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EDJJ PROFESSIONAL DEVELOPMENT SERIES

MODULE 4:

**OVERVIEW OF IDEA'97**

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## **Introduction**

This module is one in a series of training packages that have been designed for working with students with disabilities in a correctional setting; it focuses on providing an overview of the Individuals with Disabilities Education Act (IDEA).

## Objectives

- 1 Identify major terms and provisions of IDEA.
  - 1.1 Identify the name and purpose of the law.
  - 1.2 Describe how to obtain a copy of the congressional act and related regulations.
  - 1.3 Describe the major provisions of IDEA.
  - 1.4 List the major components of an *appropriate education* under the law.
  - 1.5 Define the term *special education*.
  - 1.6 Define the term *related services* and name examples.
  - 1.7 List and discuss the major due process procedures provided under IDEA.
- 2 Assist in determining the eligibility of a student for special education services.
  - 2.1 Be aware of the categories of eligibility under which a student may qualify for special education services.
  - 2.2 Name the most common disabilities found among incarcerated youth.
  - 2.3 Describe how students are identified or referred for special education.
  - 2.4 Discuss the assessment requirements that assure nonbiased special education evaluations.
  - 2.5 Describe how eligibility decisions are made.
- 3 Assist in developing Individualized Education Programs (IEP).
  - 3.1 Discuss the purpose of an IEP.
  - 3.2 List the persons responsible for the development of an IEP.
  - 3.3 Describe the components of an IEP.

- 4 Assist in making placement decisions.
  - 4.1 Describe criteria used in making placement decisions.
  - 4.2 Describe the continuum of services.
- 5 Issues in providing special education services in correctional facilities.
  - 5.1 Describe the major issues that make provision of services difficult.
  - 5.2 Name approaches for overcoming the difficulty of providing special education services in correctional facilities.

## Content Outline

### Overview of IDEA

#### 1. Identify major terms and provisions of IDEA.

1.1 In response to well coordinated parent advocacy efforts, Congress passed the Education for All Handicapped Children Act in 1975 that offered to support states in providing services to children with disabilities. The law is currently called the Individuals with Disabilities Education Act or IDEA. It is important to note that some students may qualify under Section 504 of the Rehabilitation Act of 1973 for educational services. This law covers activities in education and employment in ways to prohibit discrimination against those with disabilities in programs that receive federal financial assistance [Section 504, 29 U.S.C. §706(8), 794, and 794a].

1.1.1 The Education for All Handicapped Children's Act and its subsequent amendments are often referred to as PL 94-142, because it initially was the 142nd public law passed during the 94th session of Congress.

1.1.2 IDEA was established because of a number of major problems related to educating children with disabilities (Transparency T-A). Many children with disabilities were being excluded from educational services. Children who were receiving services were often receiving inadequate instruction. Parents and guardians of children with disabilities had no rights with regard to securing educational services. States and local districts did not have the funds to provide additional services.

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1.1.3 In response to these problems, IDEA was created to insure the provision of a free, appropriate public education to all children with disabilities; to protect the rights of parents and children with disabilities; to assist states and local districts in providing services; and to monitor and insure the effectiveness of states' efforts to provide services.

1.1.4 Since the law was first passed, Congress has made numerous changes to IDEA. Reviewing all of these changes is beyond the scope of this presentation. However, the major changes are listed herein. (See Transparency T-1; The reader may also refer to Module 3 in this series.) Amendments in 1983 extended services to children down to the age of 3. Amendments in 1986 further extended services to infants and toddlers. Amendments in 1990 changed the title of the law from the Education for All Handicapped Children Act to the Individuals with Disabilities Education Act (IDEA). These amendments also required the provision of transition planning for children by the age of 16. The most recent revision in 1997 clarified how disciplinary actions should affect assessment and intervention planning for students with disabilities. These amendments also clarified that the mandates of IDEA do apply to incarcerated youth with disabilities.

1.2 You should know how to obtain a copy of the law.

1.2.1 You may want to keep a copy of IDEA and the associated regulations on hand for reference.

1.2.2 There are a number of ways to get a copy of the laws and regulations (See Transparency T-2). You also can download the laws and regulations from the web site of the Office of Special Education and Rehabilitation Services. ([http://www.ed.gov/offices/OSERS/IDEA/the\\_law.html](http://www.ed.gov/offices/OSERS/IDEA/the_law.html)) Or you can also order the laws and regulations by mail from two sources: You can order them from the Department of Education at their EDPUBS web site (<http://www.ed.gov/pubs/edpubs.html>) or call 1-877-4-ED-PUBS. The laws and regulations are also available from the Government Printing Office by calling 202-512-1800 or by writing to the Government Printing Office Superintendent of Documents, PO Box 37195-7954, Pittsburgh, PA 15250.

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This information should be on a handout as well. Also, we need to give them some guidance on where to go for state regulations--perhaps their State Department of Education (I think AIR has an electronic copy of these if you need them).

1.3 The following is a summary of the major provisions of IDEA. Refer to Transparency T-3.

- 1.3.1 Due Process. Eligible persons and their parents are guaranteed certain procedural safeguards in matters of identification, evaluation, and educational placement. This will be discussed in greater depth later.
- 1.3.2 Least Restrictive Environment. To the greatest extent possible, children with disabilities are to be educated in the same environment as children without disabilities.
- 1.3.3 Nondiscriminatory Assessment. Testing and assessment is an integral part of determining eligibility and placement for students with disabilities. Any tests or assessments must be free of cultural or racial bias.

