<u>HELP GUIDE FOR SCHOOL ADMINISTRATORS</u>

WHAT SUCCESSFUL SCHOOL ADMINISTRATORS NEED TO KNOW ABOUT THE EDUCATION OF STUDENTS WITH DISABILITIES

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INTRODUCTION

This guide is designed to assist Alabama school administrators to increase their knowledge of a school's obligations for implementing the *Individuals with Disabilities Education Act* (IDEA), to provide assistance in making legally sound decisions, and to assist in the avoidance of common legal mistakes in the area of educating students with disabilities. As a part of the development of this guide, school administrators were asked to submit questions for review by the Alabama State Department of Education (ALSDE), Special Education Services (SES) Section, and Consultant Julie Weatherly. As a result, the Q&A section presented here is based largely upon real questions specifically posed by school principals and other administrators regarding special education legal issues and requirements.

The school's principal is the instructional leader of the school and is considered to be its site-based manager. As such, the principal has the overall responsibility for monitoring and supervising his/her staff in such a way to ensure that appropriate instruction and support are provided to all students at the school.

In Alabama, the principal and/or other school administrator designee typically participates in and serves as the local education agency (LEA) Representative at the Individualized Education Program (IEP) meetings. The LEA is responsible for ensuring that the services set forth in every student's IEP are provided. In carrying out this responsibility, it is critical that the principal communicate closely with the school district's Special Education Coordinator for problem-solving, collaboration and compliance, which will demonstrate a unity of effort throughout the entire district. Effective procedures for monitoring the delivery of services to students with disabilities must be developed and implemented locally.

Of course, this guide is not intended to cover every special education legal question that a school administrator may have. It is always advisable, even if your question is addressed in this guide, that you seek additional guidance from your school district's Special Education Coordinator and, in complex situations, from the school district's school board attorney. This guide is not designed to provide legal advice as to fact-specific situations.

I. LAWS THAT APPLY AND THEIR PROVISIONS

A. Legal Overview Questions

1. What federal laws apply to the education of students with disabilities in school?

The primary federal law that applies to public education of students with disabilities is the IDEA. The IDEA requires the creation of special education programs for eligible students and the provision of free appropriate public education (FAPE) to them through the development of an IEP.

Another significant federal law that you need to keep in mind is *Section 504 of the Rehabilitation Act of 1973* (Section 504). This law prevents discrimination solely on the basis of disability and requires school administrators to ensure that students who

are found to be students with disabilities (both under IDEA or Section 504 only) are provided an equal opportunity to participate in all school and school-sponsored programs and activities.

Also relevant is the *Family Educational Rights and Privacy Act* (FERPA), which protects the confidentiality of personally identifiable information (PII) contained in all student education records. This important privacy right must be safeguarded, and every school district is required to have written policies and procedures in place regarding appropriate disclosure of education records and the PII contained in them.

2. Are there Alabama laws that apply too?

Yes. The *Alabama Exceptional Child Education Act 106* and the *Alabama Administrative Code* (AAC) set forth Alabama's requirements for educating students with disabilities and ensuring that the requirements of the IDEA are met. Generally, the AAC contains the same requirements as the IDEA for ensuring the provision of FAPE to students with disabilities.

3. Can parents be charged for special education services?

No. Required special education services that are included in a student's IEP are to be provided by the school district at no cost to the parent. However, this does not preclude the school district from charging incidental participation fees that are normally charged to a student without a disability or to his/her parents as part of the general education program.

4. If the program for a student with a disability costs more than a program for a student without a disability, must it be provided?

Yes. An appropriate program of instructional and related services must be provided for a student with a disability regardless of the cost. Lack of funding is not an acceptable excuse for failing to provide services that meet the individual needs of a student with a disability.

5. Can a disability ever be so severe that the student is beyond the scope of educational responsibility?

No. Under the IDEA, the concept of "zero reject" applies. This means that *all* students with disabilities, no matter how severe, are entitled to FAPE. No student is too severe to be unable to learn or benefit from educational services. If a student's needs are determined by his/her IEP Team to be beyond what the school district can provide, the IEP Team is still required to propose a program to meet the student's needs, no matter how intensive or costly. This might include placement in a private school or even in a residential treatment program.

B. Questions Regarding Who is Covered under IDEA: Children and Parents

1. Who does the IDEA cover as far as services?

The IDEA provides that all eligible "children with disabilities" ages 3 to 21 are provided a free appropriate public education (FAPE). The IDEA also provides significant procedural safeguards to every child and his/her parents.

2. What is a "child with a disability?" What disabilities are currently included under the IDEA?

In Alabama, students may be eligible for special education services if the student has one of the following disabilities that adversely affects educational performance and the student needs special education (specially designed instruction) and related services in order to progress in the general curriculum:

a. Autism (AUT)
b. Deaf-Blindness (DB)
c. Developmental Delay (DD)
d. Emotional Disability (ED)
e. Hearing Impairment (HI)
f. Intellectual Disability (ID)
g. Multiple Disabilities (MD)
h. Orthopedic Impairment (OI)
i. Other Health Impairment (OHI)
j. Specific Learning Disability (SLD)
k. Speech or Language Impairment (SLI)
l. Traumatic Brain Injury (TBI)
m. Visual Impairment (VI)

The detailed criteria for eligibility for each category are set forth in the AAC and must be met in order for a student to be considered a "child with a disability."

3. What is the current mandated age range for special education services?

In Alabama, school districts must develop and implement procedures that ensure that all students with disabilities in their jurisdiction, ages 3 to 21, who need special education and related services are identified, located, evaluated and provided FAPE. The school district's special education office can assist with making sure parents/guardians know who to contact to receive more information.

4. Can all students be limited to 12 years of services or must services be provided up to age 21 to those with disabilities?

Some students with disabilities will receive more than 12 years of services.

Students with disabilities who have earned a regular Alabama High School Diploma that is fully aligned with State standards via the General Education pathway are no longer entitled to special education services/FAPE. However, those students with disabilities who have earned a diploma via the Essentials or Alternate Achievement Standards pathway may "defer" graduation and, though they may participate in graduation activities and the ceremony, they may continue to receive FAPE to age 21.

Those continuing students with disabilities who have not reached their 21st birthday by August 1 are entitled to continued services up to age 21, even if it means that instruction is provided for more than 12 years. A student who turns 21 on or after August 1 and has not earned a High School Diploma via the General Education pathway is entitled to begin and complete the school year.

5. Who are "parents" under the IDEA? What about those who are divorced or have joint custody? When there is only one parent with custody, is that the only "parent" for purposes of IDEA protections?

To answer this series of questions, we need to examine the definition of "parent" under the IDEA. For purposes of the IDEA rights and activities, "parent" is defined as follows:

(1) A biological or adoptive parent of a student;
(2) A foster parent, unless State law, regulations or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
(3) A guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student (but not the State if the student is a ward of the State);
(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the student lives, or an individual who is legally responsible for the student's welfare; or
(5) A surrogate parent who has been appointed for the student.

When **the biological or adoptive parent** is attempting to act as the parent for purposes of IDEA rights and activities but there are others who also meet the definition and want to act as "parent," the law **presumes** that the biological or adoptive parent is the parent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the student. If the biological or adoptive parent is not attempting to act as the parent for purposes of IDEA rights and activities, then another person, such as one "acting in the place of parent" can act as parent, unless/until the biological/adoptive parent attempts to act.

If a judicial decree or court order identifies a specific person or persons listed above to act as the "parent" of a student or to make educational decisions on behalf of the student, then that person or persons is deemed to be the "parent" for purposes of the IDEA.

6. **So, in the case of divorced parents, does the noncustodial parent have any IDEA rights, such as the right to participate in the child's education and to attend IEP meetings?**

   A parent who is not the custodial parent does not necessarily lose his/her IDEA rights. As long as the noncustodial parent is still a "biological parent" attempting to act as parent and there is no court order specifying that person does not have parental/educational rights or someone else is to be the "parent" for educational purposes, the noncustodial parent has the same right as the custodial parent to participate in meetings, receive important notices, etc., under the IDEA. So, if a noncustodial parent wants to be included by the school as a "parent" for purposes of IDEA rights, the school must include that parent, unless there is some sort of court order/decree that specifies otherwise. If there is such a court order/decree, it should be maintained as part of the student's education records.

   There is no obligation on the part of the school to "seek out" noncustodial parents. If they wish to be involved, non-custodial parents must make themselves known to the school and attempt to act as parents.

7. **What if the only "parent" the school knows is the student's grandparent or other relative?**

   Individuals "acting in place of" the biological or adoptive parent may be treated as the parent under the IDEA if there is no biological or adoptive parent **who is attempting to act as the parent**, and the student lives with that relative, and/or parental rights have been removed from the biological parent(s). Thus, it is legally acceptable for the school to deal with the relative as a "parent," unless and until a biological or adoptive parent appears and wants to assume the role of or attempt to act as the parent under the IDEA.

8. **What about a foster parent? Can the foster parent be the "parent" under IDEA?**

   If the rights of the biological or adoptive parents have been terminated and the student is placed in a foster home, the foster parent can act as the parent under the IDEA. However, if there is a known biological or adoptive parent whose rights have not been terminated who is still involved in the student's life who wants to assert his/her parent rights and be treated as the parent under the IDEA, the school must work with the biological parent as the "parent" under the IDEA, even if the student lives with the foster parent and the foster parent knows the student better. The presumption under the law is that when a biological or adoptive parent wishes to act and participate as the "parent" under the IDEA, that biological or adoptive parent maintains IDEA rights.

