEP development, review, and revision include:

- The strengths of the student and the concerns of the parents for enhancing the education of their student;
- The results of the initial or most recent evaluation or reevaluation of the student;
- As appropriate, the results of the student's performance on any general statewide or districtwide assessment;
- The academic, developmental, and functional needs of the student;
- In the case of a student whose behavior impedes the student's learning or the learning of others, strategies, including the use of positive behavioral interventions, supports, and other strategies to address that behavior;
- In the case of a student with limited English proficiency, the language needs of the student as those needs relate to the student's IEP;

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<sup>31</sup> Id. at (3)(f).

- The communication needs of the student.
- Whether the student requires assistive technology devices and services.<sup>32</sup>

The content of an IEP for a student must include:

1. A statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general curriculum;
2. A statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general curriculum;
3. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student and a statement of the classroom accommodations, modifications or supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals;
4. A statement of any individual appropriate accommodations in the administration of statewide standardized assessments or district assessments of student achievement that are necessary in order to measure the academic achievement and functional performance of the student on the assessments.
5. The projected date for the beginning of the special education, services, accommodations and modifications and the anticipated frequency, location and duration of those services;

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<sup>32</sup> Id. at (3)(g).

6. A statement of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals.
7. Beginning at age 14 and no later than age 16, the IEP team must identify transition services and needs with appropriate measurable postsecondary and career goals.<sup>33</sup>

Note: Entitlement to FAPE is defined in the IDEA and state regulations as special education and related services that: (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (d) are provided in conformity with an individualized education program (IEP).<sup>34</sup>

### **C. The continuum of placement and least restrictive environment.**

Placement determinations must be made in accordance with the LRE provisions of the IDEA: 1) to the maximum extent appropriate, students with disabilities, including those in public or private institutions or other facilities, are educated with students who are not disabled; 2) special classes, separate schooling or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and 3) a continuum of alternative placements must be available to meet the needs of students with disabilities for special education and related services, including instruction in regular

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<sup>33</sup> Id. at (3)(h).

<sup>34</sup> 34 C.F.R. § 300.17; F.A.C. Rule 6A-6.03028.

classes, special classes, special schools, home instruction, and instruction in hospitals and institutions and a school district must make provision for supplementary services to be provided in conjunction with regular class placement.<sup>35</sup>

In determining the educational placement of a student with a disability, each school district must ensure the placement decision: i) Is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and, ii) Is made in conformity with the LRE provisions of this rule, iii) Is determined at least annually; iv) Is based on the student's IEP; and, v) Is as close as possible to the student's home.<sup>36</sup>

#### **D. Special education and related services as the delivery method for IEP's.**

Specially designed instruction means adapting, as appropriate to the needs of an eligible exceptional student, the content, methodology, or delivery of instruction – 1) to address the unique needs of the student that result from the student's disability; and 2) to ensure access to the general curriculum to meet the educational standards within the jurisdiction of the school district.<sup>37</sup> Special education includes: a) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and, b) instruction in physical education. c) speech-language pathology services; d) travel training; and, e) career and technical education.

Related services are defined in the federal regulations as transportation and such developmental,

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<sup>35</sup> Rule 6A-6.03028(3)(i).

<sup>36</sup> Id.

<sup>37</sup> 34 C.F.R. 300.39(b)(3).

corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and may include:

- speech-language pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes only; school health services; social work services in schools; parent counseling and training.<sup>38</sup>

#### **E. Accountability and procedural and substantive rights.**

An IEP must be in effect before special education and related services are provided to an eligible student and must be implemented as soon as possible following the IEP meeting. In addition: 1) The student's IEP shall be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; 2) All teachers and providers shall be informed of their specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP; 3) The school district must make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed on the IEP; 4) Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures.<sup>39</sup>

The public agency, including a school district, shall provide parents with written notice a

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<sup>38</sup> 34 C.F.R. § 300.34.

<sup>39</sup> Rule 6A-6.03028(3)(m).

reasonable time before proposing or refusing to initiate or change the identification, evaluation, educational placement of the student or the provision of a free appropriate public education (FAPE) to the student. Prior notice may be provided at any meeting where such proposal or refusal is made.<sup>40</sup>

Each public agency, including a school district, must establish, maintain and implement procedural safeguards that meet the requirements of this rule.<sup>41</sup> Parents must be provided a copy of their procedural safeguards, which provides a full explanation of the provisions of this rule relating to, *inter alia*,: 1) Prior written notice; 2) Access to education records; 3) The availability of mediation; 4) The opportunity to present and resolve complaints through the state complaint and due process hearing procedures, including the time period in which to file a complaint, the opportunity for the public agency, including a school district, to resolve the complaint, and the difference between the request for due process procedures and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures pursuant to subsection 6A-6.03311(5), F.A.C.; 5) Due process hearings, including the student's placement during the pendency of any due process hearing request and requirements for disclosure of evaluation results and recommendations; 6) Civil actions, including the time period in which to file those actions; and, 7) Attorney's fees.<sup>42</sup>

Some additional considerations for procedural safeguards for students with disabilities:

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<sup>40</sup> F.A.C. Rule 6A-6.03311(1).

