

H.R.1350

Individuals with Disabilities Education Improvement Act of 2004 Section 614

SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

(a) EVALUATIONS AND REEVALUATIONS-

(1) INITIAL EVALUATIONS-

(A) IN GENERAL- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

(B) REQUEST FOR INITIAL EVALUATION- Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(C) PROCEDURES- Such initial evaluation shall consist of procedures--

(i) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State has established a timeframe within which the evaluation must be conducted, within such timeframe; and

(ii) to determine the educational needs of such child.

(D) PARENTAL CONSENT-

(i) IN GENERAL- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3) (A) or (B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(ii) REFUSAL- If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

(iii) REFUSAL OR FAILURE TO CONSENT- If the parent of a child does not provide informed consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent,

the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the special education and related services for which the local educational agency requests such informed consent.

`(iv) EXCEPTION FOR WARDS OF THE STATE- The agency shall not be required to obtain an informed consent from the parents of a child for an initial evaluation to determine whether the child is a child with a disability if such child is a ward of the State and is not residing with the child's parent and consent has been given by an individual who has appropriate knowledge of the child's educational needs, including the judge appointed to the child's case or the child's attorney, guardian ad litem, or court appointed special advocate.

`(2) REEVALUATIONS-

`(A) IN GENERAL- A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--

`(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

`(ii) if the child's parents or teacher requests a reevaluation.

`(B) LIMITATION- A reevaluation conducted under subparagraph (A) shall occur--

`(i) not more than once a year, unless the parent and the local educational agency agree otherwise; and

`(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

`(b) EVALUATION PROCEDURES-

`(1) NOTICE- The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

`(2) CONDUCT OF EVALUATION- In conducting the evaluation, the local educational agency shall--

`(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--

`(i) whether the child is a child with a disability; and

`(ii) the content of the child's individualized education program, including information related to enabling the

child to be involved in and progress in the general curriculum, or for preschool children, to participate in appropriate activities;

`(B) not use any single procedure, measure, or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

`(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

`(3) ADDITIONAL REQUIREMENTS- Each local educational agency shall ensure that--

`(A) tests and other evaluation materials used to assess a child under this section--

`(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

`(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;'

`(iii) are used for purposes for which the assessments or measures are valid and reliable;

`(iv) are administered by trained and knowledgeable personnel; and

`(v) are administered in accordance with any instructions provided by the producer of such tests;

`(B) the child is assessed in all areas of suspected disability; and

`(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

`(D) assessments of children with disabilities, including homeless children with disabilities, children with disabilities who are wards of the State, and children with disabilities in military families, who transfer from 1 school district to another school district in the same academic year, are--

`(i) coordinated with such children's prior and subsequent schools as necessary to ensure timely completion of full evaluations; and

`(ii) completed within time limits--

`(I) established for all students by Federal law or State plans; and

`(II) that computes the commencement of time from the date on which such children are first referred for assessments in any local educational agency.

`(4) DETERMINATION OF ELIGIBILITY- Upon completion of administration of tests and other evaluation materials--

`(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

`(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

`(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION- In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is--

`(A) lack of scientifically based instruction in reading;

`(B) lack of instruction in mathematics; or

`(C) limited English proficiency.

`(6) SPECIFIC LEARNING DISABILITIES-

`(A) IN GENERAL- Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602(29), a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

`(B) ADDITIONAL AUTHORITY- In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

`(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS-

`(1) REVIEW OF EXISTING EVALUATION DATA- As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall--

`(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments, and observations, and teacher and related services providers observations; and

`(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

`(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

`(ii) the present levels of performance and educational needs of the child;

`(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

`(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

`(2) SOURCE OF DATA- The local educational agency shall administer such tests and other evaluation materials and procedures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

`(3) PARENTAL CONSENT- Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that the local educational agency had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

`(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED- If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is or continues to be a child with a disability, the local educational agency--

`(A) shall notify the child's parents of--

`(i) that determination and the reasons for the determination; and

`(ii) the right of such parents to request an assessment to determine whether the child is or continues to be a child with a disability; and

`(B) shall not be required to conduct such an assessment unless requested by the child's parents.