9. **What about the situation where a Department of Human Resources (DHR) caseworker wants to sign as the consenting parent for evaluations and special education services?**

   A DHR caseworker is NOT a "parent" for purposes of the IDEA. The DHR is a state agency and its representatives may not serve or sign as "parents" under the IDEA. If

there is no one that meets the definition of "parent" for the student, then the school district must appoint a surrogate parent to serve.

10. What if the biological parent wants to send someone to an IEP meeting in his/her place, such as a boyfriend who lives with the mother?

The parent is allowed to invite anyone to an IEP meeting to participate. However, since there is still a biological parent "on the scene" and the school is aware of this, anything that requires parental consent will have to be presented to the biological or adoptive parent. For example, if the district wants to conduct an evaluation, the mother's boyfriend cannot sign consent. While the boyfriend may participate in meetings, etc., he is not the "parent," and the school will need to get the parent to provide written consent to the evaluation, initial placement, etc.

11. How do we proceed with the special education process or obtain consent from a parent, if the parent is incarcerated and parental rights have not been terminated?

Incarcerated parents are still the biological or adoptive parents, unless their rights have been legally terminated. Thus, the school must send notices to incarcerated parents in this situation. If a parent's educational decision-making rights have not been revoked and the Department of Corrections allows for their participation, parents may participate by telephone or by providing written input.

12. What is a surrogate parent and what are a surrogate's rights and responsibilities?

A surrogate parent is a person trained and appointed by the school district to represent the interests of a student with a disability in the educational decision-making process when no parent (as defined above) is known and the school district, after reasonable efforts, cannot locate the student's parents. In addition, a surrogate would be appointed for a student who is a ward of the state because parental rights have been terminated.

Once a surrogate has been properly appointed, the surrogate has all of the rights and responsibilities of a parent under the IDEA, which includes the opportunity to participate in meetings regarding the identification, evaluation, educational placement, and provision of FAPE to the student. This includes being part of all meetings to address evaluation, eligibility and educational placement; having their concerns and information considered in developing and reviewing a student's IEP; and being regularly informed of the student's progress toward annual IEP goals.

II. SPECIAL EDUCATION RIGHTS AND PROCEDURAL SAFEGUARDS

1. What are the procedural safeguards under IDEA?

The procedural safeguards or *"Special Education Rights"* available to parents and their children are extensive. A copy of the *"Special Education Rights"* must be provided to parents at least once per school year and at certain other times. The Rights must include a full explanation of the procedural safeguards related to:

(1) Independent educational evaluations;
(2) Prior written notice;
(3) Parental consent;
(4) Access to educational records;
(5) Opportunity to present and resolve complaints through the due process complaint and State Complaint procedures, including—
    i. The time period in which to file a complaint;
    ii. The opportunity for the agency to resolve the complaint; and
    iii. The difference between the due process complaint and the State Complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
(6) The availability of mediation;
(7) The student's placement during pendency of hearings on the due process complaint;
(8) Procedures for students who are subject to placement in an interim alternative educational setting;
(9) Requirements for unilateral placement by parents of students in private schools at public expense;
(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
(11) State-level appeals (not applicable in Alabama);
(12) Civil actions, including the time period in which to file those actions; and
(13) Attorneys' fees.

2. Must a school have parents acknowledge in writing that they received the Special Education Rights?

Not necessarily, particularly if it is district practice to physically provide them at the IEP Team meeting itself, rather than to mail them. Some districts in Alabama may ask parents to sign that they received their Rights, but it is not a requirement.

3. What is the difference between a State Complaint and an impartial due process hearing?

The State Complaint process involves a signed written complaint that is sent to the State Superintendent of Education, Attention: Special Education Services. When a formal complaint is filed, the ALSDE investigates the alleged violations of the IDEA requirements that may have occurred and renders a decision. A specialist is assigned as the complaint contact for each complaint filed.

In contrast to a State Complaint, a due process complaint is a formal complaint that initiates litigation in the form of a due process hearing. Typically, a request for due process hearing is filed when the parent is represented by an attorney. It is submitted in writing to the ALSDE and a hearing officer is appointed to preside over the hearing. If the matter is not resolved prior to a hearing, the hearing officer will hear evidence and make a decision regarding the issues in the due process complaint. Most requests

for due process are settled prior to a hearing, but some actually go through the entire hearing process.

4. **Will the ALSDE accept a due process hearing request over the telephone?**
   No. The request must be in writing and signed and, therefore, will not be accepted or handled over the telephone. For information on the provisions applicable to filing a due process hearing, parents may write to the Alabama State Department of Education, Attention: Special Education Services, Post Office Box 302101, Montgomery, Alabama 36130-2101 or call (334) 694-4782. Individuals may also access the AAC for information related to due process by visiting the ALSDE website.

5. **What about a request for mediation? Will that be accepted over the phone?** Yes. A request for mediation can be made to the ALSDE by telephone and, if both parties agree to the mediation, a mediator will be appointed to assist in resolving the dispute informally. Formal mediation may be requested even if formal litigation is not pending.

III. SPECIAL EDUCATION PROCESS, CHILD FIND, EVALUATION AND ELIGIBILITY

A. Process Overview Questions

1. **What does the special education process entail?**

   The special education process begins with a referral for special education consideration and evaluation. An appropriate team, including the parent, reviews the referral and determines if the student will be evaluated.

   If the referral for evaluation is accepted by the team, written parent consent for an evaluation is obtained, and a comprehensive evaluation is completed by the school district. Once the evaluation is completed, eligibility for special education services is determined by an Eligibility Team using the criteria outlined in the AAC. If a student is found eligible and is identified as a student with a disability in need of special education services, the team will develop an IEP and the school will implement the IEP.

   For specific instructions and details applicable to the overall special education process and compliance, school administrators and other school personnel should refer to the ALSDE's detailed ***"****Mastering the Maze****"*** publication. It is vital that school personnel adhere to the processes set forth in *Mastering the Maze*, and school principals should urge all school personnel to refer to this important resource.

2. **May schools provide special education services to a student without first following the evaluation, eligibility and placement process and procedures?**

   No.

B. Questions Regarding the Referral Process, Child Find, the PST and RtI

1. **Do school personnel have a legal duty to refer a student for special education consideration?**

   Yes. This is known as IDEA's "child find" requirement, and it is an affirmative duty. Child find also applies to students with disabilities who attend private schools, including students attending religious schools, within the school district's jurisdiction, highly mobile students with disabilities (such as migrant students), homeless students and students who are wards of the state.

2. **When does the child find duty kick in?**

   The law requires that a student be referred for an evaluation for special education if there is sufficient *reason to suspect* or *reason to believe* that a student is a student with a disability who is in need of special education services.

3. **Does a student have to actually fail a grade (with or without accommodations) prior to being referred for an evaluation for special education services? Is this a school district decision?**

   No. The child find requirement applies to students who are *suspected* of having a disability and a need for special education, even though they have not failed, been retained in a course or grade, or are advancing from grade to grade. It does not take failing grades to trigger the child find duty to evaluate under the IDEA, and this is not a school district decision.

4. **So, what constitutes "reason to suspect" or "reason to believe" that might trigger the child find requirement?**

   Based upon applicable court decisions, there are a number of "referral red flags," such as extensive absences, disciplinary infractions and/or failing grades that have been found, *in combination*, sufficient to constitute a "reason to suspect a disability and need for services" that could trigger the child find/evaluation duty under the law. Remember, however, that not one (or even two) of these "red flags" alone would typically be sufficient to trigger the child find duty, but the more of them that exist in a particular situation, the more likely it is that the duty to refer for an evaluation would be triggered.

   The following are some examples of "referral red flags" that, in combination, educators will want to be on the "look out" for:

a. **<u>Academic Concerns in School</u>**

- Failing or noticeably declining grades or progress reports
- Retention
- Poor or noticeably declining progress on standardized assessments
- Student negatively "stands out" academically from his/her same-age peers
- Student has been in the Problem Solving/RtI process and progress monitoring data indicate little academic progress or positive response to interventions
- For IDEA child find, student already has a 504 Plan and accommodations have provided little academic benefit

b. **<u>Behavioral/Social/Emotional Concerns in School</u>**

- Numerous or noticeably increasing disciplinary referrals for violations of the student code of conduct that are of significant concern
- Signs of significant depression, withdrawal, inattention/distraction
- Signs of increased hyperactivity, forgetfulness, organizational problems
- Truancy problems, noticeably increased or chronic absences or skipping class
- Student negatively "stands out" behaviorally from his/her same-age peers
- Student has been in the Problem Solving/RtI process and progress monitoring data indicate little behavioral progress or positive response to interventions
- Student has a Behavioral Intervention Plan (BIP) that has not been effective
- For IDEA child find, student already has a 504 Plan and accommodations have provided little behavioral/social/emotional benefit

c. **<u>Outside or Other Information Provided/Obtained</u>**

- Information that student has been hospitalized (particularly for mental health reasons, chronic health issues, etc.)
- Information that student has received a DSM-5 diagnosis (ADHD, ODD, OCD, etc.)
- Information that student is taking medication
- Information that student has an Individual Health Care Plan (may have a disability that should be acknowledged to ensure nondiscrimination or may need services in addition to IHP, such as an IEP or 504 Plan)
- Information that student has been exposed to a traumatic event
- Information that student has suffered a head injury/concussion
- Information that student is seeing an outside counselor, therapist, physician, etc.
- Private evaluator/therapist/service provider suggests the need for an evaluation or special services

d. Internal Information from School Personnel

- Teacher/other school service provider suggests a need for an evaluation under 504 or IDEA or suggests counseling, special education or other special services, etc.

e. Parent Request for Evaluation or Services

5. Do we wait for parents to make a referral for an evaluation?

No. While the parent may initiate a request for the initial evaluation, the child find duty may be triggered prior to that time. When there is sufficient suspicion or belief that a disability and need for services may exist, a referral must be made whether the parent has requested it or not.

