

IEP REFORM: UNDERSTANDING THE 2006 AMENDMENTS TO IDEA 2004

By: Lara A. Elborn and Chaundre S. White

Since 1975, special education law in the United States has been governed by one federal law, the Individuals with Disabilities Education Act (IDEA). IDEA ensures educational benefits and protections for children with disabilities and their parents. IDEA provides for individualized and independent evaluations, individualized placement services among a continuum of options, protections in disciplinary actions, and other special education-related services. The central goal of IDEA is to provide a free, appropriate public education (FAPE) to every child with a disability protected under the Act using the least restrictive means possible to achieve that goal.

Under IDEA, school administrations are affirmatively obliged to identify every child with a disability, and to provide services for that child, if in fact after an evaluation there is an affirmative finding of a disability. To achieve the implementation of a FAPE under IDEA, the educational path of each student with a disability is uniquely and personally crafted through a collaborative effort carried out by a team of administrators, advocates, health-care professionals, general education teachers, special education teachers and parents. Under IDEA, the public agency must ensure that the IEP team or each child with a disability includes (1) parents, (2) at least one regular educator, (3) at least one special educator, (4) a public agency representative with knowledge of general education and school resources who is responsible for supervising instruction, (5) and an individual who can interpret instructional and evaluation implications. 34 C.F.R. §300.321.

Parents can also electively include an advocate or other supportive team member who can assist in the IEP process.¹ 34 C.F.R. §300.321. Every year, the team meets, to discuss the given child's progress from the year before and to create the written document detailing the child's integrated education called an Individual Education Program (IEP). The content of the IEP must include, among other things: the child's present levels of academic and functional performance, measurable annual goals², including academic and functional goals, information regarding how the child's progress toward meeting the annual goals will be measured and reported to the parents, the special education services to be utilized, related a schedule of services to be provided, including when the services are to begin, the frequency, duration and location for the provision of services, and "Least Restrictive Environment" data which includes calculations of the amount of time the student will spend in regular education settings as opposed to time spent in special education settings each day. *Id.*

An IEP can also include any pertinent information that the team believes will help the child such as a personalized health plan (which may include information regarding fitness and/or diet) or a behavior plan (which could detail methods of ensuring the child stays on track behaviorally and what type of discipline will be utilized if the child exhibits behavioral problems).

Often, the practical effect of an IEP, depending on the extent of a child's disability, results in a child taking a mixture of general education and special education courses. The IEP serves as the real-world application of IDEA's goals and theories, and it outlines exactly

¹ If the child is over 14 years old, then he or she may also attend the IEP meeting.

which services the child will actually receive and what will ultimately happen throughout the child's education. The benefits and protections under the Act are fulfilled through the implementation of these individualized plans. Thus, the IEP should be designed in the interest of FAPE and in keeping with the precepts of IDEA.

Legislative History of IDEA

IDEA has been amended numerous times over the years since its inception in 1975. Its most significant amendments occurred in 1997, and most recently in 2004, with the Act adopting the moniker IDEA 2004. IDEA 2004 was signed into law in December of 2004, by President George W. Bush, who a few years prior made headlines by signing into law one of the largest attempts to reform general educational standards in the United States in the form of the No Child Left Behind Act.³ The major modifications to IDEA 2004 took effect on July 1, 2005.⁴ IDEA 2004 placed a new emphasis on special education students and pushed for more identifiable, measurable progress, special educators accurately and objectively measuring student progress.

However, IDEA was updated once more in on October 13, 2006. The legislation still continues to be referred to as IDEA 2004, and the 2006 modifications are referred to as the "final amendments" or "final regulations." IDEA 2004, now complete with the 2006 regulatory additions, is the legislatures most recent effort to affords students new benefits and protections under the law, and it changes the way the law applies to parents of children with disabilities.

³ The National Center on Educational Outcomes published an August 2006 pamphlet for parents of children with disabilities that explains in lay terms the practical effects of the passing of No Child Left Behind as well as the 2006 amended IDEA regulations. It can be found on the internet at: <http://www.cehd.umn.edu/nceo/onlinepubs/parents.pdf>.