<sup>41</sup> Id.

<sup>42</sup> Id. at 6A-6.03311(2)(a).

- The request for a Due Process Hearing triggers timelines and the option for resolution and mediation.
- The statute of limitations (SOL) for a state complaint in Florida is one year; the SOL for due process hearing is two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.
- Florida is a one-tier state; parents can appeal an Administrative Law Judge's decision to state or federal court.
- IDEA requires the exhaustion of administrative remedies before seeking relief in court with limited exceptions.
- The remedies under IDEA are primarily compensatory education, tuition reimbursement, injunctive relief, reimbursement for education related expenses, and attorney fees if the parent or student is the prevailing party.
- The majority of IDEA cases are resolved via a settlement agreement prior to the hearing at a resolution session, mediation, or by other means.

#### **IV. THE IEP'S RELEVANCE AND INTERACTION WITH SPECIAL NEEDS PLANNING**

IEP's provide relevant documentation for families, advocates, and special needs planners to enable and assist the person with a disability with accessing critical public benefits, services, and accommodations. IEP's are often used in conjunction with medical and vocational evaluations, assessments, and reports to substantiate a disability or disabilities, and provide support for eligibility for such programs or services. The IEP can also provide valuable information to help

advocates assess the appropriate level and type of assistance and support that is needed for the disabled individual's circumstances.

### **A. Special Needs Trusts**

Beneficiaries of SNT's typically evidence a physical or mental disability that necessitates protection and oversight of their finances and public benefits. Since SNT's are used primarily to protect the individual's means-tested public benefits, IEP's are typically requested by the Social Security Administration (SSA) and Medicaid to determine eligibility for disability-based benefits for disabled children. IEP's provide documentation of the individual's functional and academic levels which can be used to substantiate that the individual meets the criteria for public benefits. Trustees can use the IEP to better understand the limitations and abilities of the beneficiary of an SNT. Special needs trusts can also be created when the disabled individual receives an inheritance or personal injury settlement that could affect their eligibility for public benefits.

### **B. Guardian Advocacy**

The Florida legislature enacted the guardian advocate statute as an expedited form of guardianship for persons who have a specified developmental disability and reach 18, the age of majority. In Florida, a circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities if the person lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate, or if the person has voluntarily petitioned for the appointment of a guardian advocate.<sup>43</sup>

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<sup>43</sup> Fla. Stat. § 744.3085.

A developmental disability is specifically defined as “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”<sup>44</sup> At the hearing, the probate court will “consider all reports relevant to the person’s disability, including, but not limited to, the person’s current individual family or individual support plan, the individual education plan, and other professional reports documenting the condition and needs of the person.”<sup>45</sup>

Parents, guardians, and family members should be made aware and informed that when their child reaches the majority age of 18, they will not be able to access their adult child's health records or take an active role in their IEP meetings unless they take legal action.

### **C. Substituted vs. Supported Decision Making**

Alternately, a health care power of attorney and durable power of attorney may be a less restrictive alternative to a full guardianship under certain circumstances. Although Florida has not yet done so, some states are moving to a supported decision making model to support persons with developmental disabilities when feasible.<sup>46</sup> Here again, IEP’s are a critical source of information for an advocate to assess the appropriate level of assistance, support, or oversight a person with a disability needs to maintain their independence to the maximum extent

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<sup>44</sup> Fla. Stat. § 393.063(12).

<sup>45</sup> Fla. Stat. § 393.12(6).

<sup>46</sup> *In Your State*, National Resource Center for Supported Decision-Making, <http://supporteddecisionmaking.org/states> (last visited September 4, 2021).

possible.<sup>47</sup> In such cases, it will be necessary to ensure the person with a disability has the requisite capacity to authorize such decision-making instruments.