6. When does a referral become "official"?

The referral becomes "official" on the date it is received by the school, whether it is by telephone, mail, email, conference, or when a written referral form is submitted to any education personnel (e.g. secretary, guidance counselor, principal).

7. Must a referral team accept a referral from a parent if there is no clear evidence of a problem or "reason to suspect"?

Yes. The school district must accept a referral from a parent whenever one is submitted. Once submitted, a referral team meeting is then scheduled to discuss the referral. The parent is a member of this team and must be invited to participate in this meeting. The team reviews the referral and all existing data and determines whether there is a need for an evaluation. If a parent continuously makes referrals (e.g., every six months), it is advisable that the school district review all current information and decide whether a referral is warranted. If not, the school district should send a properly completed *"Notice of Proposal or Refusal to Take Action"* indicating its refusal to accept the referral, along with a copy of the *"Special Education Rights."*

8. If a parent requests an evaluation, is the school district required to evaluate?

No. School districts are only required to accept referrals from parents, not necessarily to evaluate on demand. The IEP Team will meet to review the referral and determine if the collected student data indicate a need for an evaluation.

While schools can refuse to conduct an evaluation when no evidence of a need exits, it has become common practice for a school district to proceed with an evaluation when a parent is adamant that an evaluation should be conducted. In

many instances, it makes sense to proceed with an evaluation and then focus on the somewhat more important issue of eligibility for services.

9. What happens if the IEP Team determines that the student referral does not warrant an evaluation?

If the IEP Team determines that the student does not need an evaluation for special education services because there is no reason to suspect that the student is a student with a disability in need of services, the "*Notice of Proposal or Refusal to Take Action"* must be used to document the IEP Team's decision not to accept the referral for evaluation and be given to the parent or adult student (age 19 and older), along with a copy of the "*Special Education Rights,"* so that the parent/adult student is advised of the school's decision and the right to challenge its refusal to evaluate.

10. Can school districts stop accepting referrals for special education in the spring if there is not enough time to begin services before the summer break?

No. A referral must be accepted anytime there is sufficient "reason to suspect" a disability exists, no matter when that occurs during the school year. Limitations cannot be put in place that restrict when a referral can be accepted for special education consideration, even during the summer break.

11. May school districts stop accepting referrals if classes are full?

No. Appropriate referrals must be acted upon regardless of class size and capacity. There is no such thing as a "waiting list" for referrals or for special education and related services.

12. What is a "Problem Solving Team" and how does it relate to identification or the child find duty under the law?

The Problem Solving Team (PST) is the collaborative group of school-based personnel that helps identify and guide general education interventions for all students who have academic or behavioral difficulties and is central to the school's successful implementation of a Response to Intervention (RtI) framework. The PST is responsible for day-to-day decisions, which ensure that (1) students receive instruction and interventions matched to their identified needs; (2) appropriate progress monitoring tools are utilized to provide evidence of students' response to instruction and intervention; and (3) progress monitoring data are used to make timely instructional decisions that maximize student outcomes.

13. Can the school deny a referral for evaluation based on the fact that a student has not completed the PST/RtI process?

No. The PST may refer a student to the IEP Team for consideration for evaluation if relevant data indicate that there is a suspicion of a disability and a need for special education services**. However, a parent should never be informed that the PST/RtI process must be completed before a referral can be made. The PST/RtI process does not have to be completed for a student to be evaluated for special education services.** The only reason to deny a referral is that there is no reason to suspect that the student has a disability and a need for special education services.

14. If a parent requests an evaluation, should PST intervention strategies and evaluations occur concurrently?

Yes. When a parent requests an evaluation and it is determined that an evaluation will be done, implementation of intervention strategies in the general education program should occur and continue simultaneously with the evaluation.

15. Is the PST a part of special education or regular education?

The PST process is designed for all teachers and students, both general education and special education. Any teacher who has a student that is experiencing learning or behavioral difficulties should refer the student to the PST for assistance.

16. Is the Problem-Solving Team the same as the IEP Team?

No. The PST is not to be confused with the IEP Team. The focus of the IEP Team is on the provision of services to an identified student with a disability. The PST, while focused on the student as well, has as its primary purpose the provision of support to teachers in an attempt to assist them in the development of strategies to improve student achievement.

The typical PST make-up may include, but is not limited to, the following:

Classroom Teachers
Intervention Teachers
Instructional Coaches (reading, math, literacy, graduation, etc.)
Special Education Teachers
School Counselor/School Psychologist
Administrator (principal or assistant principal)

17. What is Response to Instruction/Intervention (RtI)?

RtI integrates core instruction, assessment and intervention within a multi-tiered system designed to maximize student achievement and reduce behavior problems.

Through implementation of the RtI process, schools identify and monitor students at risk, use problem-solving and data-based decision-making to provide evidence-based interventions and adjust the intensity of interventions based on the student's response. RtI done well at the classroom level will provide data from which educators can make sound instructional decisions for individuals and groups of students. Given high-quality decisions, RtI shows promise in supporting all students—especially those at risk of failing—to achieve state performance standards.

18. Within an RtI framework, how/when do we determine that regular education can no longer sustain the services/interventions required for the student?

While there is no legal answer to this question, the school district will decide this within the design of its RtI model, as well as other such timelines and procedures. Remember, however, that the legal child find duty is still triggered based upon "reason to suspect" that the student has a disability and a need for special education services.

19. We are a "Response to Intervention" school. What do we do when parents demand that their child be evaluated for special education, even though the student is responding positively to the interventions?

If the RtI data reflect that the student is responding well and the school has no reason to believe or suspect that the student is in need of special education or related services, the referral team can refuse to conduct the evaluation requested on that basis. As described in Question 9 of this section, formal written notice of this refusal must be provided to the parent (and contain all of the legally required components), including notice of the parent's right to challenge the school's refusal to conduct an evaluation via mediation or a request for a due process hearing.

20. What type of RtI documentation is required before a student can be referred for a special education evaluation?

Remember that the child find duty to refer a student for an evaluation is triggered when there is sufficient reason to suspect or believe that the student may be a student with a disability in need of special education, regardless of any RtI documentation that may or may not be available. Within an appropriate RtI model and prior to or as a part of the referral and evaluation process, documentation is to be generated that reflects that the student has been provided appropriate instruction in regular education settings delivered by qualified personnel. In addition, data-based documentation of repeated assessments of achievement at reasonable intervals reflecting formal assessment of student progress during instruction is to be provided to the student's parents.

Typically, before a student is referred by the school for a special education evaluation, intervention strategies are implemented in the general education

program and appropriately monitored by the Problem Solving Team (PST) for an appropriate period of time (typically, a minimum of eight weeks) and be determined to have been unsuccessful. However, where sufficient "reason to believe or suspect" exists that indicates that the student is one with severe problems that require immediate attention, the referral for evaluation should occur right away, and RtI data and documentation will be generated concurrently with the evaluation.

Generally and even in cases where RtI data have not been generated, when a parent demands an evaluation and/or in extreme cases where it is clear that the student has a disability and is in need of an immediate evaluation, consent for an evaluation for special education should be obtained and an evaluation should proceed immediately in conjunction with the collection of RtI data.

21. What is the legal standard for selecting and documenting evidence-based/supported interventions for students suspected of having a learning disability or emotional/behavior disability?

Unfortunately, there is no legal standard in this regard. The PST/RtI Team must be sure, however, that there is sufficient evidence/data to support the validity of interventions that are used in the RtI process.

C. Questions Regarding the Evaluation Process

1. If the IEP Team determines that an evaluation is needed, is it required to get consent from the parent to evaluate?

Yes. The "*Notice and Consent for Initial Evaluation*" form must be signed by the parent before an initial evaluation is conducted.

2. How long does the school district have to conduct an evaluation if it is decided that one is needed and the parent consents?

Once the parent signs consent for an evaluation, the district has 60 calendar days from the date signed consent is received to complete an initial evaluation. Day One of the timeline is the day the district receives a signed "*Notice and Consent for Initial Evaluation*" form from the parent. The initial evaluation must be completed on or before Day 60. Once the evaluation is completed, the district has 30 calendar days to determine initial eligibility and another 30 calendar days from the eligibility determination date to develop an IEP.

3. If a student fails the vision and/or hearing screening and we exhaust all avenues to get it corrected but cannot do so, may we proceed with evaluation if it is going to go over the 60-day timeline?

No. The vision or hearing problem must be corrected prior to proceeding with evaluations that rely on visual or auditory acuity.

4. **Is the school district responsible for purchasing eyewear to correct vision problems prior to evaluating for eligibility if the parent has not taken action to correct vision problems?**

   Yes, if it is absolutely necessary to proceed with a valid evaluation. The school district, however, may also call upon nonprofit or other organizations that may help a student in need of eyewear whose parents cannot afford it.

5. **Who is responsible for transporting the student to and from the eye care professional?**

   The school district, if the parent does not agree to assist or provide an alternative.