- 1.3.4 Individualization. An Individualized Education Program (IEP) must be developed for each child who is eligible for special education services. This program is to be developed by a knowledgeable group of persons with input from the parent and, where appropriate, the student.
- 1.3.5 Confidentiality and Record Keeping. No one may have access to the records of children in special education programs without the specific written consent of the parents. Parents also are guaranteed the right to review the student's records at any time.
- 1.3.6 Parental Involvement. *Parent* is legally defined as the biological or adoptive parent, a guardian (excluding the state, if the child is a ward of the state), a person acting instead of the parent including a grandparent of stepparent with whom a child resides, or a surrogate parent. If the child is living with someone other than a parent, a determination needs if that person has legal custody of the child. If the person does not have legal custody, then it must be determined whether the child's parents have given written authority for someone to make decisions on educational issues on their behalf. A parent has the right to accept or decline special education services for their child if legal custody of the child has not been transferred to the state. Informed parental consent is necessary before a school conducts an initial evaluation, before a school provides special education and related services for the first time, and before a school conducts a reevaluation of a child. In cases where a parent refuses to agree to an evaluation or reevaluation and the school wants to continue

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irrespective of the parents' feelings, the school can choose to seek mediation or a due process hearing as a means of resolving the issue.

1.3.7 Parent Surrogate. If the parents or guardian of the child with a disability is unknown or is unavailable, someone can be appointed to work with school officials on the child's behalf. The selection and retention of a parent surrogate is governed by strict policies to be discussed later in this module. The local education agency should be contacted for assistance in implementing this provision.

1.3.8 Age Levels. The law requires that children services be provided for children between birth and 21 years of age.

1.3.9 Private Settings. The provisions of IDEA also cover individuals who are served in private settings.

1.3.10 Finances. Educational institutions must spend as much revenue educating children with disabilities as it does educating children without disabilities. Funds received by local districts are to be used only to cover the additional costs of educating children with disabilities.

1.3.11 Planning. Each state must submit a plan to the United States Commissioner of Education on how it proposes to educate students with disabilities. Local districts submit a similar plan to the state.

1.3.12 Interim Services. When a youth with an IEP is referred to a facility, that facility must implement the existing IEP or hold a new IEP meeting in accordance with federal law. This includes notifying the parent and including the parent at the new IEP meeting.

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1.3.13 Special Education in Lockdown. When youth are removed to a more restrictive setting because of behavioral issues, the provisions of the IEP remain consistent in a juvenile facility. This transfer may constitute a change of placement, which requires the parent's involvement. Students and parents have the right to challenge placements and modification in their IEP (Leone, Rutherford, & Nelson, 1991).

1.4 The IDEA sets forth certain criteria for a *free appropriate public education* under the law. You may hear these criteria referred to by the acronym *FAPE*. Refer to Transparency T-4.

1.4.1 Free. IDEA specifies that services be provided for all eligible persons at public expense, without charge to the parent.

1.4.2 Appropriate. Educational services for persons with disabilities are to be provided in accordance with the criteria set forth by the law.

1.4.3 Public. The law applies to any public institutions within a state. The provisions of IDEA also cover individuals who are served in private educational settings.

1.4.4 Education. The services that are provided are meant to benefit and support the education of the eligible individual.

1.5 We should certainly consider what the term *special education* means (Transparency T-4A & T-4B).

1.5.1 Teachers often respond to differences in the abilities of students by dividing them into groups. These arrangements are usually adequate to respond to most differences (Bolson, Quinn, Nelson, in press).

- 1.5.2 Students with more significant differences may require programs designed for their special needs (You may wish to refer to Module 6 in this series on Curriculum).
  - 1.5.3 Special education is instruction designed to respond to the unique characteristics of children who have needs that cannot be met by the standard school curriculum.
  - 1.5.4 Programs may consist of changes in content, instructional methods, instructional materials, and expected rate of progress. These programs are called Individualized Education Programs (IEPs).
  - 1.5.5 Specially designed educational programs also may call for supportive related services that go beyond academic instruction.
- 1.6 The related services provision of IDEA recognizes that students with disabilities often require more than just academic instruction to benefit from their educational programs. While they are called related services, these services are really necessities. Without related services, the student might be excluded from appropriate programs. Some specific examples of related services follow.
- 1.6.1 Developmentally related services. These are services that can take the form of early identification and assessment of disabilities in children, physical therapy, and certain medical examinations. However, medical examinations are only considered related services when provided as diagnostic services to determine a student's medically related disability and the extent to which the student may require special education. Ongoing medical attention is not considered a related service.

1.6.2 Corrective services. These services include speech pathology, audiology, and occupational therapy.

1.6.3 Supportive services. These services include such things as counseling or psychological services, recreation, parent counseling or training, social work services in the school, and transportation and special transportation requirements.

Three issues with respect to related services have caused concern among many school districts. Transparency T-5. Some school districts have been reluctant to provide related services other than those currently available in their schools for fear that the school district will be unable to meet the financial obligations of providing related services. It should be noted that IDEA does mandate that related services should be provided at no cost to parents. However, the law does not require that school districts bear the full cost of related services. Interagency agreements offer one option for sharing the cost of related services. Such agreements allow costs to be distributed among the agencies that will be providing related services. Some school districts have argued that any level of provision of a related service meets the intent of the law. However, the real issue is not the amount of a related service that is provided, but whether or not the student receives sufficient related services to benefit from their educational program. Other school districts have found it difficult to draw the line between medical services and related services. The federal regulations do require that medical diagnostic services be provided free of charge to parents, but that parents are responsible for the cost of ongoing medical treatment. Decisions regarding related medical services should be based on whether the service is necessary to enable the student to benefit from their educational

program. The related services requirement may be one of the most difficult provisions of IDEA to implement in correctional settings, where access to certain services is limited.