#### **D. ABLE Accounts**

ABLE Accounts are tax-advantaged savings accounts for individuals with disabilities. ABLE accounts were created by the Stephen Beck Jr. Achieving a Better Life Experience Act of 2014 or ABLE Act. According to the ABLE National Resource Center, millions of individuals with disabilities and their families depend on a wide variety of public benefits for income, health care and food and housing assistance. Eligibility for these public benefits (SSI, SNAP, Medicaid) require meeting a means/resource test that restricts eligibility to individuals with less than \$2,000 in liquid resources, such as cash savings, non-ABLE checking and savings accounts and some retirement funds.”<sup>48</sup>

The ABLE Act limits eligibility to individuals with disabilities with an age of onset of disability before turning 26 years of age. If individuals meet this age requirement and are also receiving benefits under SSI and/or SSDI, they are automatically eligible to establish an ABLE account. If they are not a recipient of SSI and/or SSDI but still meet the age of onset disability requirement, they could still be eligible to open an ABLE account if they meet Social Security’s definition and criteria regarding functional limitations and receive a letter of disability certification from a licensed physician or specialist. Accordingly, IEPs are another source of documentation that can be used to show the onset of the disability before the individual turned age 26.

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<sup>47</sup> *Lighting the Way to Guardianship and Other Decision-Making Alternatives*, Florida Developmental Disabilities Council (April 2017), <https://fddc.org/wp-content/uploads/2020/08/Lighting-the-Way-Family-2017-English.pdf>.

<sup>48</sup> *10 Things You Should Know*, ABLE National Resource Center, <https://www.ablenrc.org/what-is-able/what-are-able-accounts/> (last visited September 4, 2021).

Note: Florida participates in ABLE Accounts through ABLE United at: [www.ableunited.com](http://www.ableunited.com).

### **E. Public Benefits**

As discussed above, many public benefits programs rely on IEP's as a source of supporting documentation for benefits programs such as Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), Children's Medical Services (CMS) for Medicaid, Vocational Rehabilitation, and many others. The Social Security Administration will typically request a copy of the IEP to determine if a child has "a physical or mental condition(s) that very seriously limits his or her activities."<sup>49</sup> IEP's are often requested by postsecondary schools to verify eligibility for Section 504 or Americans with Disabilities Act (ADA) accommodations. Most IEP's are now created electronically which facilitates sharing the IEP with third parties.

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<sup>49</sup> 20 C.F.R. § 416.926a.

**6A-6.03028 Provision of Free Appropriate Public Education (FAPE) and Development of Individual Educational Plans for Students with Disabilities.**

(1) Entitlement to FAPE. All students with disabilities aged three (3) through twenty-one (21) residing in the state have the right to FAPE consistent with the requirements of Section 1003.571, F.S. and Rules 6A-6.03011 through 6A-6.0361, F.A.C. FAPE shall be made available to students with disabilities, including students who have been suspended or expelled, and any individual student with a disability who needs special education and related services, even though the student has not failed or been retained in a course or grade, and is advancing from grade to grade. The obligation to make FAPE available to all students with disabilities does not apply with respect to the following:

(a) Students with disabilities who have graduated from high school with a standard diploma, and who have not deferred receipt of the diploma, in accordance with Section 1003.4282(10)(c), F.S. A standard diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate of completion or a general educational development credential (GED); and,

(b) Students aged eighteen (18) through twenty-one (21) who, in the last educational placement prior to their incarceration in an adult correctional facility:

1. Were not actually identified as being a child with a disability pursuant to Rules 6A-6.03011 through 6A-6.0361, F.A.C.; and,
2. Did not have an individual educational plan (IEP) in accordance with this rule.

(c) The exception in paragraph (b) of this section, does not apply to students with disabilities, aged eighteen (18) through twenty-one (21), who:

1. Had been identified as a student with a disability under Rules 6A-6.03011 through 6A-6.0361, F.A.C., and had received services in accordance with an IEP, but who left school prior to their incarceration; or
2. Did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability under Rules 6A-6.03011 through 6A-6.0361, F.A.C.

(2) Treatment of charter school students. Students with disabilities who attend public charter schools and their parents retain all rights under Rules 6A-6.03011 through 6A-6.0361, F.A.C. In carrying out Part B of the Individuals with Disabilities Education Act (IDEA) and Rules 6A-6.03011 through 6A-6.0361, F.A.C., with respect to charter schools that are public schools of the school district, the school district must serve students with disabilities attending those charter schools in the same manner as the district serves students with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the school district has a policy or practice of providing such services on the site to its other public schools and provide funds under Part B of the IDEA to those charter schools on the same basis as the school district provides funds to the school district's other public schools, including proportional distribution based on relative enrollment of students with disabilities and at the same time as the school district distributes other Federal funds to its other public schools.