6. **How should we proceed when parents refuse consent for an initial evaluation that we believe is necessary?**

   The school district must make and document its "reasonable efforts" to obtain informed consent from the parent for an initial evaluation. However, if the parent fails to consent or to respond to a request for consent to an evaluation, the school district may, but is not required to, pursue the initial evaluation by using the due process procedures under the IDEA.

   Most of the time, a school district will simply document a parent's refusal to consent to the evaluation and maintain that in the student's file, rather than to initiate a formal proceeding to attempt to override the parent's refusal to consent to the evaluation. If the school district does not choose to pursue a proceeding to override parent refusal to consent to an evaluation, the school district will not be in violation of the IDEA's child find or evaluation requirements.

7. **If a particular evaluation has recently been conducted, for what time period would that evaluation be considered valid for us to use for eligibility purposes?**

   Any evaluation is considered valid for determining initial eligibility for special education services if that evaluation is conducted within one year of the date of the IEP Team meeting to discuss the need for additional data, if any, to determine eligibility. If the initial evaluation is for an out-of-state student who is transferring into Alabama, the public agency may use the evaluations at their own discretion.

D. Questions about Reevaluation

1. **Isn't it true that we only have to reevaluate a student every three years?**

   While it is true that a reevaluation meeting must be held every three (3) years to determine whether reassessment is necessary, reevaluation may be needed "whenever conditions warrant." Thus, the need to conduct a reevaluation is an IEP Team decision depending upon the needs of the student. If a student is not making progress, an IEP Team should always consider the need for obtaining additional evaluative information. A "reevaluation" does not necessarily mean, however, that

a formal assessment is to be done. It could be that an IEP Team meeting is convened to review all existing data to determine whether changes may need to be made to the student's IEP or whether additional assessment data should be obtained.

2. **May we determine that a student is no longer eligible if we choose to collect no new data, or must we administer formal assessments?**

   A student may be determined ineligible for services even if a school district chooses not to collect new data or administer formal assessments as part of a reevaluation. This determination may be based on existing data (such as report cards, work samples, teacher input, state assessments, etc.). A new eligibility report that includes all of the minimum evaluative criteria must be generated, but this does not mean just transferring the information from the previous eligibility report to a new report. Current data must be on the eligibility report to support the decision at that time to dismiss the student from special education services based upon the fact that the student is no longer eligible and in need of special education services.

3. **How many three-year reevaluations may lapse without getting new testing?**

   The need to conduct assessments and to obtain additional data as part of a reevaluation is an IEP Team decision. However, the IEP Team must be able to justify and defend its decision not to conduct any new assessments as part of its reevaluation of a particular student. Where significant changes have occurred with the student's performance or disability, re-assessment should strongly be considered by the team.

   It is also important to remember that when eligibility criteria in the AAC change, the student must meet new AAC criteria at the time of reevaluation. Thus, when the minimum evaluative criteria in the AAC are revised, most students will need additional evaluative data in order to meet the new criteria.

4. **In terms of a reevaluation, what responsibility does a school have if the parent will not attend meetings, give permission for a reevaluation, or provide needed input for social histories or behavior scales?**

   In essence, a parent is refusing to allow for the district to conduct a reevaluation under these circumstances. The U.S. Department of Education (US DOE) has indicated that where a parent refuses consent for reevaluation and the school district believes that based on existing data the student does not continue to have a disability or does not continue to need special education and related services, the school district may determine that it will not continue to provide special education and related services. If this is decided, the school district must provide prior written notice of its proposal to discontinue the provision of FAPE based upon the fact that it does not have evaluative data in place that supports continued eligibility.

5. **What constitutes a reevaluation for a student before determining that a student is no longer a student with a disability?**

   A reevaluation begins with the IEP Team reviewing all existing data and deciding whether additional evaluative data are necessary to determine a student's continued eligibility for special education and related services. Data to review would include, but not be limited to, work samples, observations, behavioral data, attendance data and other measures of student performance already available in the student's record. Parent consent is not needed to review educational records as part of a reevaluation.

   Based upon its review of existing data, the IEP Team may decide that no additional evaluative data are needed to make a determination, or it may decide that additional evaluative data must be obtained in order to determine continued eligibility. In the latter case, parent consent is required prior to conducting additional assessments or documentation of at least two attempts is required if the parent fails to respond to the request for reevaluation.

E. Questions about Independent Educational Evaluations (IEEs)

1. **If a parent disagrees with a school district's evaluation and requests an IEE, does the parent get to choose who conducts this evaluation?**

   When a parent disagrees with an evaluation conducted by the school district, the parent has the right to request that the district fund an Independent Educational Evaluation (IEE). An IEE must be conducted by a qualified examiner who is not employed by the school district.

   If a parent requests an IEE, the school district must either file a due process hearing request to show that its evaluation is appropriate (or the evaluation obtained by the parent does meet agency criteria) or ensure that the requested independent evaluation is provided at public expense. If the final decision in a due process hearing is that the school district's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense.

   Unfortunately, the law does not specifically set forth whether the parent gets to choose who actually conducts an IEE. However, the US DOE has indicated that school districts must maintain a list of independent evaluators from which parents may choose, but the list needs to be comprehensive and inclusive of all qualified examiners in the area.

2. **If an IEE is conducted or a parent brings in a private evaluation report, must the school district consider it?**

   Yes. The district must consider the results of any independent educational evaluation in any decisions made with respect to the student's right to FAPE. However, the district is not required to implement all or any of the

recommendations contained in an independent evaluation report, particularly if the school does not agree with those recommendations, based upon its own reliable data about the student's needs and abilities.

3. Who makes the decision about whether an IEE will be funded by the district?

This is not a school administrator's decision or an IEP Team decision. If a parent requests an IEE, the parent should be referred to the district's Special Education Coordinator so that the request may be properly addressed.

F. Eligibility Questions

1. Must a school district find a student eligible for services based on letters or other documentation from a doctor?

While documentation from a doctor may contain valuable and relevant information, a doctor does not determine eligibility for special education services. Rather, the school district must conduct the evaluations required by the AAC, and the student must meet the criteria in the AAC to be eligible for special education services. Doctors make medical diagnoses, not educational diagnoses. A medical diagnosis alone does not automatically constitute eligibility for special education services. The Eligibility Committee will make the eligibility decision and, if eligible, the IEP Team will develop an IEP.

2. When the team is convened to determine eligibility, must the team reach a consensus regarding eligibility?

A "unanimous" team decision is not required to determine eligibility of a student but obtaining "consensus" (general agreement) of the team must be attempted. The eligibility decision page provides areas for signatures of agreement or disagreement with the eligibility decision. At the end of the process, school district personnel must ultimately decide what the determination will be from the school district's perspective and provide written notice of the final eligibility determination to the parents, along with the Parent Rights.

3. Why are certain students denied special education services because they don't meet the "paper" criteria for special education?

Eligibility criteria are important and must be followed. Congress and the US DOE are clear that students must meet eligibility criteria, as defined by the state, in order to be found eligible to receive special education services.

4. Does Alabama use the severe discrepancy model exclusively to determine SLD? Are any school districts in Alabama using the RtI model for eligibility?

In Alabama, school districts may use any or all of the three available options to determine eligibility for specific learning disability (SLD). These options are: RtI,

Pattern of Strengths and Weaknesses and Severe Discrepancy. While the Severe Discrepancy option continues to be the most frequently used for identification of SLD in Alabama, the other two options are also used.

IV. THE IEP PROCESS--PROCEDURES AND CONTENT

A. General IEP Process Questions

1. How can I get parents to attend IEP Team meetings?

Legally, it is required that school districts "take reasonable steps" to ensure that one or both parents are present at each IEP Team meeting or are afforded the opportunity to participate, including notifying them (via sending a "*Notice of Proposed Meeting/Consent for Agency Participation*" form) early enough to ensure that they will have an opportunity to respond and attend. In addition, the meeting must be scheduled at a mutually agreed upon time and place.

There is no legal avenue that a school district may pursue to force parents to attend IEP Team meetings. The school district will be in compliance as long as it takes steps and documents action taken as noted in the answer to the next question.

2. What action should the school district take if the parents fail to respond to the "*Notice of Proposed Meeting/Consent for Agency Participation*"?

If the parent or adult student (age 19 and older) does not respond to two attempts (first and second notice), the school district may proceed with the IEP meeting. However, the school district must maintain documentation of two attempts to provide Notice that includes at least one of the following:

a. Records of telephone calls made or attempted and the results of the calls;
b. Copies of correspondence, including the "*Notice of Proposed Meeting/Consent for Agency Participation*" form sent to the parents; or
c. Records of visits made to a parent's home or place of employment and the results of those visits.

The district should also seek input from the parents prior to the meeting, as well as offer to them the option of participation in the IEP Team meeting via conference call or other alternative format.

3. May an IEP Team meeting occur without the parents?

Yes. Even if the parent checks that he/she will meet as scheduled but does not show up, the IEP Team meeting may be held as scheduled with the other required IEP Team members. However, only the topics checked on the "*Notice of Proposed Meeting/Consent for Agency Participation*" form may be discussed at such meeting.

4. **What level of accommodation is necessary in terms of scheduling IEP Team meetings convenient for parents? Must the school district schedule an IEP Team meeting on an evening or weekend at parental request?**

   Unfortunately, the law does not specifically set forth what is an appropriate "mutually agreed upon" time and place for IEP Team meetings. Applicable guidance indicates a district must make "a good faith effort" to reach an agreement with the parents regarding the scheduling of IEP Team meetings, but the law does not preclude a district from considering its own scheduling needs. Clearly, scheduling meetings in the evening, after school hours or over the weekend is not required.