1.7 Once a student has been referred for special education evaluation and services, there are certain due process procedures which must be initiated to ensure the rights of the student and their parents.

1.7.1 Following screening or initial referral, parents are to be notified of the action the public agency wishes to initiate. In addition to being notified, their consent is required prior to the agency conducting an individual educational evaluation. Parental consent is also required prior to initial placement into special education.

1.7.2 At the time of placement, the agency also should inform the parents of their right to access their child's records and to request an independent evaluation if they choose. It likewise is the responsibility of the agency to describe their right to a hearing as provided in Section 121a.508 of the regulations. Most agencies provide this information to parents at each and every meeting during which the child's placement or program will be discussed.

1.7.3 Parents are entitled to a due process hearing before an impartial hearing officer if they wish to challenge the identification, evaluation, or educational placement of their child. In a hearing, parents have the right to counsel and/or persons knowledgeable about their child's disability. They have the right to present information and to cross-examine, to confront and compel the attendance of witnesses, and to prohibit the introduction of any

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evidence that has not been disclosed at least five working days before a hearing. Parents have the right to a written or electronic record of the proceedings, and written or electronic information about the decision within 45 days after the school receives the hearing request.

1.7.4 If no parent can be identified or their whereabouts cannot be determined, or if the student is a ward of the state, then it is the responsibility of the public agency to assign a surrogate parent to act on the behalf of the student. The procedures for selecting and assigning surrogate parents are governed by state law. However, IDEA requires that they not be employees of any public agency which is involved in the education or care of the student. Additionally, they must have no conflicts of interest and possess the knowledge and skills to represent the student adequately.

2. To receive services under IDEA, a student must be determined eligible. Not all students who experience problems in school require special education services. Furthermore, not all children with disabilities require special education and related services; some show appropriate school progress without special education and related services. To be considered eligible, the student must be found to have one or more of the disabilities defined in IDEA, and require special education and related services.

2.1 There are currently 13 categories of disabilities defined in IDEA: autism, deafness, deaf-blind, hearing impairment, mental retardation ,multiple disabilities, orthopedic impairment, other health impairment, emotional disturbance, specific

learning disability, speech or language impairment, traumatic brain injury, and visual impairment.

2.2 The most common disabilities found among incarcerated youth are specific learning disability, emotional disturbance, and mild to moderate mental retardation.

2.3 Students are usually identified and referred for evaluation in one of three ways.

2.3.1 Systematic screening. Screening tests are used in many school settings to identify students who may be candidates for further evaluation of the need for special education and related services. In correctional settings, youth are generally screened as part of the classification process as they enter the system.

2.3.2 Referral. A referral for special education services can come from any person who knows the student (including the student him-or-herself) but the most frequent referrals are made by teachers.

2.3.3 Parental Request. Parents also have the right to request an evaluation of their child's need for special education and related services.

2.4 IDEA includes a number of mandates to ensure that evaluations are conducted in a fair and unbiased manner.

2.4.1 First, tests and evaluation materials must be administered in the student's native language.

2.4.2 Second, the law requires that no single procedure be used as the sole criterion for determining an appropriate educational program.

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2.4.3 Third, tests must measure what they purport to measure. For example, an IQ test for a student with a language problem should not rely heavily on verbal responses.

2.4.4 Fourth, the law requires that the evaluation be planned, conducted, and reviewed by a multidisciplinary team or group of persons. This means persons from various specialties should be included in the evaluation process.

2.4.5 Finally, the law requires that the student be assessed in all areas that are related to the suspected disability. The evaluation should include, where appropriate, health, vision/hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

2.5 Once the evaluation procedures are completed, the decision as to whether a student is eligible for special education and related services is made by the multidisciplinary team or the school-based committee. The multidisciplinary team or school-based committee will generally base the decision on a number of criteria.

2.5.1 First, the team will use the collected evaluation data to determine whether the student meets one or more of the definitions of disability. Most states have attempted to establish standardized criteria for meeting the definitions of disability found in IDEA.

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2.5.2 Second, the team will use the collected evaluation data and input from team members to determine whether the student requires special education and related services.

3. Development of Individualized Education Programs.

3.1 Once the decision regarding eligibility and placement of a student have been made, IDEA requires that an Individualized Education Program (IEP) be developed.

3.1.1 The IEP is a document that describes the educational program that has been designed to meet the child's unique needs.

3.1.2 By law, the meeting to develop the IEP must be held within 30 calendar days of deciding that the child is eligible for special education and related services. In most cases the IEP meeting is held immediately following the eligibility meeting.

3.2 The law requires that certain individuals must be involved in the development of the individualized education program. These individuals are expected to work together as a team to write the student's IEP. The members of the team should include the following:

3.2.1 Parents. Federal law recognizes parents as key members of the IEP development team. However, this can present problems for students who are incarcerated. Contacting the parents can often be difficult and having these parents present for IEP team meetings can be impractical. Make repeated attempts to include the parent or guardian and accommodate their schedules.