⁴ This does not include personnel requirements.

IDEA 2004 to 2006: What Changed?

This paper seeks to discuss at least three major areas where IDEA 2004 was amended in the final regulations, the reasons for their amendments, and the practical effects of those changes on the entire IEP process. First, the 2006 amendments sought to clarify the previously somewhat ambiguous role of parental participation by creating guidelines that served to detail exactly what role the school would play in trying to involve parents and how parents could expect to be involved.

Another great change seen in the 2006 amendments was a greater effort on behalf of legislators to encourage more overall transparency and communication in the IEP process between all parties. Congress more specifically outlined the duties and obligations of each member of the IEP team.

Finally, in order to appease all members of the IEP team, new procedural safeguards were put into place which serve to explain to the members of the IEP team what procedures to follow when other team members fail to live up to their duties.

The result of these changes speaks to an overall theme: with more transparency and fleshing out the role of parents in this process, the team should better be able to serve their ultimate goal, which is to effectively and efficiently plan the individualized educational plan of a child with a disability.

A. Parental Participation in the IEP

After the final regulations were solidified in 2006, 34 C.F.R. §300.322 in the statute provides that a public agency must take certain steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are at the very least afforded the opportunity to participate. The school administration is now required to take certain steps in order to encourage optimal parental involvement such as: (1) notifying parents of the meeting early enough; and (2) scheduling the meeting at a mutually agreed upon time and place. Where physical presence is impossible, the school administration is required to utilize other methods to ensure parental involvement such as individual or conference telephone calls. 34 C.F.R. §300.322(c).

I. “The power of the mosquito”

Interestingly, a major practical hurdle to planning an IEP as noted by prominent Illinois education attorney Jennifer Bollero⁵ is not excessive or overbearing parental involvement in the IEP process, rather, parental manipulation of their ability to be involved in the meeting itself. In a 2011 interview⁶, Bollero admitted to often seeing in her practice, parents, acting in what they perceive to be the best interest of their child, boycotting IEP meetings in order to attempt to ensure a certain result or concession on behalf of the

⁵ **Jennifer L. Bollero** is an attorney at the law firm of Sraga, Engler and Boyle, L.L.C., where she has a school law practice with a concentration in special education litigation. Ms. Bollero received her undergraduate degree from Northwestern University and her Juris Doctor degree from Loyola University of Chicago School of Law. She is a former member of the adjunct faculty at Elgin Community College Paralegal Program, and serves on the Professional Advisory Committee of the Autism Society of Illinois and the Illinois Attorney General's Special Committee on Special Education. Ms. Bollero is a former special education mediator for the Illinois State Board of Education.

⁶ Interview was conducted by phone and completed by co-author Lara Elborno on May 16, 2011. Notes are available by contacting Elborno at Lara.Elborno@gmail.com.

school administration. Bolero commented that parents have the “*power of the mosquito*” in the IEP process. She noted that generally parents are not able to secure any result via these maladaptive behaviors, however, what they can do is impel the school administration to “stop and scratch,” in other words, notice what it is that the parents are demanding.

For example, Bollero explained that a typical case proceeds as follows: parent(s) may skip several scheduled IEP meetings because of dissatisfaction with their child’s previous year’s IEP. Perhaps, the child was only afforded 30 minutes of speech pathology per week as a part of the previous year’s IEP. The parent(s) communicate to the school that because they are seeing minimal or less than optimal improvement in their child’s functioning⁷ that they would like the frequency/duration increased. The school, in trying to provide for other students, or because of issues related to resources, is resistant to offer additional therapy to the child because of their evaluation that it would not necessarily serve to improve the child’s level of functioning. The school, knowing that the parent is going to continue to boycott scheduled IEP meetings and stall the process may still elect to offer more therapy as a concession. Bollero noted that this phenomenon still continues after the 2006 amendments, however, it has in fact lessened.