(3) IEP requirements. An IEP must be developed, reviewed, and revised for each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, in accordance with this rule. For a student identified as gifted in accordance with Rule 6A-6.03019, F.A.C., and who is also identified as a student with a disability, as defined in paragraph 6A-6.03411(1)(f), F.A.C., the strengths, needs and services associated with a student's giftedness must be addressed in the student's IEP. Parents are partners with schools and school district personnel in developing, reviewing, and revising the IEP for their student. For the purposes of this rule, the term parents also includes legal guardians.

(a) Role of parents. The role of parents in developing IEPs includes:

1. Providing critical information regarding the strengths of their student;
2. Expressing their concerns for enhancing the education of their student so that their student can receive FAPE;
3. Participating in discussions about the student's need for special education and related services;
4. Participating in the determination of how the student will be involved and progress in the general curriculum, including participation in the statewide assessment program and in district-wide assessments;
5. Participating in the determination of what services the school district will provide to the student and in what setting; and,
6. Participating in the determination of which course of study leading towards a standard diploma the student will pursue, consistent with Section 1003.4282, F.S., to include a course of study leading to a Scholar or Merit designation in accordance with Section 1003.4285, F.S.

(b) Parent participation in meetings. Each school district shall establish procedures that provide the opportunity for one or both

of the student's parents to participate in meetings and decisions concerning the IEP for the student. Parents of each student with a disability must be members of any group that makes decisions on the educational placement of their student. Procedures to ensure participation in meetings shall include the following:

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend. Any time an IEP meeting is convened for the purpose of reviewing or changing a student's IEP as it relates to administration of the Florida Standards Alternate Assessment and the provision of instruction in the state standards access points curriculum, or placement of the student in an exceptional student education center, the school shall provide the notice to the parent at least ten (10) days prior to the meeting. The meeting may be convened prior to the tenth day if the parent consents upon receipt of the written notice; and,

2. Scheduling the meeting at a mutually agreed on time and place.

3. A written notice of the meeting must be provided to the parents and must indicate the purpose, time, and location of the meeting, and who, by title or position, will be attending. The notice must also include a statement informing the parents that they have the right to invite individuals with special knowledge or expertise about their student and that they may request that a Part C service coordinator or other representative of the Part C system be invited to attend the initial IEP Team meeting for a child previously receiving early intervention services under Part C of the IDEA.

4. No later than the first IEP to be in effect when the student turns fourteen (14), or younger if determined appropriate by the IEP Team, the notice must also indicate that a purpose of the meeting will be identifying transition services needs of the student and that the district will invite the student.

5. Not later than the first IEP to be in effect when the student turns sixteen (16), or younger if determined appropriate by the IEP Team, the notice must also indicate that a purpose of the meeting will be consideration of the postsecondary and career goals and transition services for the student, that the district will invite the student, and identify any other agency that will be invited to send a representative to the meeting.

6. If neither parent can attend, the school district shall use other methods to ensure parent participation, including individual or conference telephone calls or video conferencing.

7. A meeting may be conducted without a parent in attendance if the school district is unable to obtain the attendance of the parents. In this case, the district must have a record of its attempts to arrange a mutually agreed on time and place, such as:

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence sent to the parents and any responses received; and,

c. Detailed records of visits made to the parents' home or place of employment and the results of those visits.

8. The district shall take whatever action is necessary to ensure that the parents and the student, beginning at age fourteen (14), understand the proceedings at a meeting, which may include arranging for an interpreter for parents and students who are deaf or whose native language is a language other than English.

9. A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

10. The district shall give the parents a copy of the IEP at no cost to the parents.

(c) IEP Team participants. The IEP Team, with a reasonable number of participants, shall include:

1. The parents of the student;

2. Not less than one (1) regular education teacher of the student, if the student is or may be participating in the regular education environment. The regular education teacher of a student with a disability, as a member of the IEP Team, must to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of:

a. Appropriate positive behavioral interventions and supports and other strategies for the student; and,

b. Supplementary aids and services, classroom accommodations, modifications or supports for school personnel that will be provided for the student consistent with this rule.

3. Not less than one (1) special education teacher of the student, or where appropriate, not less than one special education provider of the student;

4. At least one (1) teacher of the gifted, if the team is developing an IEP for a student who is also identified as gifted in accordance with Rule 6A-6.03019, F.A.C.

5. A representative of the school district who is qualified to provide or supervise the provision of specially designed instruction

to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the school district. At the discretion of the school district, the student's special education teacher may be designated to also serve as the representative of the school district if the teacher meets the requirements described in this paragraph;

6. An individual who can interpret the instructional implications of evaluation results who may be a member of the IEP Team as described in subparagraph (3)(c)3., 4. or 5. of this rule;

7. At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate. The determination of the knowledge or special expertise of any such individual shall be made by the party who invited the individual to be a member of the IEP Team; and,

8. The student, if appropriate, and in all cases where a purpose of the meeting will be the identification of the student's transition services needs or consideration of postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP meeting to identify transition services needs or consider postsecondary and career goals and transition services, the school district shall take other steps to ensure that the student's preferences and interests are considered.