5. **How much advance notice must be given when inviting parents to attend an IEP meeting?**

   There is no specified length of time, although individual school districts may have their own timeframe for providing notices of meetings (typically five to seven school days). However, the notice should be sent early enough so that adequate time is allowed for planning and scheduling adjustments can be made, if necessary.

6. **Must the school district provide a copy of the IEP to the parents?**

   Yes. A copy of the IEP must be provided to the parents.

7. **Can a parent record an IEP Team meeting?**

   On occasion, a parent may request that an IEP Team meeting be recorded. Generally, if the parent can show a true need for doing so in order to participate meaningfully during the meeting, courts have allowed recording, even over the objection of a teacher. If a parent truly needs to record the meeting for participation purposes, it may simply be easier to allow for the recording. However, the school district should record the meeting as well and keep a copy of the recording as an "education record." Some school districts may not allow for recording of meetings, including IEP meetings, but if the parent can demonstrate a disability or other true need to record in order to fully participate, then there would need to be an exception made.

B. IEP Team Questions

1. **What is an IEP Team?**

   The IEP Team is a group comprised of the parent and qualified school staff members who make all decisions regarding the identification, evaluation, and placement for a student with a disability.

2. **What is the function of the IEP Team?**

The IEP Team is responsible for reviewing all available assessment data, determining eligibility, developing and reviewing and revising the IEP and determining appropriate services and placement for the student.

3. **Who are the required members of a student's IEP Team?**

Under the IDEA and the AAC, a school district must ensure that the IEP Team for each student with a disability includes: (1) the parents of the student; (2) not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); (3) not less than one special education teacher of the student, or if appropriate, at least one special education provider of the student; (4) a representative of the school district (the "LEA Representative") who (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; (ii) is knowledgeable about the general curriculum; (iii) is knowledgeable about the availability of resources of the school district; and (iv) has the authority to commit agency resources and be able to ensure that IEP services will be provided; (5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team already described; (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and (7) if appropriate, the student.

The school is required to ensure that members (2) through (5) above are present at every IEP Team meeting and that parents are properly invited to attend. At meetings where transition services will be addressed for the student (typically beginning at age 16 or younger if determined appropriate by the IEP Team), other agencies involved in providing transition services are to be invited to attend (with parental consent), as well as the student.

4. **Are all IEP Team members required to attend every IEP Team meeting? Do they all have to stay for the entire meeting?**

In general, members (2) through (5) above are required at every IEP meeting and in attendance for the entire meeting. In 2004, however, the IDEA formalized a process by which a mandatory member of the IEP Team could be excused from attending an IEP meeting or part of an IEP meeting.

A school IEP Team member is not required to attend an IEP meeting, in whole or in part, *if the parent of the student at issue and the school agree* that the attendance of that member is not necessary "because the member's area of the curriculum or related services is not being modified or discussed in the meeting." When the meeting involves a modification to, or discussion of, the member's area of the curriculum or related services, the member may be excused if the parent and school

district consent to the excusal and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting. Parental agreement or consent to any excusal must be in writing, and school districts should have a practice for excusing IEP Team members from IEP meetings.

The 2006 IDEA regulations clarified the "IEP Team members" to whom the excusal procedures apply. The regulations clarified that the excusal procedures in the Act refer to the IEP Team members (2) through (5) listed in the answer to Question 3 above. If the staff members that cannot attend include any of these IEP Team members, then a formal excusal procedure must be followed for each one who cannot attend. If certain staff members do not plan to attend but the mandatory members of the student's team will be there, then the excusal procedures are not required.

Because these procedures can be so complicated, most districts will not proceed with a meeting unless all IEP Team members are present. However, there may be times (due to an emergency) where the district will need to get the parent's consent to proceed without a mandatory IEP Team member and follow its procedures for proper excusal.

5. **Who should sign an IEP?**

Although no one is actually required by law to sign an IEP, it is prudent practice for compliance purposes to have members sign to reflect who was present and who participated. Only those individuals actually present at the IEP Team meeting should sign the IEP. If an IEP Team member participates by phone, the name of that person should be placed on the appropriate line on the IEP document and a notation made that the person participated by phone. Unless a team member was actually present and participated at the IEP Team meeting, that member should not sign the IEP.

6. **Who is authorized to serve as the LEA Representative of the school at an IEP Team meeting?**

It is important that whoever is designated to serve as the local education agency (LEA) representative at an IEP meeting is qualified to serve in that position. Remember that the LEA Representative must be (i) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; (ii) knowledgeable about the general education curriculum; and (iii) knowledgeable about the availability of resources of the school district. In Alabama, the LEA must also be able to commit resources on behalf of the school district that the IEP Team believes the student needs, based upon all relevant and reliable data, to make appropriate educational progress. The LEA is also responsible for ensuring that every student's IEP is implemented.

Whoever is designated to serve as the LEA at an IEP meeting should be clearly aware of and trained regarding his/her role and be prepared to meet the criteria for serving as the LEA Representative. In Alabama, it is typical that the school's principal or designee serves as the LEA to lead the meeting's process so that the special education service providers can focus on the IEP's content during the meeting.

7. **Which teacher should attend the IEP Team meeting when the student has more than one teacher?**

With respect to "not less than one special education teacher of the student," this must be a teacher who provides (or has provided) special education services to the student and not just someone with special education certification.

With respect to "not less than one regular education teacher of the student," if the student has several regular education teachers, the law is clear that "not less than one" regular education teacher of the student is required to attend (if the student is, or may be, participating in the regular education environment). This means that not all of a student's regular education teachers must be there and that the requirement is satisfied with one of the student's regular education teachers in attendance.

With respect to which regular education teacher should attend if the student has more than one regular education teacher, it is important to consider language from the US DOE indicating that the regular education teacher who serves as a member of a student's IEP Team should be a teacher who is, has or may be responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to instruct the student. If the student has more than one regular education teacher responsible for carrying out a portion of the IEP, the school may designate which teacher or teachers will serve as the IEP Team member(s), taking into account the best interests of the student.

8. **What if a general education teacher cannot or will not attend the IEP meeting?**

If no general education teacher of the student can or will attend, then the formal excusal procedures must be followed before the meeting proceeds. Not having a general education teacher at the meeting has been held sufficient, in and of itself, to constitute a denial of FAPE. Principals must impress upon general education teachers the importance of compliance with the requirement that they attend and appropriately participate in IEP Team meetings.

9. **Why is there a requirement that a general education teacher participate as a member of the IEP Team if a student is not participating in the general education environment?**

A general education teacher must participate as a member of the IEP Team to discuss what and how the general education curriculum may be accessed by the

student and how the student will be involved in the general education curriculum during that IEP implementation year. The general education teacher may also assist in the determination of appropriate positive behavioral interventions and supports, the determination of supplementary aids and services, program modifications and supports for school personnel.

10. May the parents bring other individuals with them to an IEP Team meeting?

Yes. The parent or the school district may invite any individuals who have knowledge or special expertise regarding the student to the IEP Team meeting. According to the US DOE, the determination as to whether an individual has "knowledge or special expertise" is to be made by the parent or school district who has invited the individual to participate. While the parents are not required to alert the school district as to who they have invited, the school district is required to give notice to the parent as to all of its invitees. During preparation for the meeting, school districts may ask parents to let them know if they plan to have anyone with them at the meeting.

11. Are school districts and parents allowed to be represented by attorneys at IEP Team meetings?

The US DOE has indicated that the IDEA authorizes the addition of other individuals to the IEP Team at the discretion of the parent or the district only if those other individuals have knowledge or special expertise regarding the student. The determination of whether an attorney possesses "knowledge or special expertise" regarding the student would have to be made on a case-by-case basis by the parent or school inviting the attorney to be a member of the team. The US DOE noted that the presence of attorneys could contribute to a "potentially adversarial atmosphere at the meeting," even if the attorney possessed knowledge or special expertise regarding the student. Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged. However, if the parent brings an attorney to an IEP Team meeting, then the school should strongly consider whether it should have its attorney present and adjourn the meeting and reschedule it, if necessary, so that the school's attorney may attend.

12. Can representatives of the Alabama Education Association (AEA) or other teacher organizations attend IEP Team meetings at the request of a teacher or other district personnel?

The US DOE has noted that the IDEA does not provide guidance for including individuals such as representatives of teacher organizations as part of an IEP Team, unless they are included because of knowledge or special expertise regarding the student. Because a representative of a teacher organization would generally be concerned with the interests of the teacher rather than the interests of the student and would not possess knowledge or expertise about the student, it generally would be inappropriate for such an official to be a member of the IEP Team or to otherwise participate in an IEP Team meeting.

C. IEP Content Questions

1. How long should an IEP be?

The law does not specify how long an IEP must be but does specify the required components of an IEP. Because Alabama has a state form that must be used by IEP Teams, the components are driven by the form. However, the form does not provide guidance in terms of how long an IEP will be for a particular student, and each IEP Team must determine what is appropriate for the student based upon the student's unique needs, abilities and circumstances.

2. Must the IEP describe how a student's progress will be measured?

Yes. The IDEA regulations require the IEP to include "a description of how the student's progress toward meeting the annual goals [in the IEP] will be measured" and "when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided." It is <u>very important</u> that the student's progress is continuously monitored and measured in accordance with the provisions in the IEP and that data are kept to reflect progress on the annual goals. School administrators must hold their regular and special education teachers and other service providers accountable if they are not tracking the progress of their students with disabilities.

