

Special Education Rule Changes

Parent attorneys [Deborah Mattison](#) and [Rachel McGinley](#) of Wiggins Childs Pantazis Fisher Goldfarb have prepared a brief legal analysis of the special education rule changes proposed by the Alabama State Department of Education (ALSDE). The rules, if enacted as written, would affect children receiving special education services. **Read the extensive draft – [Click here](#)**

Review the Alabama Department of Education proposed changes to the Administrative Code for Implementation of IDEA: [Click here](#)

Below is a brief explanation: Blue: Mattison & McGinley Green: General Comments Black – ADAP

Independent Educational Evaluations in Peril

The ALSDE proposes to change language surrounding Independent Educational Evaluations (IEEs). Under the IDEA, a parent has a right to an IEE at public expense if the parent disagrees with an evaluation obtained by the school system. A parent's right to an IEE is fundamentally important to ensure a free appropriate public education (FAPE). Depending on how they are interpreted, the proposed rules could limit a parent's right to an IEE to only certain situations. The ALSDE should keep the current rules as they are or rewrite them so they mirror the federal regulation. IDEA = Individuals with Disabilities Education Act

*Here is just one general comment & perspective – there may be others: **Unacceptable** - I am in agreement with this statement "...because the IEE should be an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. The IEE should not be limited to evaluating only a child's academic or cognitive skills, but may include the evaluation of any skill related to the child's educational needs. Evaluations of neurological functioning, adapted physical education, sensory needs etc...*

Shorter Statute of Limitation Impacting Children's Rights

The ALSDE proposes to shorten the time period for parents to file for due process after they find out about a violation of their children's rights. The time period (the statute of limitation) would be shortened from two (2) years to one (1) year. Shortening the time period might actually lead to more due process complaints being filed statewide; parents might be less willing to work with their schools before taking the giant step of filing for hearings if they know their claims might evaporate after a year. The two year statute of limitation should be maintained.

*Here is just one general comment & perspective – there may be others:: **Unacceptable** - because 1 yr. is potentially not enough time to: (1) observe a pattern(s), (2) discover an underlying issue(s) (3) realize a stimulus, cause or origin of the complaint (4) comparison of variants i.e.: environment, tasks, social, academic and behavior. No change is needed - the two year statute of limitation should remain.*

Additional Pleading Requirements

The ALSDE proposes to require more specifics from parents filing complaints. If these specifics are not met in the complaint, then the complaint could be dismissed. For parents who are filing complaints without the help of an attorney, this proposed rule change could lead to their complaints being dismissed more readily. The present rules have provisions that function well to ensure that schools and parents understand the legal claims being made. No change is needed.

*Here is just one general comment & perspective – there may be others:: **Unacceptable** (not because parents are against specificity) on the contrary, it is the specifics of their child's rights within the classroom and school that parents want addressed, rectified and adhered to in accordance with IDEA. Complaints filed without the help of an attorney should not be in jeopardy of having the complaint dismissed due to a parent's capability, knowledge or native language to use or apply educational terminology or legal wording when filing a complaint. The rules as they stand are successful and function well. No change is needed.*

Additional Hearing Requirements

The proposed rules require parents and schools to develop a joint statement of agreed upon facts and exhibits to be used at the hearing. This rule appears to violate the IDEA's hearing requirements; the proposed rule should be rejected.

The rules propose to limit hearings to three days and to require those hearing to be held on consecutive days absent good cause. Hearing officers are to allow for equitable time for the parties. These proposed rules may end up causing unintended harmful consequences and should be reconsidered.

*Here is just one general comment & perspective – there may be others: **Unacceptable** – this requirement is not in accord with Federal IDEA hearing procedures so therefore exceeds the Federal requirement. This rule should be rejected.*

Graduation Changes May Cause Students to be “Prematurely Graduated”

As ADAP explained see: <http://adap.net/18-21special.ed.pdf> - the state revamped its graduation requirements recently so that the only diploma awarded in Alabama is a regular diploma. When a student receives a regular diploma, his right to special education services end. The proposed rules attempt to align the special education section of the code with the sections that detail the revamped graduation scheme. However, the proposed rules don't ensure that students with the most significant disabilities (those taking coursework that previously would have entitled them to the Certificate of Attendance or the Alabama Occupational Diploma) will not lose their right to continued educational services, particularly in the area of transition, upon completion of required diploma coursework.

This is an Unacceptable change. Instead - “The Alabama High School Diploma must be deferred for students with disabilities who will remain in school until age 21. According to IDEA, students with disabilities who have not earned a regular high school diploma are entitled to services up to age 21. Therefore, the awarding the Alabama High School Diploma prematurely would deny a student his or her right to receive services until age 21 and would be considered a denial of [a] Free Appropriate Public Education (FAPE).”

Conclusion

The IDEA provides a floor of rights to children and their parents; state law cannot provide fewer rights than those available under federal law. Any proposed changes to the state's special education rules must be analyzed to ensure that this basic floor of rights is not violated.

Proposed changes should be analyzed against the purposes of the IDEA. These purposes are:

- 1) to ensure that all children with disabilities have available to them a free appropriate public education
- 2) that is individualized to meet their unique needs to prepare them for further education, employment and independent living
- 3) and to ensure that the due process rights of children with disabilities and their parents are protected.

If proposed changes don't further these purposes, they should not be enacted. ***Family and child advocates should ask the ALSDE: how do these proposed changes help students with disabilities?***

If you submit emailed comments, consider emailing a copy of your comments to [ADAP](#); we're going to summarize the comments for public distribution (if requested, your name will be withheld).