9. With the consent of the parents or a student who has reached the age of majority, the school district shall invite a representative of any participating agency that may be responsible for providing or paying for transition services. Parental consent or the consent of the student who has reached the age of majority must also be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

10. In the case of a child who was previously served and received early intervention services under Part C of the IDEA, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

(d) IEP Team member excusal. A member of the IEP Team described in subparagraphs (3)(c)2. through (3)(c)6. of this rule, is not required to attend an IEP Team meeting, in whole or in part, if the parent of a student with a disability and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. Any such member of the IEP Team may also be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent, in writing, and the school district consent to the excusal and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(e) Transition of children with disabilities from the infants and toddlers early intervention program.

1. By the third (3rd) birthday of a child who has been participating in the early intervention program for infants and toddlers with disabilities, an IEP consistent with this rule or an individual family support plan (IFSP) consistent with Rule 6A-6.03029, F.A.C., must be developed and implemented.

2. For the purpose of implementing the requirement of this rule, each school district will participate in transition planning conferences arranged by the state lead agency for the infants and toddlers with disabilities early intervention program.

3. If the child's third (3rd) birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(f) IEP and meeting timelines. Timelines for IEPs for students with disabilities shall include the following:

1. An IEP, which has been reviewed, and if appropriate, revised periodically, but not less than annually, must be in effect at the beginning of each school year for each eligible student with a disability within its jurisdiction.

2. An IEP must be developed within thirty (30) calendar days following the determination of a student's eligibility for special education and related services and be in effect prior to the provision of these services.

3. Meetings shall be held to develop, review and revise the IEP. A meeting shall be held at least annually to review each IEP and, as appropriate, revise its provisions in accordance with all aspects of this rule.

(g) Considerations in IEP development, review, and revision for students with disabilities. The IEP Team shall consider the following in IEP development, review, and revision:

1. The strengths of the student and the concerns of the parents for enhancing the education of their student;

2. The results of the initial or most recent evaluation or reevaluation of the student;

3. As appropriate, the results of the student's performance on any general statewide or districtwide assessment;

4. The academic, developmental, and functional needs of the student;

5. In the case of a student who has also been identified as a student who is gifted in accordance with Rule 6A-6.03019, F.A.C., the IEP shall address the gifted and disability related needs of the student.

6. In the case of a student whose behavior impedes the student's learning or the learning of others, strategies, including the use of positive behavioral interventions, supports, and other strategies to address that behavior;

7. In the case of a student with limited English proficiency, the language needs of the student as those needs relate to the student's IEP;

8. In the case of a student who is blind or visually impaired, provision of instruction in braille and the use of braille unless the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, including future needs, and appropriate reading and writing media (including an evaluation of the student's future need for instruction in braille or the use of braille), that instruction in braille or the use of braille is not appropriate for the student;

9. The communication needs of the student;

10. In the case of a student who is deaf or hard-of-hearing or dual-sensory impaired, the Communication Plan form 313189, effective December 2014, is available at (<http://www.flrules.org/Gateway/reference.asp?No=Ref-04776>) or may be obtained from the Florida Department of Education, Bureau of Exceptional Education and Student Services, 325 West Gaines Street, Room 614, Tallahassee, FL 32399. The Communication Plan form is incorporated by reference and shall be used to address, the student's language and communication needs; opportunities for direct communications with peers and professional personnel in the student's language and communication mode; academic level; and full range of needs, including opportunities for direct instruction in the student's language and communication mode;

11. Whether the student requires assistive technology devices and services. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the IEP Team determines that the student needs access to those devices in order to receive a FAPE; and,

12. At least annually, whether extended school year (ESY) services are necessary for the provision of a FAPE to the student consistent with the following:

a. ESY services must be provided if a student's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student.

b. When determining whether ESY services are necessary, the IEP Team must consider all of the following factors:

(I) Whether there is a likelihood that significant regression will occur in critical life skills related to the following areas:

(A) Academics or for prekindergarten children with disabilities, developmentally appropriate pre-academic skills;

(B) Communication;

(C) Independent functioning and self-sufficiency; and,

(D) Social or emotional development or behavior.