3. Is it appropriate to make categorical decisions about what services will be provided to students with disabilities?

No. Each student's IEP and services must be determined on an *individual basis* and at least annually, if not before. Every IEP must include a statement of the specific special education and related services to be provided to the student and the extent to which the student will be able to participate in the general education setting. Blanket statements such as "we always do it that way," or "this is what we provide for all of our students with autism" must be avoided. All recommendations for services must be based upon what the individual student needs in order to make progress appropriate in light of the student's circumstances.

V. PLACEMENT AND PARENT CONSENT

1. Can a school district provide special education before an IEP has been formulated?

No. In 1999, the US DOE specifically stated that an IEP must be *in effect* before special education and related services are provided to an eligible student and that the appropriate placement for a particular student with a disability cannot be determined until after decisions have been made about the student's needs and the services that the school district will provide to meet those needs. These decisions must be made at the

IEP Team meeting and it is not permissible to first place the student and then develop the IEP.

Thus, according to the law, an IEP must be developed before special education services may be delivered, and the student's placement must be based upon, among other factors, the student's IEP. In addition, courts have considered "predetermination of placement" to be fatal to the school district's position and a denial of FAPE, in and of itself.

2. **What does it mean to require IEP decisions to be made by "consensus"? Should a placement decision be made if the parents oppose it? What happens if the parents do not agree with the school district's proposed IEP?**

Technically and according to the dictionary, the word "consensus" means unanimity. Though reaching unanimity in decision making is an admirable goal, it may not always be possible. The US DOE has addressed this issue and stated that an IEP meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint, informed decisions regarding the: (1) student's needs and appropriate goals; (2) extent to which the student will be involved in the general curriculum and participate in the regular education environment and state and district-wide assessments; and (3) services needed to support that involvement and participation and to achieve agreed-upon goals. The DOE noted that parents are considered "equal partners" with school district staff in making these decisions, and the IEP Team must consider the parents' concerns and the information that they provide regarding the student in developing, reviewing and revising IEPs.

While the IEP Team should work toward reaching consensus or, in other words, a *general agreement*, the school district has the ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." The fact that the parents brought more people to the meeting is not determinative of its outcome; nor does the principal get to "stack the deck" and mandate that a vote occur at an IEP meeting.

If the IEP Team cannot reach general agreement, the school district must provide the parents with a copy of the proposed IEP along with prior written notice of its proposed or refused action, or both, using the "*Notice of Proposal or Refusal to Take Action"* form. The parents then have the right to seek resolution of any disagreements by initiating mediation or an impartial due process hearing to challenge the proposed or refused action or services.

3. **Can a parent dictate what is to be included in the IEP? Do all IEP Team members have to agree upon the services?**

Again, while the parent must be afforded a meaningful opportunity to participate in the development of an IEP, the parent is only one member of the IEP Team. The parent may offer suggestions and provide information that must be considered by the entire

team in developing an appropriate IEP. It is not required, however, that all members of the IEP agree with the proposed services that are written in the IEP or that all of a parent's demands are incorporated.

4. What if the school district staff do not agree among themselves on the services to be provided?

When there is disagreement among school IEP Team members as to what the district's final IEP recommendation for services will be, the US DOE and at least one court have looked to the LEA Representative as the one with the ultimate responsibility for helping the school team members make the final recommendation for services when the IEP Team is in disagreement as to the student's placement. Someone must make the decision as to what proposal the school district believes it can support and defend as FAPE for the student.

5. Do parents have the right to decline special education services for their child?

Yes. School districts must obtain "informed parental consent" prior to the provision of special education services for the first time by providing them with a *"Notice and Consent for the Provision of Special Education Services"* form to indicate their written consent to services. If the parent refuses to provide consent to initial services or fails to respond to requests for it, the school district may *not* use the mediation or due process procedures to obtain agreement or a ruling that services may be provided to the student. Thus, where a parent refuses consent to services, there is really nothing the school district can do, other than to document its attempts to obtain consent. Clearly, however, the school district will not be in violation of the requirement to make FAPE available to the student where the parent has refused consent for services. In addition, the student will not be considered a student with a disability for disciplinary purposes or other considerations.

6. Why do we have to "chase down" parents to acquire signatures for referrals, consent for evaluation and provision of services?

Obtaining signed parental consent for initial evaluations and the provision of special education services is a vital procedural requirement under IDEA and the AAC. Documentation is key to showing compliance under the IDEA and to a school district's ability to defend itself if challenged. However, schools are required only to make and document their reasonable efforts to obtain consent for initial evaluations and initial services, but an initial evaluation and provision of services may not take place without prior written parental consent.

7. How should a school proceed when parents refuse to provide consent for the provision of special education services?

If the parent or adult student (age 19 and older) refuses consent for the initial provision of services, the school district may request that the parent or adult student participate in a conference to discuss his/her decision. However, if the parent or adult student does

not give written consent for services, the school district cannot provide those services and cannot request a due process hearing or mediation to seek to override the refusal to consent to services. As a result, the school district must do the best it can to provide appropriate services to the student short of special education services.

8. May an IEP be implemented without a parent's signature?

As discussed previously, the first IEP proposed for a student cannot be implemented without parent/adult student consent. However, if consent has been given to initial services, all IEPs beyond that point may be implemented without consent, if certain conditions have been met. If the parents has been given an opportunity to participate in the IEP meeting and this is documented (via the "*Notice of Proposed Meeting/Consent for Agency Participation*" form with two documented attempts) but cannot or will not attend, the IEP Team can meet and sign the IEP and it can be implemented, even if the parent did not sign it.

9. Once a parent has consented to the provision of special education services, does the parent have the right to demand later that the student be dismissed from special education?

Yes. In 2008, IDEA regulations were put into place that require school districts to discontinue the provision of services if a parent revokes consent, in writing, to special education services personnel. However, as is discussed in the discipline section below, where the parent revokes consent to services, the student will not be considered to be a student with a disability for disciplinary or other purposes.

10. What is the procedure for a parent to request that special education services be discontinued for a student?

If the parent makes the request to remove the student from special education, the school district must obtain a signed "*Notice of Revocation of Consent for Continued Provision of Special Education and Related Services*" form and provide written notice to the parent before ceasing services.

11. As part of parent consent, do parents get to select the student's special education teacher/case manager or other teachers and service providers?

No. The assignment of specific school personnel to implement an IEP is a school district decision. The parent does not have the right to dictate who will provide the services, and personnel selection is not an IEP Team decision.

VI. LEAST RESTRICTIVE ENVIRONMENT AND "INCLUSION"

1. What is the meaning of least restrictive environment (LRE)?

The IDEA requires states to establish procedures to ensure that, to the maximum extent appropriate, students with disabilities, including those in public or private institutions or

other care facilities, are educated with students who are not disabled and that special classes, separate schooling or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This is called the law's LRE requirement.

2. Is "full inclusion" of students with disabilities mandated by the IDEA?

It depends upon what is meant by "full inclusion." To the extent that "full inclusion" means that all students with disabilities must be placed in the regular education classroom, that would be inconsistent with the IDEA's requirement that placement decisions be made on an individualized basis. Clearly, the LRE for a student is determined based upon the individual needs of the student.

3. What factors should a school consider in making a placement decision? How do schools determine the LRE?

The issue of LRE has been frequently litigated and many courts have established standards and factors for use in determining what the LRE is for a particular student. Factors to be considered include whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily for a given student. If it cannot, and the school intends to provide special education or to remove the student from regular education, whether the school has mainstreamed the student to the maximum extent appropriate must be considered. The appropriate question is what is the LRE where the student can make appropriate progress in light of the student's circumstances (i.e., where the student can receive meaningful educational benefit)?

When determining the appropriate services and the LRE where they will be provided, the IEP Team must consider the range of service options beginning with collaborative/consultative services in the general education setting to the provision of homebound/hospital services. As each option on the LRE continuum is considered, the IEP Team discusses and decides if the option, with the provision of supplementary aids and services, is the LRE where the student can receive FAPE or, in other words, can make appropriate educational progress on things such as his/her IEP annual goals and/or benchmarks/short-term objectives.

4. Does a student with a disability have the right to placement in the neighborhood school?

While there is a preference for every student with a disability to receive services in the school that he/she would attend if not disabled, the IDEA does not require that each school building in a school district be able to provide all the special education and related services for all types and severities of disabilities. Rather, the school district has an obligation to generally make available a full continuum of alternative placement options that support opportunities for its students with disabilities to be educated with nondisabled peers to the maximum extent appropriate. If a student's IEP requires

services that are not available at the school closest to the student's home, the student may be placed in another school that can offer the services that are included in the IEP.

Transportation, if needed for the student to benefit from special education, must be provided as a related service at no cost to the parent, to the location where the IEP-based services will be provided. Often, students who have low-incidence, high-needs may need to be placed outside of their home-zoned school where the highly structured, intensive services that they need are centrally located. Districts are not required to have a full array of such services in every one of its schools.

5. **Is inclusion in regular education classes the same as participation in the general curriculum?**

   No. The US DOE has noted that an IEP must address a student's involvement in the general curriculum, regardless of the nature and severity of the student's disability. In addition, the IEP for *each* student with a disability (including students who are educated in separate classrooms or schools) must address how the student will be involved in and progress in the general curriculum.