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- 3.2.2 Teachers. Both regular and special education teachers are recognized as critical members of the IEP development team. The regular education teacher can provide information regarding the current curriculum and strategies that have been helpful in dealing with academic and behavior problems. A special education teacher can use his or her training to offer suggestions regarding modifications to the curriculum and other aspects of individualizing instruction to meet the student's unique needs.
- 3.2.3 An individual who can interpret the meaning of evaluation results. The team should include someone who cannot only interpret the meaning of the evaluation results, but the instructional implications of the results.
- 3.2.4 An individual representing the school system. It is important to have a person available who can speak knowledgeably about the resources available in the student's educational setting. This person should also have the authority to commit district resources.
- 3.2.5 Individuals with knowledge or special expertise about the student. The parent or school system can invite certain individuals to participate on the IEP team. These should be persons who can provide additional valuable insights. A parent or guardian may choose to invite an advocate who knows the child. The school system may choose to invite a paraprofessional or classroom assistant who knows the child.
- 3.2.6 Representatives from transition agencies. Transition refers to activities meant to prepare students for a movement to adult life. When a student reaches the age of 14, the IEP should include "transition planning". This

involves helping a student plan his or her courses of study. When a student reaches the age of 16, the IEP should include transition services (to be discussed later). When the purpose of an IEP meeting is to plan transition services for a student, a representative of the transition agency must be invited to the meeting. Efforts should be made to include a transition representative who has the authority to commit financial resources related to the transition services. If the representative is unable to attend, the school system must make some sort of arrangement.

3.2.7 The student. When possible, students should be invited to attend their own IEP meetings. When the purpose of an IEP meeting is to discuss transition services, the student *must* be invited to the meeting.

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3.3 By law, an IEP is expected to contain specific components. The law does *not* say what an IEP should look like, only what information it should contain. The forms for documenting IEPs will differ across states, facilities, and schools. However, all of these forms should document the following information.

3.3.1 Present levels of educational performance. The IEP must state how the student is currently performing in school. This information can come from the evaluation results, parent and teacher observation, or other school staff. This section of the IEP should include a description of how the student's disability affects his or her performance in school.

3.3.2 Annual goals. Annual goals are statements of levels of achievement the student can be expected to accomplish in a year. The annual goals should relate directly to the student's academic, social, behavioral, and/or

physical needs. The annual goals are further broken down into a series of short term objectives. Both the annual goals and short-term objectives should be measurable. In other words, any person reading the annual goals or short-term objectives should be able to devise a way to measure student progress toward achievement of the goals and objectives.

- 3.3.3 Special education and related services. The IEP must list the special education and related services that will be provided to the student to ensure s/he can benefit from his/her educational program.
- 3.3.4 Participation with children without disabilities. As described earlier, one of the major focuses of IDEA involves providing educational services in the least restrictive environment. The IEP must include a description of the degree to which the student will *not* participate in regular classes or other regular school activities.
- 3.3.5 Participation in state- and district-wide testing. Many states require some form of state- or district-wide testing. The IEP must state how such tests must be modified for the student to participate in testing. If the child cannot participate, then the IEP must state why and explain how the student will be tested.
- 3.3.6 Dates and places. The IEP must list the schedules for all services being provided: when they will begin; how often they will be provided; where they will be provided; and how long they will last.
- 3.3.7 Transition services needs. For children who reach the age of 14, the IEP must contain transition planning information related to how the student's

courses of study will be designed to promote success in postschool goals.

Transition planning requires the same level of parental involvement as does the IEP. When reaching the age of 16, the IEP must contain transition services information detailing the specific services that are needed for the student to enter the postschool environment.

3.3.8 Age of majority. Some states transfer certain rights from parent to child when the child reaches the age of majority. At least one year before a student reaches the age of majority, the IEP must include a statement that the child has been informed that such a transfer of rights will take place when the child reaches the age of majority.

3.3.9 Measuring progress. The IEP must include a description of how the student's progress toward educational goals will be measured. The IEP should also include a description of how the student's parents will be notified of progress toward educational goals.

3.3.10 Additional information. States and school systems may require additional information be included in the IEP to help document their compliance with other federal regulations. For instance, the IEP might include documentation that a meeting was held in a timely manner and that the parent received a copy of the procedural safeguards.

4. If you work in an environment that includes providing services for students with disabilities, you may be part of an IEP team and should be prepared to make placement decisions. Once the IEP has been developed, the committee must decide where the student will receive special education services.

4.1 It is important to understand the impact that the student's disability has on their behavior before placement (Office of Juvenile Justice and Delinquency Prevention, 2000). The law requires that placement decisions should be made based on the educational goals included in the child's IEP. That is why the placement decision is not made until after the IEP has been written. Care should be taken not to automatically assign all students with the same disability to the same educational setting. The setting selected should be the least restrictive environment (Transparency T-19). This means that students with disabilities are to be educated, to the greatest extent possible, in the settings with students without disabilities. In a setting as close as possible to regular education classes, the law requires that schools make a good faith effort to educate students with disabilities in less restrictive settings before placing them in more restrictive settings (Yell, 1998).

4.2 Federal law requires that each public agency provide a continuum of services (Lewis, Schwartz, & Ianacone, 1988). A continuum of services means that a set of environments is made available. In typical school situations, the continuum of services might include the following:

- 4.2.1 Regular class placement with few or no supports
- 4.2.2 Regular class placement with consulting assistance
- 4.2.3 Regular class placement with itinerant specialist assistance
- 4.2.4 Regular class placement with resource room assistance
- 4.2.5 Special class placement with part-time regular class
- 4.2.6 Full-time special class placement

4.2.7 Special day school

4.2.8 Residential school

4.2.9 Homebound instruction

4.2.10 Hospital or institution

4.3 It is expected that most students will be served in the least restrictive environment and that few students will be served in the most restrictive environments. A continuum of services is required for two basic reasons. First, when a continuum does not exist, then placement decisions are frequently made on the basis of what the school offers, instead of being based on the individual needs of the student. Second, if gaps exist in the continuum of services, then it is highly probable that the student will remain in a more restrictive setting because a slightly less restrictive alternative does not exist.