While the 2004 regulations made no mention of what procedure to follow where parents refuse to appear at an IEP meeting, the 2006 amended regulations provided that an IEP Team meeting can occur without a parent or parents in attendance if they cannot be convinced to attend, however the public agency is required to maintain: (1) a detailed

⁷ Remember, parents are not guaranteed any result from an IEP or the best education for their children with disabilities. Rather, the law guarantees children the right to a free and appropriate public education.

record of telephone calls made or attempted and the results of those calls, (2): copies of correspondence sent to the parent and any responses received; and (2) detailed records of visits made to the parent's home or place of employment and the results of those visit. 34 CFR § 300.322(d).

Extensive litigation has been brought over the issue of parental involvement in the IEP process, specifically when problems arise with parental attendance. As Ms. Bollero mentioned, parents may avoid IEP meetings in an attempt to gain leverage over their child's services, but they can also miss meetings for other reasons as well, such as noncommittal support of their child's education. For example, low socioeconomic areas frequently suffer from low parental involvement in childhood special education due to financial constraints, employment imposition, or the reality of personal strife that essentially puts education on the "back burner." *Mayor Mark Schwiebert*, Rock Island, Illinois, Public Forum on Education. May 2009. When parents do not attend IEP meetings, there can be a frustrating lack of communication among the IEP team which often leads to lawsuits.

Take, for example, a 2003 case from Washington involving parental attendance at IEP meetings. The parents of a student with autism and mental retardation in this case brought suit against their son's school district, alleging that they had violated IDEA by providing an inadequate evaluation of the student and not allowing them to meaningfully participate in the development of their son's IEP. *M.L. v. Federal Way School Dist.*, 341 F.3d 1052, 1057 (9th Cir. 2003).

The court determined that the school district was permitted to conduct the IEP meeting without the parents present under 34 C.F.R. § 300.345, which authorizes a school district to proceed with an IEP meeting without the presence of a child's parent if the school district is unable to convince the parents to attend following attempts of record to do so. *M.L.*, 341 F.3d at 1064-65. The court went on to explain that not every procedural violation is sufficient to support a finding that a student involved was denied a free and public education. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001). The court ultimately held that school district's decision to hold an IEP meeting without presence of parents of their son with autism and mental retardation did not deny him a free appropriate public education in violation of the IDEA. *M.L.*, 341 F.3d at 1062. The court reasoned that where the school district made extensive efforts to include the parents as part of the IEP team and encouraged them to attend meetings, and that the parents still did not attend or set forth a credible reason for non-attendance, the meetings were permitted to go on without them without violating IDEA. *Id.*

It is clear that case law demonstrates that parental absence from meetings does not violate IDEA. This raises the question of whether a parent not attending meetings essentially “bumps them out” of the IEP process entirely. After all, if the committee is permitted without them, how could they effectively weigh in on their needs and wants for their child’s education? It is certainly possible, in fact, that educators and evaluation professionals would prefer to have more exclusive control over the IEP development, leaving the planning and documentation to those who are trained and have expertise in the field. Despite the possible simplifying that would come from reducing the IEP team’s

numbers, parents are often considered the most important members on that team. For parents, not being present at an IEP development meeting does not leave a parent without recourse against the final product. Parents cannot be, essentially, squeezed out of the decision making.

In a 1989 IEP dispute, The Cordrey family filed suit against their severely handicapped son's school district for failing to include extended school year (ESY) program in his IEP. *Cordrey v. Euckert*, 917 F.2d 1460, 1463 (6th Cir. 1990), certiorari denied 499 U.S. 938. The school district argued that the Cordrey's had waived their right to object to the IEP because of their refusal to cooperate in the IEP team meetings, and that they were further not in a position to object that the school district had failed to conduct a proper IEP meeting. Cordrey, 917 F.2d at 1467. The court was displeased with this argument, noting that while annual IEP evaluations are mandatory, parents are not absolutely required to attend. Id. at 1468.

The court held that parents who failed to attend individualized educational program meeting were nevertheless entitled to claim that school district failed to consider student's needs at properly convened meeting, inasmuch as regulations promulgated under the Education of the Handicapped Act required annual meeting to review student's individualized educational program, but did not require parental attendance. Id. at 1467-68.