(II) Whether the student is at a crucial stage in the development of a critical life skill or an emerging skill and a lapse in services would substantially jeopardize the student's chances of learning that skill;

(III) Whether the nature or severity of the student's disability is such that the student would be unlikely to benefit from their education without the provision of ESY services; and,

(IV) Extenuating circumstances pertinent to the student's current situation that indicate the likelihood that FAPE would not be provided without ESY services. Examples include the following: a student who had recently obtained paid supported employment and requires the services of a job coach in order to be successful; a student who requires ESY services in order to remain in his or her existing least restrictive environment (LRE) and prevent movement to a more restrictive setting; and a student whose frequent health-related absences have significantly impeded progress on goals related to critical life skills.

c. School districts may not limit ESY to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

13. If, after consideration of the factors in paragraph (3)(g) of this rule, the IEP Team determines that a student needs a particular device or service, including an intervention, accommodation or other program modification, in order for the student to receive a FAPE, the IEP must include a statement to that effect.

(h) Contents of the IEP. The IEP for each student with a disability must include:

1. A statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general curriculum, or for prekindergarten children, as appropriate, how the disability affects the student's participation in appropriate activities. For a student identified as gifted and who is also

identified as a student with a disability, the statement of the student's present levels of academic achievement must include the student's strengths, interests and needs beyond the general curriculum that result from the student's giftedness;

2. A statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general curriculum or for preschool children, as appropriate, to participate in appropriate activities and meeting each of the student's other educational needs that result from the student's disability. For students also identified as gifted, the IEP must include a statement of measurable annual goals that result from the student's giftedness;

3. A description of benchmarks or short-term objectives for:

- a. Students with disabilities who take alternate assessments aligned to alternate achievement standards; or
- b. Any other student with a disability, at the discretion of the IEP Team.

4. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the classroom accommodations, modifications or supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals; to be involved and progress in the general curriculum; to participate in extracurricular and other nonacademic activities; and to be educated and participate with other students with disabilities and nondisabled students in the activities described in this section. A parent must provide signed consent for a student to receive instructional accommodations that would not be permitted on the statewide assessments and must acknowledge in writing that he or she understands the implications of such accommodations. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in subparagraph (3)(h)4. of this rule;

5. A statement of any individual appropriate accommodations in the administration of statewide standardized assessments as described in Section 1008.22(3), F.S., or district assessments of student achievement that are necessary in order to measure the academic achievement and functional performance of the student on the assessments. Accommodations that negate the validity of a statewide assessment are not allowable in accordance with Section 1008.22(3)(c)3., F.S. If the IEP Team determines that the student will take the Florida Standards Alternate Assessment instead of other statewide standardized assessments or an alternate district assessment of student achievement, the IEP must include a statement of why the student cannot participate in other statewide standardized assessments or district assessments and, if applicable, why the particular district alternate assessment selected is appropriate for the student. If a student does not participate in the statewide assessment program as a result of being granted an extraordinary exemption in accordance with the provisions of Section 1008.212, F.S., or a medically complex exemption in accordance with Section 1008.22(9), F.S., the district must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation in accordance with Section 1008.22(3), F.S.

6. The projected date for the beginning of the special education, services, accommodations and modifications described in subparagraph (3)(h)4. of this rule, and the anticipated frequency, location and duration of those services;

7. A statement of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

8. Before attaining the age of fourteen (14), in order to ensure quality transition planning and services, IEP Teams shall begin the process of identifying transition services needs of students with disabilities, to include the following:

- a. A statement of intent to pursue a standard high school diploma pursuant to Sections 1003.4282(1)-(9), or 1003.4282(10), F.S., and a Scholar or Merit designation in accordance with Section 1003.4285, F.S., as determined by the parent;
- b. The preparation needed for the student to graduate from high school with a standard diploma and a Scholar or Merit diploma designation as determined by the parent; and,

c. Consideration of the student's need for instruction or the provision of information in the area of self-determination and self-advocacy to assist the student to be able to actively and effectively participate in IEP meetings and self-advocate, so that needed postsecondary and career goals may be identified and in place by age sixteen (16).

9. Beginning not later than the first IEP to be in effect when the student turns sixteen (16), or younger, if determined appropriate by the IEP Team and updated annually, the IEP must include the following:

- a. A statement of intent to receive a standard high school diploma before the student attains the age of twenty-two (22) and a description of how the student will fully meet the requirements of Section 1003.4282, F.S. This requirement does not apply if the student entered grade 9 prior to the 2014-2015 school year and is pursuing a special diploma in accordance with the student's IEP;

b. A statement of the outcomes and the additional benefits expected by the parent and the IEP team at the time of the student's graduation;

c. A statement of appropriate measurable postsecondary and career goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist the student in reaching those goals; and,

d. If a participating agency responsible for transition services, other than the school district, fails to provide the transition services described in the IEP, the school district shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP. However, this does not relieve any participating agency, including Division of Vocational Rehabilitation Services, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

10. Beginning at least one (1) year before the student's eighteenth (18th) birthday, a statement that the student has been informed of his or her rights under Part B of the IDEA, if any, that will transfer from the parent to the student on reaching the age of majority, which is eighteen (18) years of age.