5. IDEA was designed to accommodate a public school service delivery model. The provisions of IDEA also cover state and local adult and juvenile populations in correctional facilities. If correctional facilities fail to comply with IDEA mandates, they can be challenged through class-action civil rights litigation, individual lawsuits, or administrative proceedings (Office of Juvenile Justice and Delinquency Prevention, 2000). Implementing IDEA and developing IEPs in correctional settings can raise a variety of problems.

5.1 What are the general issues that create problems in implementing IDEA in correctional settings (Transparency T-22)?

5.1.1 Mobility Issues. Adjudicated youth are often held in a variety of settings for short periods of time as they move through the corrections system. The

mobility of youth in the corrections system can make identification, evaluation, and program development difficult (Pasternack, Protillos, & Hoff, 1988). It also can make it difficult to provide a consistent level of educational services across facilities.

5.1.2 Records Exchange. Obtaining records is often problematic when students move from school district to school district. This problem is even more difficult when records are to be transferred between a school and a correctional facility or between correctional facilities. In one survey, only 42% of correctional education directors reported being informed by another agency when a student with a disability entered their facility (Lewis, Schwartz, & Ianacone, 1988).

5.1.3 Safety/Security Issues. The requirement to serve students with disabilities in the least restrictive environment poses safety and security issues for correctional institutions. In one such instance, a student was being held in a maximum security unit that offered only one hour of educational instruction per week. A problematic issue arose because the student's IEP required 5.5 hours of educational instruction per day. In this case, a grievance was filed and the hearing officer found that the institution had two options: They could educate the student in the main educational building with additional security, or, they could provide the 5.5 hours of educational instruction within the maximum security unit. Clearly, safety and security issues must be balanced with the mandate to provide special education services.

- 5.1.4 Administration of Services. The responsibility for the cost and administration of special education services has been a complex issue. Students are often incarcerated in facilities that are located in a school district different from their home school district. In such cases, state statutes and regulations vary with regard to the responsibility for funding and administration of services.
- 5.1.5 Parental Involvement (refer to Handout 1). IDEA mandates a high degree of parent involvement. It is often difficult, if not impossible, for parents to be involved in the special education program if their child is incarcerated. As discussed earlier, in some cases it may be necessary to appoint a surrogate parent to participate in the place of the parent. Correctional facilities can have difficulty in identifying surrogate parents that meet the guidelines set forth by most states. The appointment of a surrogate parent is regulated by a strict set of guidelines that may vary slightly from state to state. However, in general, the guidelines are as follows.
- 5.1.5.1 A surrogate parent should be appointed when the parents are unwilling or unable to participate and the student is not considered to be an adult, or when the student is over 18 but is disabled to the extent that he/she cannot protect his/her own interests.
- 5.1.5.2 The agency must document repeated attempts to contact the parent. If the parent fails to respond or fails to attend mutually agreed upon meetings, the agency can begin the process of appointing a surrogate parent. Parents should be notified in writing when this

process begins and the parents retain the right to represent their child at any time they choose to become involved on their own behalf.

5.1.5.3 In some states, students who are at least 18 years of age are considered adults and can function as their own advocate. In some states, all inmates in adult facilities are considered to be emancipated adults. In either case, such students are accorded all the rights and procedural safeguards usually granted to the parent.

5.1.5.4 At least one year before the student reaches the age of majority, the school must notify the student and his or her parents that parental rights and procedural safeguards provided under IDEA will transfer to the youth at the age of majority. In cases where a guardian or conservator makes decisions for a youth, then the transfer of right does not occur. If a guardian or conservator has not been appointed and a school district considers the student unable to make informed educational decisions, then the parents or another individual can be appointed to represent the student's educational interests.

5.1.5.5 The guidelines for the selection of a surrogate parent require that the surrogate be competent to act as an advocate for the child and that they establish a relationship with the child. To avoid conflicts of interest, the surrogate may not be an employee of the agency responsible for the child.

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5.2 Recommendations (Transparency T-23). Educating a variety of correctional staff with respect to the provisions and implementation of IDEA is one approach to increasing the level of appropriate services. However, simply educating staff is not likely to impact the degree to which the procedural guidelines of IDEA will be included in the policy and administration of correctional facilities. Robinson and Rapport (1999) offer a set of short procedural checklists to assist staff in implementing the provisions of IDEA in both short-term and long-term facilities. (See Handout: Checklist for Short-term Facilities and Handout: Checklist for Long-term Facilities.) As mentioned earlier, the movement of adjudicated youth through a range of settings can make timely service delivery difficult. Make every effort to obtain the student's records from the prior school district. Make screening for special education services a part of intake procedures. Finally, seeking out collaborative agreements with various state and district agencies is one of the best ways to solve some of the difficult issues related to mobility, records exchange, administration of services, and parental involvement.

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## Handout 1

### **Parent and Family Involvement in Special Education Programming**

This section focuses on the role of parents or parent surrogates in the special education process. The following is a list of recommendations for trainers related to the delivery of information about parents of youth with disabilities in the juvenile and adult corrections system.