`(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY-

`(A) IN GENERAL- Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

`(B) EXCEPTION-

`(i) IN GENERAL- The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or to exceeding the age eligibility for a free appropriate public education under State law.

`(ii) SUMMARY OF PERFORMANCE- For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

`(d) INDIVIDUALIZED EDUCATION PROGRAMS-

`(1) DEFINITIONS- As used in this title:

`(A) INDIVIDUALIZED EDUCATION PROGRAM-

`(i) IN GENERAL- The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--

`(I) a statement of the child's present levels of academic achievement and functional performance, including--

`(aa) how the child's disability affects the child's involvement and progress in the general curriculum; or

`(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

`(II) a statement of measurable annual goals, including academic and functional goals, designed to--

`(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum; and

`(bb) meet each of the child's other educational needs that result from the child's disability;

`(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child 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;

`(IV) a statement of the special education and related services, and supplementary aids and services, to be provided to the child, or on behalf of the child, and a statement of the program

modifications or supports for school personnel that will be provided for the child--

`(aa) to advance appropriately toward attaining the annual goals;

`(bb) to be involved in and make progress in the general curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

`(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

`(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

`(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

`(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why--

`(AA) the child cannot participate in the regular assessment; and

`(BB) the particular alternate assessment selected is appropriate for the child;

`(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

`(VIII) beginning not later than the first IEP to be in effect when the child is 14, and updated annually thereafter--

`(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

`(bb) the transition services (including courses of study) needed by the child to reach those goals, including services to be provided by other agencies when needed; and

`(cc) beginning at least 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

`(ii) RULE OF CONSTRUCTION- Nothing in this section shall be construed to require--

`(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

`(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

`(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM- The term `individualized education program team' or `IEP Team' means a group of individuals composed of--

`(i) the parents of a child with a disability;

`(ii) at least 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

`(iii) at least 1 special education teacher, or where appropriate, at least 1 special education provider of such child;

`(iv) a representative of the local educational agency who--
` (I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
` (II) is knowledgeable about the general curriculum;
and
` (III) is knowledgeable about the availability of resources of the local educational agency;

`(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

`(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

`(vii) whenever appropriate, the child with a disability.

`(viii) if the child is a ward of the State, another individual with appropriate knowledge of the child's educational needs, such as a foster parent, a relative with whom the child lives who acts as a parent to the child, an attorney for the child, a guardian ad litem, a court appointed special advocate, a judge, or an education surrogate.

`(C) IEP TEAM ATTENDANCE-

`(i) ATTENDANCE NOT NECESSARY- A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if that member, the parent of a child with a disability, and the local educational agency agree that the attendance of such member is not necessary because no modification to the member's area of the curriculum or related services is being modified or discussed in the meeting.

`(ii) EXCUSAL- A member of the IEP Team may be excused from attending an IEP 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--

`(I) that member, the parent, and the local educational agency consent to the excusal; and

`(II) the member submits input into the development of the IEP prior to the meeting.

`(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED- A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

`(2) REQUIREMENT THAT PROGRAM BE IN EFFECT-

`(A) IN GENERAL- At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

`(B) PROGRAM FOR CHILD AGED 3 THROUGH 5- In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is--

`(i) consistent with State policy; and

`(ii) agreed to by the agency and the child's parents.

`(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS-

`(i) IN GENERAL- In the case of a child with a disability, including a homeless child with a disability, a child with a disability who is a ward of the State, or a child with a disability in a military family, who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in the same or another State, the local educational agency, State educational agency, or other State agency, as the case may be, shall immediately provide such child with a free

appropriate public education, including comparable services identified in the previously held IEP and in consultation with the parents until such time as the local educational agency, State educational agency, or other State agency, as the case may be, adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

`(ii) TRANSMITTAL OF RECORDS- To facilitate the transition for a child described in clause (i), the new school in which the child enrolls shall immediately request the child's records from the previous schools in which the child was enrolled and the previous schools in which the child was enrolled shall immediately transmit to the new school, upon such request, the IEP and supporting documents and any other records relating to the provision of special education or related services to the child.