Methodology is one specific area where we can see the limitations on parental involvement. The law does not require a child's IEP to include information on the specific

educational methodology that will be used in implementing the IEP.⁸ Methodology may be included if, however, the entire team finds that its inclusion in the IEP is appropriate. The parents are a part of this team, yet, they cannot singlehandedly demand the use of a specific tool or method of instruction, nor can they unilaterally propose to include methodology in the written IEP.⁹ However, the 2006 regulations noted that parents do have the right to discuss methodology in an IEP and to raise issues related to methodology as any other team member would.

This provision highlights a fact which is reiterated over and over again by the 2006 amendments as well as the development of the case law regarding parental participation: the parents, although they are a part of the IEP team and are expected to collaborate, they do not in fact possess leadership or veto power over the process.

The question then becomes: how much involvement are parents afforded when developing IEPs? Even when a parent refuses to partake in the development of their child's educational plan, they can still object to the final outcome created by the other remaining members of the IEP team. Although it may seem that the parents are the "ringleaders" of their child's education, courts have not been reluctant to put some limitations on parental involvement. For example, a school district is able to perform evaluations on students who have an IEP, even if the student's parents do not give their consent for such an

⁸ *Wrightslaw* developed an informational book entitled "All About IEP's" for parents of children with disabilities. This book is one of many which serves to educate parents about their legal rights in the IEP process in addition to providing examples of ways to craft successful IEP's depending on the disability in question. (Wright, 2010).

⁹ This does not mean that parents can expect to have their children experimented on via strange methodologies. The 2006 amendments are clear in that "states, school districts, and school personnel must...select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available." 34 CFR § 300.156.

evaluation. These types of evaluations are limited to annual reevaluations or progress meetings. In 1996, the Seventh Circuit heard a case in which the parents of a disabled student brought suit against the school district. *Johnson v. Duneland School Corp.*, 92 F.3d 554, 557 (7th Cir. 1996). They protested the school's insistence on bringing their child in for a reevaluation where the student's condition had changed since he had last attended school. *Id.* at 558. The Court held that the school district had a right to conduct its own three-year reevaluation of disabled student under Individuals with Disabilities Education Act (IDEA), and that IDEA did not require parental consent for such an evaluation. *Id.* at 557; see also, *Andress v. Cleveland Independent School Dist.*, 64 F.3d 176, 179 (5th Cir. 1995) (where the court granted summary judgment and held that the school district's right to conduct a three-year evaluation is absolute). Thus, the Johnson family did not have any authority to refuse this evaluation, and the case implies that the student would be evaluated regardless of his parents' wishes.

Not only is parental consent sometimes not needed to further the goals and requirements of an IEP, sometimes even complete parental refusal does not bar a school district from implementing a plan. This is especially prevalent when the parents are refusing a requirement or a service that the court deems is in the child's best educational interest. *M.L. v. El Paso Independent School Dist.*, 610 F. Supp. 2d 582, 595 (Tex. W.D. 2009). In *M.L. v. El Paso Independent School Dist.*, an IEP due process hearing officer and the lower court had the authority under IDEA to override parent's refusal to consent to school district's notice seeking consent to reevaluate her child. *Id.* at 597. The child in question was a middle school student, and the evaluation was requested to determine what,

if any, special education services he may need. M.L., 610 F. Supp. 2d at 593. The court reasoned that the child's parents' continued refusal to consent to new evaluation would preclude the student from continuing to receive special education services, which were in his best interest. *Id.* at 597.

It appears that the nature of parental involvement in the IEP process is multifaceted. While parents are typically dynamic participants in the development of the educational plan for their child, a lack of participation in that process can lead to the process continuing on without their input. Even so, parents can remain involved in the final outcome of the IEP document or implementation if they feel something has gone awry regardless of their attendance at IEP meetings. This essentially puts parents back in the driver's seat, ensuring that they have the final say when it comes to their child. How, then, can the idea of overruling parental consent in favor of a student's interests be explained? See *M.L. v. El Paso Independent School Dist.*, 610 F. Supp. 2d 582, 595 (Tex. W.D. 2009), *supra*. This seems to suggest that, although parents are ultimately responsible for the outcome of their child's IEP, with various methods of recourse when they are not satisfied with the finished product, there is a threshold at which their power is undermined.