- A. Parental involvement in special education planning is especially important when a child is incarcerated and has access to fewer advocates.
- B. Anecdotal evidence shows, however, that parent attendance and involvement in special education planning for their child is often problematic when the youth is incarcerated.
- C. In some instances, students with disabilities whose parents either cannot or will not be involved in the IEP process should be assigned a surrogate parent to advocate for the student's rights and interests.

### **Barriers to Parent Involvement: Prior School Experiences**

Significant barriers often exist for parent involvement in IEP planning meetings in correctional setting.

- The first barrier is often their prior negative experiences with the IEP process when their child attended public school.
- Parents may not have been involved in the special education process in the past.
- Parents are often unaware that their participation is essential and potentially influential.
- Parents often are unaware that their child's behavioral difficulties and learning needs are related to the presence of a disability.

- Parents' suggestions for working with their child often are not respected. They may be accused of "enabling" their child's problems and disabilities rather than supported for being good advocates.
- Parents are often ignored or blamed for their child's misbehavior by persons in authority and, as a result, are wary of individuals in social services, health services, education, or the juvenile justice system (Garfinkle, 2000).
- Parents acknowledge that there may have been repercussions for their children when they were vocal in their response to school issues.

### **Barriers to Parent Involvement: Personal Issues**

- In some cases, parents don't participate because they may have a negative relationship with their child as a result of years of stress, frustration, and lack of knowledge about how to interact with a child with problematic behaviors.
- Parents may be overwhelmed by their own life challenges including poverty, their own mental health, and lack of community or family supports.
- Parents may not be informed in a timely way about IEP meetings and may be unable to attend meetings because of job responsibilities or the lack of childcare.
- Parents may be unable to access childcare so that they can leave their home and attend a meeting.

### **Barriers to Parent Involvement in the Correctional Setting**

- Parents may be intimidated by the corrections setting and fearful that by advocating there will be repercussions for their child.
- Parents may not have access to transportation to the incarceration site, especially when the child is placed in a setting far from home.
- Parents believe that there is no center of control in the corrections setting; they do not know who is in charge and to whom complaints should be addressed.

### **Strategies for Parent Involvement in the Correctional Setting**

It is recommended that:

- IEP meetings take place in an easily accessible location, planned around visiting day, or conducted via conference call with parents.

- Transportation and childcare be available for parents who attend IEP meetings.
- The setting is conducive to interaction between team members and parents (e.g., seating at round tables).
- IEP meetings are conducted in family-friendly language that parents can understand.
- Parents should be encouraged to express their opinions without fear of retribution for their incarcerated child.
- Parents should be encouraged to ask questions if they don't understand something.
- Resources in the community, such as parent training centers and disability advocacy groups, should be identified for parent support (Rutherford, Quinn, Leone, Garfinkle, & Nelson, 2002).
- All written information in the IEP is presented in clear, straightforward language and is arranged according to topics (i.e., discipline, assessment, etc.).

### **Parent Involvement under IDEA**

The provisions of the Individuals with Disabilities Education Act (IDEA) are applicable in all state and local juvenile and adult criminal corrections facilities. The only exception for entitlement to special education services are for those youth ages 18 through 21, who in their last educational placement prior to incarceration in an adult criminal correctional facility, had not been identified previously as a child with a disability and did not have an IEP (Burrell & Warboys, 2000).

Parent and parent surrogate roles are clearly defined under IDEA. *Parent* is legally defined as the biological or adoptive parent; a guardian (excluding the state, if the child is a ward of the state); a person acting instead of the parent, including a grandparent or stepparent with whom a child resides; or a surrogate parent. *A surrogate parent* is someone assigned by the state to act as the child's parent for purposes of special education services, in cases where the parent cannot be located or the child is a ward of

the state. A state or school employee may not act as the child's surrogate parent. If the child is living with someone other than a parent, a determination needs to be made of whether that person has legal custody of the child. If the person does not have legal custody, then it must be determined whether the child's parent has given her/him written authority to make decisions on educational issues. A parent has the right to accept or decline special education services for their child if legal custody of the child has not been transferred to the state. Informed parental consent is necessary before a school conducts an initial evaluation, before a school provides special education and related services for the first time, and before a school conducts a reevaluation of a child. In cases where a parent refuses to agree to an evaluation or reevaluation and the school wants to continue irrespective of their feelings, the school can choose to seek mediation or a due process hearing as a means of resolving the issue.

### **Due Process**

Parents are entitled to a due process hearing before an impartial hearing officer if they wish to challenge the identification, evaluation, or educational placement of their child. In a hearing, parents have the right to counsel and/or persons knowledgeable about their child's disability. They have the right to present information and to cross-examine, confront, and compel the attendance of witnesses and to prohibit the introduction of any evidence that has not been disclosed at least 5 working days before a hearing. Parents have the right to a written or electronic record of the proceedings, and written or electronic information about the decision within 45 days after the school receives the hearing request.

## **IDEA in Juvenile Facilities**

Long-term juvenile facilities have the obligation to identify youth with disabilities who have not been identified previously as eligible for special education. Because the evaluation process calls for parental consent, parents can initiate this process. This mandate also applies to short-term facilities. The facility education staff must ensure that requests for reevaluation by parents and teachers are honored.

## **Interim Services**

When a youth with an IEP is referred to a facility, this facility must implement the existing IEP or hold a new IEP meeting in accordance with federal law. This includes notifying the parent and including the parent at the new IEP meeting (U.S. Department of Education, 2000).