6. **Must a student with a disability fail in a less restrictive environment before moving to a more restrictive environment?**

   Not as a matter of law. In discussing the IDEA's LRE requirements, the US DOE has commented that a student need not fail in the regular classroom before another placement can be considered. Conversely, IDEA does not require that a student demonstrate achievement of a specific performance level as a prerequisite for placement in a regular classroom.

7. **Can parents of regular education students legally challenge the inclusion of a disruptive student with a disability?**

   In looking at available court decisions, it has never been done, so it remains to be seen whether a parent of a regular education student would have any legal "standing" to bring an action to challenge the inclusion of a disruptive student with a disability in the regular classroom. However, if the student with a disability is so disruptive that the student is not truly benefiting or making appropriate progress in being there, the student's IEP Team would need to reconvene and consider whether a change of placement would be appropriate.

8. **What is our recourse in the event we have a very low-functioning student with a disability enroll in our school that has never been in the general education setting, is a total disruption to instruction, yet the LRE determination in the IEP dictates that all services be provided in the general education setting?**

   Convene the student's IEP Team for the purpose of reviewing the student's IEP to address behavior and consider what the LRE is for the student. If it is determined that 100% of the school day in the general education setting with supplementary aids and

services is not the LRE for the student, then a proposed change in placement would be made by the IEP Team, followed by a "*Notice of Proposal or Refusal to Take Action*" form to the parent.

9. Why is it important for students with disabilities to have access to and be included in the general education curriculum with their nondisabled peers?

Access to the general education curriculum for students with disabilities is required by law. The IEPs of all students with disabilities must address the extent to which the student will be involved and progress in the general education curriculum. The goal is to include all students with disabilities in the regular education environment to the maximum extent appropriate for that student to receive a FAPE. The LRE is an IEP Team decision that should be based on the individual needs of the student, taking into consideration many relevant factors and data.

10. In order to meet the LRE mandate, are we required to have a general education preschool program in order to meet the requirement for preschoolers with disabilities or will our self-contained, multi-needs preschool class be sufficient?

The IDEA's LRE requirement applies to preschool children. This means that before a preschool child can be placed outside of a regular education environment, the IEP Team making the placement decision must consider whether supplementary aids and services could be provided that would enable the child to be educated satisfactorily in the regular education setting. This is true <u>even if the school district does not operate programs for nondisabled preschoolers</u>, and IEP Teams must consider an individual preschool child's needs with respect to inclusion with and exposure to nondisabled peers, regardless of the preschool setting for the child.

For school districts that have available full-time preschool programs for nondisabled students (including preschool programs that include nondisabled students solely for purposes of meeting the LRE requirement), the presumption should be that children with disabilities can participate on a full-time basis with typically developing peers, unless something about the unique needs of a particular child precludes such a placement and requires removal.

According to the US DOE, where a school district does not have available regular preschool programs for nondisabled children, the district must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability. These methods may include: 1) providing opportunities for them to participate in preschool programs operated by other public agencies (such as Head Start or community-based child care); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular elementary schools; or (4) providing home-based services. If an IEP Team determines that placement in a private preschool program is necessary for a child to receive FAPE, the district must make that program available at no cost to the parent.

11. **How do we provide "full inclusion, one-on-one paraprofessionals" with cuts in personnel that would provide for this service?**

    Matters of funding and establishing teaching and support positions are local decisions that are largely based upon state foundation allotments. However, the needs of students with disabilities must be met when an IEP Team determines what is the LRE and what supplementary aids and supports are necessary for a student to make appropriate progress on the goals set forth in the IEP. Cost and lack of availability of services are not considered defenses to the failure to meet a student's individual needs.

VII. MISCELLEANOUS SPECIAL EDUCATION SERVICE ISSUES

A. General Related Services Questions

1. **What are related services?**

   In addition to special education services, an IEP Team may decide that an individual student requires related services in order to benefit from special education. Special education services must be described in the detail box in a manner that all IEP Team members understand. SES strongly encourages the IEP Team to refrain from including by name specific programs, devices and/or equipment as part of the IEP. Related services may include, but are not limited to, developmental, corrective and other supportive services, such as transportation, audiology services, counseling services (including rehabilitation counseling services), early identification and assessment of disabilities in children, interpreting services, medical services (for diagnostic and evaluation purposes only), occupational therapy, parent counseling and training, physical therapy, psychological services, recreation (including therapeutic recreation), speech-language pathology, social work services in schools, school nurse services, school health services and orientation and mobility services. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping of a cochlear implant), maintenance of the device or the replacement of it.

2. **Must related services be specified in the IEP?**

   Yes. If the IEP Team determines that a related service is necessary in order for the student to benefit from special education services, the school district must specify that in the IEP and provide the service directly, through its own resources or indirectly, by contracting with another public or private entity.

B. Transportation Questions

1. **What are the requirements applicable to transportation of students with disabilities?**

   The regular mode of transportation provided to general education students must be made available for students with disabilities, unless the student's IEP Team

determines that special transportation is needed as a related service to meet the individual needs of the student.

2. **Can parents be required to transport their children?**

   Parents cannot be required to transport their children with disabilities if the school district provides transportation to its students without disabilities. However, even where a school district does not provide transportation to any of its students, an IEP Team for a student may determine that specialized transportation is needed as a related service due to the student's disability and in order for the student to benefit from his/her special education services.

3. **If the parent agrees to provide special transportation through a contract with the school district, what is the rate of reimbursement?**

   If the school district and parent agree that the parent will provide special transportation and the parent will be reimbursed by the district, general practice is that this would be at a mileage reimbursement rate allowed and approved by the school district and in accordance with the school district's documentation requirements.

4. **Might special education support staff (i.e., an aide) or assistive equipment be required during transportation on the school bus?**

   Yes, and this is an IEP Team decision based upon the individual needs of a particular student.

5. **Must a student with a disability be picked up inside the residence/home?**

   Typically not, because special transportation is not provided for the convenience of parents. Rather, such decisions are based upon the student's disability and individual needs. Based upon the common continuum of services available within the transportation system, an IEP Team should consider the individual ability/disability of the student and determine the appropriate level of service needed to ensure FAPE. Even for students who need specialized transportation as a related service, pick-up points can range from regular bus stops to curb-to-curb service, depending upon the needs of the student and taking into consideration the obligation to safely transport the student while promoting independence.

   It is not common practice for school district employees to enter the residence of students who ride a special needs bus. In fact, family members or other responsible parties are typically expected to bring their children to the curbside in the morning and meet them there in the afternoon, where they are assisted on and off the bus as necessary by transportation providers and/or support staff.

C. Extended School Year Question

1. Must IEPs include services during the summer months or extended school year (ESY)?

It depends on the needs of the individual student as determined by the IEP Team. The IEP Team must consider every student's need for ESY services at least annually as part of the provision of FAPE. ESY services must be provided where the student's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student and that significant regression in critical skill areas will result due to the summer break in instruction that cannot be recouped within a reasonable period of time when school starts back.

If it is decided that ESY services are needed, the IEP must clearly specify which goals and services are being extended, the beginning and ending dates for services, the location and the amount of time committed. The decision should be based upon student performance data that has been collected before and after breaks during the school year and in accordance with the school district's process and procedures for making appropriate ESY determinations.

VIII. IEP IMPLEMENTATION AND MONITORING

1. Who, in the school setting, should monitor the services that students with disabilities are receiving? How do we hold special education teachers accountable for providing services that are included in an IEP?

The school's principal is the instructional leader of the school and is considered to be its site-based manager. As such, the principal has the overall responsibility for monitoring and supervising his/her staff in such a way to ensure that appropriate instruction and support are provided to all students at the school.

As discussed previously and in Alabama, the principal and/or other school administrator designee typically participates in and serves as the LEA Representative at IEP meetings. The LEA is responsible for ensuring that the services set forth in every student's IEP are provided. In carrying out this responsibility, it is critical that the principal communicate closely with the school district's Special Education Coordinator for problem-solving, collaboration and compliance, which will demonstrate a unity of effort throughout the entire district. Effective procedures for monitoring the delivery of services to students with disabilities must be developed and implemented locally.

2. If specified by the IEP, must a general education teacher modify a general education program for a student with a disability?

Yes. If the student's IEP requires course modification, the teacher is required to comply with the IEP. It is anticipated that a collaborative/consultative teacher who

may or may not be the case manager for the student would assist the general education teacher in developing and implementing the required modifications.

3. Who is responsible for modifying curriculum?

"Adapting the curriculum involves differentiating instruction to provide learners with a variety of ways to process information and demonstrate what they have learned, in order to 'match' the way in which each learner learns most effectively." (Bashinski, Susan M., July 2002)

Obviously, general and special education teachers must work together to modify the curriculum as appropriate for each individual student. General and special education teachers have content knowledge, and special education teachers have expertise in student characteristics and knowledge of student strengths and needs. It makes sense for them to work together to decide how to differentiate to address individual student needs.

4. Who is responsible for providing the accommodations for a student with an IEP—special education teachers or general education teachers?

This is an IEP Team decision and every teacher and/or other service provider must be specifically informed of their responsibilities relative to the implementation of an IEP.

5. Can the parents of children with disabilities ever be required to provide special education services?

Parents may never be required to provide the special education and related services listed on their child's IEP.