This raises the question of whether this should be the case: should parents not have full control over their child's future? The cases suggest that they should not. Although case law points to a few admittedly trivial points of the IEP process, such as mandatory reevaluations and consent forms, it could easily be argued that a parent's decision on how to proceed with their child's education should be exclusively theirs to make. While no one would criticize the IEP team's job in theory, combining knowledgeable professionals with concerned advocates for the child, many parents are upset by the administrative

overtaking through the IEP process in practice. This undoubtedly stems from a parent's right to raise his or her child, and this typically includes choosing exactly how to educate them.

The Supreme Court has held that a parent can even completely remove a student from any form of schooling past a certain age if their religion or culture demands it. Wisconsin v. Yoder, 406 U.S. 205 (1971). In Yoder, the Supreme Court held that children living in the Amish community should not be held to compulsory school attendance laws mandating that they attend school until they were sixteen years old; rather, they were permitted to discontinue their education after completing the eighth grade. Yoder, 406 U.S. at 209. The Court reasoned that because of their Amish faith and separation from society, their parents could control their education and allow them to discontinue their studies at an earlier age than other students in Wisconsin. Id. at 210.

With great freedom given to parents in educating their children in peculiar circumstances, why are parents of children with disabilities not given full discretion in how to educate their child? The answer to this may have something to do with the nature of the "peculiar circumstances" involved. In Yoder, the parents of the children involved were Amish, and their demand for an exception stemmed from their practice of the Amish faith. Their expertise in the area of Amish tradition is unquestioned, and the Court allowed a modification to the education statute in favor of preserving their traditions. In the case of special education, however, each spoke in the IEP team's wheel brings its own expertise. A parent is likely not the most knowledgeable team member in the area of special or general education, nor a teacher in the area of psychology, nor an evaluator in knowing the child in

question personally. Ultimately, with each member of a student's IEP committee comes an important contribution, a certain expertise that no one else is bringing to the process. Because each team member represents only a small facet of the bigger picture, there must be limitations on how much power they have over the entire process. Despite their incredible interest in the well-being of their child, parents must be included in these limitations for the greater good of the student.

B. Greater Overall Transparency and Communication between parties in the IEP process

A certain level of transparency has always been a part of IDEA. For example, it has long been established, prior to IDEA 2004 even, that throughout the IEP process parents must be notified of their rights under Individuals with Disabilities Education Act (IDEA), which include the right to an administrative hearing to evaluate the IEP team's decisions, and the right to seek review by a federal court. *Gill v. Columbia 93 School Dist.*, C.A.8 (Mo.) 2000, 217 F.3d 1027.

Yet, the type of transparency provided for in the 2006 amendments focuses on increasing the overall communication between all parties. Section 300.323(d) has been revised to require public agencies to ensure that each individual responsible for the implementation of a child's IEP, is informed of his or her specific responsibility. Section 300.324(a)(4) pertains to changes made in a child's IEP after the annual IEP meeting. This section requires that all individuals involved in the child's IEP team be notified where changes are made to a child's annual IEP absent an IEP meeting. Even if those changes do not in fact change that individual's role in the implementation of the child's IEP.

We can even see from the section regarding parental involvement (see above A) that specific notification procedures were cemented in the 2006 regulations to ensure that where parents choose not to participate, at the very least, a detailed and substantial record is created with respect to the various attempts made. These procedural requirements as well serve to create greater transparency and communication between all parties in the IEP process, even where they are perhaps more adversarial than collaborative.

The 2006 amendments emphasized clear and open communication between all parties. For example, in a case which came after the amendments, the 2nd circuit held that the failure of a school board to provide autistic child with an independent educational evaluation (IEE) did not render the child's IEP defective under the IDEA, where the parent's request for independent evaluations was not clear enough for the school board to act on the request, and when the school board asked for clarification, it received no response. School Bd. of Lee County v. E.S., M.D., 561 F.Supp.2d 1282 (2nd Cir. 2003).