## **Parent Involvement**

- Staff must include parents in the IEP process as defined under IDEA. With the exception of rulings made by the court to limit their rights, parents of youth in correctional settings have the same rights as parents of youth who are students in public schools including the right to due process and mediation.
- Due process protections are separate from any internal institutional grievance procedure. As such, officials may not require students or parents to fulfill steps not required by IDEA in order to challenge school officials' decisions.
- Facilities staff should inform youth and their parents or surrogate parents of their rights under IDEA.
- Parents have the right to examine records, receive written notice of proposed actions (or refusal to take actions), and participate in meetings involving the identification, evaluation, and educational placement of their child as well as the provision of FAPE.
- Parents have the right to ask for a reevaluation of their child if that child is in state custody.

- In theory, parents may have the right to challenge a child's exclusion from a correctional education setting because of disciplinary issues related to their disability under the Americans with Disabilities Act.
- Distance from an institution should not interfere with parent involvement in an IEP. The facility has an obligation to keep parents involved, whether through teleconferencing, FAXs, or any other means of communication.
- Similarly, surrogate parents can be appointed as part of the due process protection and have all the same rights regarding education as parents. Surrogate parents may be independent and may not be appointed from within the corrections system.

### **Special Education in Lockdown**

When youth are removed to a more restrictive setting because of behavioral issues, the provisions of the IEP remain consistent in a juvenile facility. This transfer may constitute a change of placement which requires the parent's involvement. Students and parents have the right to challenge placements and modifications in their IEP.

### **Transition**

Transition planning for youth with disabilities is often the weak link in special education services for incarcerated youth. While a majority of youth in the delinquency system fall within the age range where transition services are mandated, under IDEA, transition planning should begin at age 14 with full services beginning optimally at 16 or earlier where appropriate. Transition planning requires the same level of parent involvement as does the IEP. For youth with disabilities who are incarcerated, transition planning has great significance because their successful return to the community is predicated on developing a highly structured transition plan that includes educational planning, vocational counseling, mental health and services, job placement skills, independent living skills, strategies for success in the community, and cognitive and social skills.

Transition planning is critical in developing a reintegration plan that can prepare the youth for increasing responsibility in the community.

### **Transfer of Parental Rights**

At least one year before the student reaches the age of majority (as established in each state), the school must notify the student and his/her parents that parental rights and procedural safeguards provided under IDEA will transfer to the youth at the age of majority. In cases where a guardian or conservator makes decisions for a youth, then the transfer of rights does not occur. If a guardian or conservator has not been appointed and a school district considers the student unable to make informed educational decisions, then the parents or another individual can be appointed to represent the students educational interests.

## **Handout 2**

### **Checklist for Short-Term Facilities** (from Robinson & Rapport, 1999)

1. Contact the student's prior school district to obtain educational records (e.g., IEP).
2. Implement the IEP from the student's prior school district with necessary modifications.
3. Conduct screening during initial arrival at the correctional facility in the absence of an IEP.
4. Because parental notification and approval are required according to IDEA, officials should make every effort to contact and involve parents of youth with a suspected disability.
5. For youth with a suspected disability, conduct a thorough evaluation according to IDEA regulations.
6. In the absence of an IEP, hold an IEP meeting for youth who qualify for special education services.
7. Design an IEP that meets the needs of the student within the safety and judicial constraints of the facility.
8. Facilitate transition back to the public school system or into a long-term institution.

### **Handout 3**

#### **Checklist for Long-Term Facilities (from Robinson & Rapport, 1999)**

1. Collaborate with the short-term facility to enable youth to make a smooth educational transition.
2. Conduct screening during initial arrival at the correctional facility if the short-term facility reports no previous screening.
3. If no previous screening was completed at the short-term facility, conduct a thorough evaluation of students with suspected disabilities according to IDEA regulations.
4. Because parental notification and approval are required according to IDEA, officials should make every effort to contact and involve parents of youth with a suspected disability.
5. If the student qualifies for special education services, hold an IEP meeting.
6. Design an IEP that meets the needs of the student within the safety and judicial constraints of the facility
7. Upon release, facilitate transition back to the public school system through continued collaborative efforts with the receiving school district.

# Problems and Purpose

## Problems

- Many children excluded from services
- Children receiving inadequate instruction
- Lack of rights for parents and guardians
- States and districts lacked sufficient funds

## Purpose

- Insures the provision of a free, appropriate public education
- Protects the rights of parents, guardians, and children
- Assists states and districts with funding
- Monitor and insure state efforts

# Amendments to IDEA

- 1983
  - Extended services down to the age of 3
- 1986
  - Added Services for infants and toddlers
- 1990
  - Education for All Handicapped Children Act renamed Individuals with Disabilities Education Act
- 1997
  - Clarified effect of disciplinary procedures, assessment, intervention planning, and increases parental involvement.

# Obtaining a Copy of IDEA

- From the Web
  - Office of Special Education and Rehabilitation
  - [http://www.ed.gov/offices/OSERS/IDEA/the\\_law.html](http://www.ed.gov/offices/OSERS/IDEA/the_law.html)
- By Mail
  - EDPUBS (<http://www.ed.gov/pubs/edpubs.html>)
  - 1-877-4-ED-PUBS.
  - Government Printing Office  
Superintendent of Documents  
PO Box 37195-7954  
Pittsburgh, PA 15250  
202-512-1800

# Major Provisions of IDEA

- Due Process
- Least Restrictive Environment
- Nondiscriminatory Assessment
- Individualization
- Confidentiality
- Parent Surrogate
- Age Levels
- Private Settings
- Finances
- Planning

T-4

**FAPE =**

## **Free Appropriate Public Education**

- **Free:** provided for all eligible persons at public expense without charge to the parent.
- **Appropriate:** provided in accordance with the criteria set forth by the law.
- **Public:** IDEA covers individuals who are served in public and private educational settings
- **Education:** meant to benefit and support the education of the eligible individual.