`(3) DEVELOPMENT OF IEP-

`(A) IN GENERAL- In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider--

`(i) the strengths of the child;

`(ii) the concerns of the parents for enhancing the education of their child;

`(iii) the results of the initial evaluation or most recent evaluation of the child; and

`(iv) the academic, developmental, and functional needs of the child.

`(B) CONSIDERATION OF SPECIAL FACTORS- The IEP Team shall--

`(i) in the case of a child whose behavior impedes the child's learning or that of others, provide for positive behavioral interventions and supports, and other strategies to address that behavior;

`(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

`(iii) in the case of a child who is blind or visually impaired--

`(I) provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and

`(II) consider, when appropriate, instructional services related to functional performance skills, orientation and mobility, and skills in the use of assistive technology devices, including low vision devices;

`(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

`(v) consider whether the child requires assistive technology devices and services.

`(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER- A regular education teacher of the child, as a member of the IEP Team shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

`(D) AGREEMENT- In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

`(E) CONSOLIDATION OF IEP TEAM MEETINGS- To the extent possible, the local educational agency shall encourage the consolidation of reevaluations of a child with IEP Team meetings for the child.

`(4) REVIEW AND REVISION OF IEP-

`(A) IN GENERAL- The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team--

`(i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

`(ii) revise the IEP as appropriate to address--

`(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

`(II) the results of any reevaluation conducted under this section;

`(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

`(IV) the child's anticipated needs; or

`(V) other matters.

`(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER- A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

`(5) THREE-YEAR IEP-

`(A) DEVELOPMENT OF 3-YEAR IEP- The local educational agency may offer a child with a disability who has reached the age of 18, the option of developing a comprehensive 3-year IEP. With the consent of the parent, when appropriate, the IEP Team shall develop an IEP, as described in paragraphs (1) and (3), that is designed to serve the child for the final 3-year transition period, which includes a statement of--

`(i) measurable goals that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's transitional and postsecondary needs that result from the child's disability; and

`(ii) measurable annual goals for measuring progress toward meeting the postsecondary goals described in clause (i).

`(B) REVIEW AND REVISION OF 3-YEAR IEP-

`(i) REQUIREMENT- Each year the local educational agency shall ensure that the IEP Team--

`(I) provides an annual review of the child's IEP to determine the child's current levels of progress and determine whether the annual goals for the child are being achieved; and

`(II) revises the IEP, as appropriate, to enable the child to continue to meet the measurable transition goals set out in the IEP.

`(ii) COMPREHENSIVE REVIEW- If the review under clause (i) determines that the child is not making sufficient progress toward the goals described in subparagraph (A), the local educational agency shall ensure that the IEP Team provides a review, within 30 calendar days, of the IEP under paragraph (4).

`(iii) PREFERENCE- At the request of the child, or when appropriate, the parent, the IEP Team shall conduct a review of the child's 3-year IEP under paragraph (4) rather than an annual review under subparagraph (B)(i).

`(6) FAILURE TO MEET TRANSITION OBJECTIVES- If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

`(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS-

`(A) IN GENERAL- The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

`(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(V) (relating to participation of children with disabilities in general assessments).

`(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

`(B) ADDITIONAL REQUIREMENT- If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

`(e) EDUCATIONAL PLACEMENTS- Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. Decisions regarding the educational placement of a child with a disability who is a homeless child shall comply with the requirements described under section 722(g)(3) of the McKinney-Vento Homeless Assistance Act.

`(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION- When conducting IEP Team meetings and placement meetings pursuant to this section, the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.