In addition, prior to the updates in the Act, many IEP teams ran into various problems with communication among their committees and often failed at keeping each other informed throughout the development and implementation of educational plans for IEP students. For example, a 1994 case held that a school district's failure to include a hearing-impaired child's parents at her IEP meeting at the school was a violation of the IDEA because of a negative prioritization and unequal communication among the parties. Shapiro v. Paradise Valley Unified School Dist. No. 69, 317 F.3d 1072 (9th Cir. 2003). The court held that although the parents were notified of the meeting and did not attend, the parents asked the district to reschedule the meeting and the school district prioritized its

representatives' schedules over that of the parents. Shapiro, 317 F.3d at 1078. This is an example of a lack of transparency and communication in the IEP process. Instead of scheduling the meeting at a time that all the necessary parties could attend, the school district sought only to keep the representatives in mind when scheduling, demonstrating a discrepancy of information and communication that is unhealthy to the IEP process. When there is a lack of equality among IEP team members, there is also often a lack of trust among the parties, leaving room for conflict instead of progress in the meetings.

In another instance, a school's failed to provide handicapped adolescent with notice and hearing with regard to the student being persistently excluded from school after a stay in a state hospital. Jackson v. Franklin County School Bd., 806 F.2d 623 (5th Cir. 1986). The school also failed to provide proper notice to the student's mother about the situation and failed to call a meeting of the student's IEP team and support members. Id. at 628. The Act requires that the school give parents or guardians sufficient notice whenever school proposes to initiate or change educational placement of child and which defines individual education program, and this includes informing the child as well where appropriate. Id. Sadly, this case shows how even an adolescent student can be left out of the IEP decision making, even when they are of an appropriate age to be involved in the process, when are not being properly informed, and when the student himself should be the focal point of the education plan.

On the other hand, not all small failures to communicate constitute a violation of IDEA. In Ms. S. v. Vashon Island School District, a mother of a disabled child filed suit against the school district, claiming that they had violated IDEA by not properly

communicating to her about an upcoming IEP meeting which she ultimately did not attend. The court held that although there were minor procedural violations in providing notice to the student's mother about the upcoming IEP meeting, there was no IDEA violation because the district eventually informed her about the meeting. Ms. S. ex rel. G. v. Vashon Island School Dist., 337 F.3d 1115 (9th Cir. 2003).

It seems clear that the majority of disputes arise when a parent or other member of the IEP team feel excluded or uninformed about the process. Professor Mary Bird¹⁰ of Loyola University Chicago School of Law agrees, noting that despite her persistent involvement in her son's IEP, she always wishes that she school would allow her to be more involved and would give her more information about her son's goals and progress. The 2006 updates to IDEA provide for a greater overall transparency among all parties, and the changes were intended to maximize the benefit to the student and improve the efficiency of the IEP requirements in general. The 2006 amendments require that all parties be diligent and detailed in their record keeping. Although this will inevitably require more time and effort on the part of the team members, this serves to improve relationships among the committee and foster a relationship up trust within the IEP team. This inevitably makes

¹⁰ **Mary Bird** received her B.A., from Catholic University of America in 1980 and her J.D. from Loyola University Chicago School of Law in 1987. Mary Bird has worked in the area of children's rights and education for over twenty years. She practiced as a supervising attorney at the Office of the Public Guardian and as a staff attorney in the Children's Rights Project of the Legal Assistance Foundation of Chicago. Ms. Bird has represented children, parents, and relative caretakers in the Abuse and Neglect Division of Juvenile Court. Ms. Bird has been active on the school leadership team and on PTO committees in the Oak Park public schools. She has worked to incorporate and maintain Spanish in the elementary school curriculum. Ms. Bird regularly addresses equity issues in Oak Park schools, including policies and practices that contribute to the minority achievement gap. She was interviewed about her experiences in planning her own son's IEP on May 14, 2011. Notes from the 2011 in-person interview can be retrieved by emailing co-author Chaundre White at CWhite11@luc.edu.

meetings more efficient, helps the team work together, avoids litigation, and ultimately and most importantly, helps the student: the reason that the IEP is in place to begin with.