11. Beginning with the 2015-2016 school year, a statement identifying the Career and Professional Education (CAPE) digital tool certificates and the CAPE industry certifications that the student seeks to attain before high school graduation, if any, pursuant to Section 1003.4203, F.S.

(i) LRE and placement determinations. Placement determinations shall be made in accordance with the LRE provisions of the IDEA, as follows:

1. To the maximum extent appropriate, students with disabilities, including those in public or private institutions or other facilities, are educated with students who are not disabled;

2. Special classes, separate schooling or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and,

3. A continuum of alternative placements must be available to meet the needs of students with disabilities for special education and related services, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions and a school district must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

4. In determining the educational placement of a student with a disability, including a preschool child with a disability, each school district must ensure that:

a. The placement decision.

(I) Is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and,

(II) Is made in conformity with the LRE provisions of this rule.

b. The student's placement:

(I) Is determined at least annually;

(II) Is based on the student's IEP; and,

(III) Is as close as possible to the student's home.

c. Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if nondisabled;

d. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs; and,

e. A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

5. In providing or arranging for the provision of nonacademic and extracurricular services and activities (including meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available), each school district must ensure that each student with a disability participates with students who are not disabled to the maximum extent appropriate to the needs of the student. The school district must ensure that each student with a disability has the supplementary aids

and services determined by the student's IEP Team to be appropriate and necessary for the student to participate in nonacademic settings.

(j) Review and revision of the IEP. The school district shall ensure that the IEP Team:

1. Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved;

2. Revises the IEP as appropriate to address:

a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;

b. The results of any reevaluation conducted;

c. Information about the student provided to, or by, the parents;

d. The student's anticipated needs or other matters; and,

e. Consideration of the factors described in paragraph (3)(g) of this rule; and,

3. Responds to the parent's right to ask for revision of the student's IEP; and,

4. Encourages the consolidation of reevaluation meetings for the student and other IEP Team meetings for the student, to the extent possible.

(k) Changes to the IEP. Generally, changes to the IEP must be made by the entire IEP Team at an IEP Team meeting and may be made by amending the IEP rather than by redrafting the entire IEP. However, in making changes to a student's IEP after the annual IEP meeting for a school year, the parent and the school district may agree not to convene an IEP Team meeting for purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP without a meeting, the school district must ensure that the student's IEP Team is informed of those changes. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. In addition, the following changes to the IEP and decisions made by the IEP team must be approved by the parent or the adult student if rights have transferred in accordance with subsection 6A-6.03311(8), F.A.C. Such changes are subject to an independent reviewer selected by the parent as provided in Section 1003.572, F.S., and include:

1. Changes to the postsecondary or career goals; and,

2. Beginning with students entering grade 9 in the 2014-2015 school year, changes in the selected graduation option specified in the student's IEP and any waiver of statewide standardized assessment results made by the IEP team in accordance with the provisions of Section 1008.22(3)(c), F.S.

(l) Students with disabilities in adult prisons. The requirements of this rule relating to participation in general assessments do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. In addition, the requirements relating to transition planning and services do not apply with respect to those students whose eligibility for services under Part B of the IDEA and Rules 6A-6.03011 through 6A-6.0361, F.A.C., will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release. The IEP Team of a student with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated, and the requirements relating to IEP content and LRE do not apply with respect to such modifications made.

(m) IEP implementation and accountability. The school district, or other state agency that provides special education either directly, by contract, or through other arrangements, is responsible for providing special education to students with disabilities in accordance with the students' IEPs. However, it is not required that the school district, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. An IEP must be in effect before special education and related services are provided to an eligible student and must be implemented as soon as possible following the IEP meeting. In addition:

1. The student's IEP shall be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.

2. All teachers and providers shall be informed of their specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

3. The school district must make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed on the IEP.

4. Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures.

(n) IEPs and meetings for students with disabilities placed in private schools or community facilities by the school district.