# What is Special Education?

- Instruction designed to respond to the unique characteristics of children who have needs that cannot be met by the standard school curriculum.

T-4B

# Special Education

may consist of changes in:

- Content
- Instructional Methods
- Instructional Materials
- Expected Rate of Progress
- Individualized Education Programs (IEPs)

T-6

# Related Services: Examples

- Developmentally Related Services
- Corrective Services
- Supportive Services

# Related Services: Issues

## Issue

- Financial Obligations
- Amount of Service
- Medical vs. Related Services

## Solution

- Interagency Agreements
- Educational Benefit
- Diagnostic vs. Ongoing Services

# Due Process Procedures

- Parental Informed Consent
  - At initiation of referral
  - At initial evaluation
  - At placement
  - Right to review records
  - Right to an independent evaluation
  - Right to initiate hearing
- Surrogate Parent

# Eligibility

To be considered eligible for special education services, a student must

- Be found to have one or more of the disabilities defined in IDEA.
- Require special education or related services.

# Eligibility: Categories

- Autism
- Deafness
- Deaf-blind
- Hearing Impairment
- Mental Retardation
- Multiple Disabilities
- Orthopedic Impairment
- Visual Impairment
- Other Health Impairment
- Emotional Disturbance
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury

T-10

# Most Common Disabilities Among Incarcerated Youth

- Emotional Disturbance
- Specific Learning Disability
- Mental Retardation

# How are youth identified?

- Systematic screening
- Referral by a teacher or other person
- Self-referral by student
- Parental request
- Intake screening

# Fair and Unbiased Evaluation

- Administer tests in student's native language
- Use multiple assessment instruments
- Use assessments that are valid
- Insure that the assessment is planned and reviewed by a multidisciplinary team
- Assess in all areas related to the suspected disability.

# Evaluations should include

- Health
- Vision
- Social and emotional status
- General intelligence
- Academic performance
- Communicative status
- Motor abilities

# Determining Eligibility

The multi-disciplinary team should

- Use the collected evaluation data to determine whether the student meets one or more of the definitions of disability.
- Use the collected evaluation data to determine whether the student requires special education and related services.

# Individualized Education Programs

- The IEP describes the educational program that has been designed to meet the child's unique needs.
- The meeting to develop the IEP must be held within 30 calendar days of deciding that the child is eligible.

# Individualized Education Programs: The IEP Team

- Parents
- Teachers
- Someone who can interpret the test results
- Someone representing the school system
- School system expert
- Parent advocate
- Transition specialist
- The student!!!

# Individualized Education Programs: The Components

- Present levels of educational performance
- Annual goals
- Special education and related services
- Participation with children without disabilities
- Participation in statewide and district testing
- Dates and places
- Transition services
- Age of majority
- Measuring progress
- Additional information

# The Placement Decision

- Based on the educational goals in the IEP
- Placement should be determined **AFTER** development of the IEP
- **DO NOT** automatically assign the student to a setting for students with the same disability
- Select the least restrictive environment

T-19

# The Least Restrictive Environment (LRE)

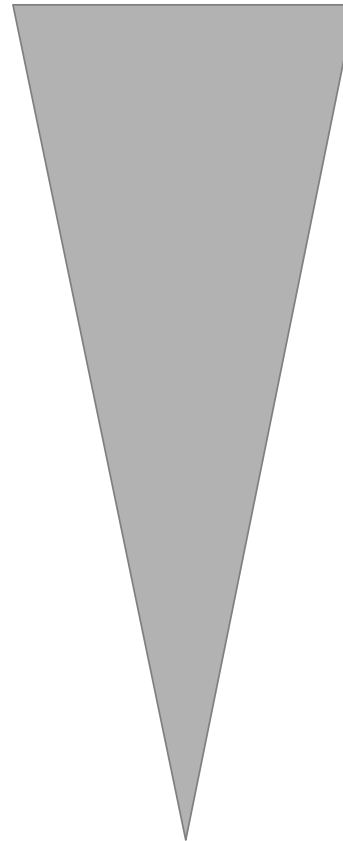
Students with disabilities  
should be educated with their  
peers without disabilities to the  
maximum extent possible (IDEA, 34

C.F.R. § 300.550(b)(2)).

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# The Placement Decision: Continuum of Services

- Regular class
- Regular class + consultation
- Regular class + itinerant
- Regular class + resource
- Special class + regular class
- Special class
- Special day school
- Residential
- Homebound
- Hospital or institution



Least  
Restrictive

Most  
Restrictive

# Implementing IDEA in Correctional Settings: Issues

- Mobility
- Records Exchange
- Safety and Security
- Administration of Services
- Parental Involvement

# Implementing IDEA in Correctional Settings: Issues

- Surrogate Parent
  - When the parent is unwilling or unable to participate and
    - (a) The student is not considered an adult.
    - OR
    - (b) The student is over 18 but cannot protect their own interests.

# Implementing IDEA in Correctional Settings: Recommendations

- Educate a variety of staff.
- Include IDEA mandates in facility policy and administrative procedures.
  - Robinson and Rapport Checklists (handouts 2 & 3)
- Make screening a part of intake procedures
- Seek collaborative agreements with various state and district agencies.