C. Procedural Safeguards

The 2006 amendments clarified many procedural policies in the IEP process which were ambiguous in IDEA 2004. It was long established that parents needed to be notified of their procedural rights in the IEP process, such as the right to an administrative hearing and the right to evaluate the IEP team's decisions, and the right to seek review before a federal court. . Gill v. Columbia, 93 School Dist., C.A.8 (Mo.) 2000, 217 F.3d 1027.

One of the biggest problems that advocates faced in the field of practicing special education law related to dealing with parental psychology and acceptance of their child's condition. 300.502 responded to this reality by making clear that a parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. Because these evaluations are crucial in the planning of a student's IEP, if a parent finds the result of one unfavorable, they may demand multiple evaluations by various professionals take place. However, this provision makes clear that while a parent may disagree with the outcome of an evaluation, they only have the right to employ public funds to compel one additional educational evaluation.

34 CFR § 300.50(c) continues to provide that the public agency has a duty to consider and use the additional evaluation so long as it complies with the FAPE provision. This section now places a responsibility on the public agency or school administration to

respond to what may be a potentially legitimate complaint or concern about a child's initial evaluation. However, 200.502b5 ensures that a parent cannot just demand that numerous evaluations take place where the result of their child's condition is not favorable to them.

The 2006 amendments also added a provision which clarified that either a parent or a public agency may initiate a may initiate a request for an initial evaluation to determine if the child is a child with a disability. 34 CFR § 300.300. The amendments specified that where a request has been made for an initial evaluation, the school administration has 60 days to conduct the evaluation. 34 CFR § 300.301(b).

Whereas initially, it seems like this requirement is placing a great responsibility on the school to act swiftly and efficiently, the 2006 amendments also added some qualifications to balance the duties. For example, this provision does not apply where a parent repeatedly fails or refuses to produce the child for the evaluation. 34 CFR § 300.301(c)(1). Further, where it appears that the school administration is taking sufficient steps, or where the school administration has agreed with the parents to an alternate, reasonable time frame to ensure the completion of an initial evaluation, there is some leeway in the amendments that may permit the school to be acting in accordance with the law even if the initial evaluation does not occur in the 60 day time frame. 34 CFR § 300.301(e).

Interestingly, many of the procedural safeguards put in place by the 2006 amendments, where they do set time limits, also allow those time limits to be legally bypassed where the school administration and parents can come to another mutual agreement. See 4 CFR § 300.303(a).

D. Conclusion

The Individuals with Disabilities Education Act has come a long way since its inception over thirty years ago. Most recently, the 2006 amendments known as the final regulations to IDEA 2004 attempted to ameliorate many of the problems noted in practice by attorneys practicing in special education law. The 2006 amendments have actively tried to: encourage fruitful collaboration with open lines of communication between all parties, clarify the precise role of the parents in guiding and planning their disabled child's unique educational program known as an IEP, and set realistic goals and timelines in order to better streamline the entire special education process.

Yet, despite the positive changes put in place in 2006, there are obviously still some issues with IEP law that will persist over time. With the interests of different parties tugging from so many different directions, there will likely always be conflict when it comes to implementing an educational plan for a disabled student. Parents will keep their family's best interest at heart, teachers will strive for improving educational opportunities, and evaluation professionals will want to promote the well being of the student in the academic community. What all seem like valid, sincere interests will at times clash in the planning and implementation, and it is important to keep this process as productive as possible. The 2006 changes strive to keep all parties involved, informed, and content with the educational plan.

There is a bigger picture here, and a simple application of everything that IDEA aims to promote: it is all done in the interest of the student. The law must continue to be flexible in the interest of supporting the student. As the IEP team works in harmony, the student is afforded the best possible educational opportunities. Whatever problems arise in the future must be responded to with continued improvement in the legislation. As the face of special education changes, the law should too. The 2006 changes to IDEA work toward their ultimate goal of enriching the lives of disabled students and leading them toward success, but advocates of education should continue to be open to potential areas of improvement.