1. If a student with a disability is placed in a private school by the school district, in consultation with the student's parents, the school district shall:

a. Ensure that the student has all of the rights of a student with a disability who is served by a school district.  
b. Before the school district places the student, initiate and conduct a meeting to develop an IEP for the student, in accordance with this rule or for children ages three (3) through five (5), an IEP or an IFSP in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC.; and,

c. Ensure the attendance of a representative of the private school at the meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

2. After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the school district but the school district must ensure that the parents and a school district representative are involved in decisions about the IEP and agree to proposed changes in the IEP before those changes are implemented by the private school.

3. Even if a private school or facility implements a student's IEP, responsibility for compliance with these rules remains with the school district.

4. Subparagraphs (3)(n)1. through 3. of this rule, apply only to students who are or have been placed in or referred to a private school or facility by a school district as a means of providing FAPE.

(o) If placement in a public or private residential program is necessary to provide special education to a student with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the student.

(p) Procedures for routine checking of hearing aids and external components of surgically implanted medical devices. Each school district must ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly and must ensure that the external components of surgically implanted medical devices are functioning properly. For a student with a surgically implanted medical device who is receiving special education and related services under Rules 6A-6.03011 through 6A-6.0361, F.A.C., a school district is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

(q) Procedures for students with disabilities who are covered by public benefits or insurance. A school district may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under Rules 6A-6.03011 through 6A-6.0361, F.A.C., as permitted under the public benefits or insurance program, except as provided herein.

1. With regard to services required to provide FAPE to an eligible student under the IDEA, the school district:

a. May not require parents to sign up for or enroll in public insurance programs in order for their student to receive FAPE under Part B of the IDEA;

b. May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA, but pursuant to subparagraph (3)(q)3. of this rule, may pay the cost that the parent otherwise would be required to pay;

c. May not use a student's benefits under a public insurance program if that use would:

(I) Decrease available lifetime coverage or any other insured benefit;

(II) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(III) Increase premiums or lead to the discontinuation of benefits or insurance; or

(IV) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and,

d. Prior to accessing the student's or parent's public benefits or insurance for the first time, and after providing notification to the student's parent as described in sub-subparagraph (3)(q)1.e. of this rule, the school district must obtain written, parental consent that specifies:

(I) The personally identifiable information that may be disclosed such as records or information about the services that may be provided to the student;

(II) The purpose of disclosure, such as for purpose of billing for services;

(III) The agency to which the disclosure may be made; and,

(IV) That the parent understands and agrees that the school district may access the parent's or student's public benefits or

insurance to pay for services required under Rules 6A-6.03011 through 6A-6.0361, F.A.C.

e. Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide written notification consistent with the requirements found in paragraphs 6A-6.03311(1)(a) and (b), F.A.C., to the student's parents that includes:

- (I) A statement of the parental consent provision in sub-subparagraph (3)(q)1.d. of this rule;
- (II) A statement of the no cost provisions of subparagraph (3)(q)1. of this rule;
- (III) A statement that the parents have the right to withdraw their consent to disclose their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance at any time; and,
- (IV) A statement that the withdrawal of consent or refusal to provide consent to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

2. With regard to students with disabilities who are covered by private insurance, a school district may access a parent's private insurance proceeds to provide services required under the IDEA only if the parent provides written informed consent. Each time the school district proposes to access the parent's private insurance proceeds, the agency must obtain parental consent and inform the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

3. Use of Part B funds if parent does not give consent. If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required to ensure FAPE, the school district may use its IDEA Part B funds to pay for the service. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the school district may use its IDEA Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

(r) Access to instructional materials. Each school district must take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(s) Physical education. Physical education services, specially designed if necessary, must be made available to every student with a disability receiving FAPE, unless the school district enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades. Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled students unless the student is enrolled full time in a separate facility or the student needs specially designed physical education, as prescribed in the student's IEP. If specially designed physical education is prescribed in a student's IEP, the school district responsible for the education of that student must provide the services directly or make arrangements for those services to be provided through other public or private programs. The school district responsible for the education of a student with a disability who is enrolled in a separate facility must ensure that the student receives appropriate physical education services in compliance with this section.

(t) Program options. Each school district must take steps to ensure that its students with disabilities have available to them the variety of educational programs and services available to nondisabled students in the area served by the school district, including art, music, industrial arts, consumer and homemaking education, and career technical education.

*Rulemaking Authority 1001.02(1), (2)(n), 1003.01(3)(a), (b), 1003.4282, 1003.55, 1003.57, 1003.571, 1003.5715, 1008.22 FS. Law Implemented 1002.33, 1003.01(3)(a), (b), 1003.4203, 1003.4282, 1003.55, 1003.57, 1003.571, 1003.5715, 1003.5716, 1008.22 FS. History—New 7-13-93, Amended 10-17-04, 12-22-08, 12-15-09, 3-25-14, 12-23-14, 1-7-16.*