IX. REVIEW AND REVISION OF IEPS AND CHANGE OF PLACEMENT

1. Is a school obligated to continue to provide a service listed on a prior year's IEP?

A student's current placement (defined as the special education and related services listed in the IEP and where they will be provided) must be implemented, unless there is a subsequent IEP developed by an IEP Team. Of course, the IEP Team must meet whenever warranted (but at least every 12 months) to review and revise an IEP and, as part of that review, it could be proposed that a service included on the previous IEP not be continued in the future. If the parent agrees to this decision, the IEP services can be changed. If the parent does not agree to the decision, written notice must be given to the parent of the proposed change in placement, and the parent can then challenge the proposed change in placement via mediation or initiation of a due process hearing. If the parent requests a due process hearing, the service stated in the current last-agreed upon IEP will continue as part of the student's "stay-put" placement pending the outcome of the hearing.

2. When and how can an IEP be changed?

At any time that an IEP Team agrees that the student's needs indicate that a change to the IEP is needed. Changes must be reflected on the IEP or via an appropriate amendment to the IEP. An IEP cannot be changed unilaterally by the parent or by any school person.

In 2004, the IDEA set out a provision allowing for changes to be made to an IEP after the annual IEP meeting but without another IEP meeting. In making changes to a student's IEP after the annual IEP meeting for a school year, the parent and the school district may agree *not* to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the student's current IEP. Changes to the IEP may then be made, if the parent agrees in writing to the changes, "either by the entire IEP Team or by amending the IEP rather than by redrafting the entire IEP."

In Alabama, if it is agreed that an IEP may be amended without an IEP Team meeting, the parent must be provided a revised copy of the IEP with the amendments incorporated. In addition, if changes are made to the IEP without an IEP meeting, the school must ensure that the student's IEP Team is informed of those changes. Because this amendment provision lends itself to potential pitfalls, school administrators must be extremely careful in implementing these provisions and consult with the district's Special Education Coordinator about the IEP amendment process.

3. How often must IEPs be revised/updated/written?

The IEP must be reviewed at least annually but may need to be reviewed more often and as needed. In Alabama, if a parent or any service provider has reason to suspect that the IEP needs revision, an IEP meeting can be requested at any time and the school must conduct the IEP meeting within 30 calendar days of receipt of the request for the meeting.

X. ADDRESSING BEHAVIORAL ISSUES AND DISCIPLINE

A. General Questions Related to Disruptive Students with Disabilities

1. How do you teach and support students with disabilities who are out of control?

Behavior support (rather than traditional forms of discipline, such as suspension) is key to addressing behavioral issues for students with disabilities. When a student with a disability exhibits behaviors that are disruptive to the education of the student or others, the IEP Team is required to address this issue and consider positive behavioral interventions and supports. The IEP Team may address the behavior either by including behavioral goals in the IEP; including related services in the IEP; conducting a Functional Behavioral Assessment (FBA) and/or developing a

Behavior Intervention Plan (BIP) and referencing those in the IEP; or providing specific services for the student; and/or all of the above.

2. **How do you ensure fidelity in the implementation of a BIP when there is significant resistance from both general education and special education teachers?**

   The IEP will contain a reference to the BIP and other behavioral services/goals in place, and they must be implemented. School administrators, whose duties include supervision of teachers and implementation of IEPs, must monitor student services as outlined in IEPs in order to maintain compliance and ensure the integrity of the special education process, as well as to provide a safe school environment.

3. **What recourse do we have when a student has had every opportunity to complete his/her work, has a BIP with a positive reinforcement system in place, but refuses to attempt work that is given?**

   Continue to convene the IEP Team to, among other things, discuss behavioral issues, review and revise the IEP/BIP as necessary, and make certain to document all good faith efforts to address and provide the student with positive behavioral interventions and supports designed to correct the undesirable behavior. The IEP Team may also need to consider the need to conduct a reevaluation to obtain current assessment data to include behavior.

4. **Can a school district refer students who demonstrate extreme behavioral misconduct for an assessment by a local mental health psychiatrist without cost to the district?**

   No. When a district refers a student for a medical evaluation, this would be considered to be for "diagnostic and educational purposes" and, therefore, would essentially constitute a related service that the district is required to ensure is done at no cost to the parents.

B. Questions about FBAs and BIPs

1. **When would it be appropriate to do a Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP) to address a violation of the Code of Conduct?**

   Conducting FBAs and developing BIPs is an essential requirement for addressing behaviors that a student exhibits, particularly if the student is one with a disability. As soon as a pattern of behavioral issues is present, best practice would dictate that an FBA be conducted and a BIP developed. Of most importance is the requirement to maintain continuous implementation and monitoring of positive behavioral strategies and interventions and daily data to reflect implementation.

For some students, behavioral intervention can be as important as academic intervention, if not more so. Routine and structure are critical when working with students who have behavior problems that impede their learning or the learning of others. When working with a student that exhibits inappropriate behavior at school, the IEP Team, as a matter of best practice, should first conduct an appropriate FBA that typically includes, among other things, observation of the behavior that is occurring and identification of any possible antecedents and consequences that exist when the inappropriate behavior occurs. The FBA may reveal the function of the behavior that will help the IEP Team to determine an appropriate replacement behavior and to develop appropriate interventions to support it.

Based upon the information from the FBA, a BIP should be developed. It is extremely important that there is follow-through in the provision of all reinforcements, incentives and consequences. It is important to maintain short-term and long-term behavioral goals with reinforcements and incentives for the student. The student should be a part of developing the BIP when appropriate. In some instances, the school should request the assistance of a behavioral specialist, Board Certified Behavioral Analyst (BCBA) or some other outside behavioral expert, particularly when attempted strategies/interventions are not successful.

Within the context of disciplining a student with a disability and where the contemplated disciplinary action will constitute a "change of placement" for the student—disciplinary removal for more than ten days cumulatively or in a school year—it is required that an IEP Team conduct a manifestation determination. If the IEP Team decides that the conduct is a manifestation of the student's disability, the IEP Team *is required to* conduct an FBA and develop a BIP, unless the district has already conducted one and implemented a BIP during the previous 18 months before the behavior that resulted in the change of placement occurred. If a BIP has already been implemented, then the IEP Team must review and revise it as necessary to address the behavior currently at issue.

C. Questions Related to the Use of Suspension and Expulsion or Other Disciplinary Removals

1. May students with disabilities be expelled from school?

Yes, <u>but only</u> if proper procedures for a disciplinary "change of placement" are followed. When a student with a disability is removed completely from the school setting due to an "expulsion," the law requires that special education services must continue to be provided by the school district that constitute "FAPE" for the student. Because services must be provided to a properly expelled student with a disability, there is no such thing as "true expulsion" for students with disabilities under the IDEA. (See also Question 6 below).

2. **May students with disabilities be suspended from school?**

   Yes, short-term suspensions may be administered, as long as a unilateral "change of placement" does not occur outside of the IEP Team process. If a change of placement will occur as a result of a suspension or other disciplinary removal (more than ten school days of removal), then the student's IEP Team must be involved.

3. **So, what constitutes a "disciplinary change of placement" that would trigger the IEP Team's involvement and a manifestation determination?**

   The IDEA regulations and the AAC provide that a disciplinary "change of placement" occurs if the removal of the student is for more than ten consecutive school days or the student has been subjected to a series of removals that total more than ten days *in the school year* and constitute a pattern that is a change of placement. A pattern of removals that constitute a pattern that is a change of placement could occur where the student's behavior is substantially similar to the student's behavior in previous incidents of misconduct and because of additional factors, such as the length of each removal, the total amount of time the student has been removed and the proximity of the removals to one another.

4. **Do partial days count in looking at when a disciplinary change of placement has occurred or, in other words, in counting the ten days?**

   Yes. Under the AAC, removals for partial school days of a half day or more will count as one full day toward determining whether a disciplinary change of placement has occurred or will occur.

5. **Who decides whether going beyond ten days of short-term removal in a school year is a pattern of removals that constitutes a disciplinary "change of placement"?**

   The IDEA regulations say that "the public agency" decides that. The AAC provides more specifically that, at a minimum, an administrator and the student's special education teacher will make that determination. If it is determined that the pattern of removals over ten school days in the school year would be a change of placement, then the IEP Team must be involved. If it is decided that the pattern of removals is not a change of placement, school personnel (in consultation with one of the student's teachers) have the authority to make the decision as to what services will be provided on removal day 11, 12, 13 and so on.

   Because this "pattern of removals" language is so vague and uncertain, most school districts treat any disciplinary removal beyond ten days in a school year as a "change of placement" and get the IEP Team involved to ensure procedural

compliance with respect to any further disciplinary removals beyond ten school days in a school year.

6. **If a student is suspended beyond ten school days in a school year or expelled for a longer period of time, is the student entitled to any services?**

   Yes. As mentioned in response to Question 1 above, if it is determined that it is appropriate to suspend a student with a disability beyond ten school days in a school year (because it is not a "change of placement" or because there is no manifestation) or "expel" the student (because there is no manifestation), the IDEA requires the school district to continue to provide "FAPE" to the suspended/expelled student.

   What services will be provided and where that will be during an "expulsion" period or a suspension beyond ten school days in a school year will vary to meet the student's individual needs and circumstances (e.g., a student needing credits may need four hours of education per week at the alternative school to constitute "FAPE" during the suspension/expulsion period).

7. **What are these "FAPE" services for a suspended/expelled student with a disability supposed to look like?**

   The IDEA provides that during any suspension/expulsion beyond ten school days, the student must continue to receive services that will enable the student to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals developed in the student's IEP. These educational services may be provided in an interim alternative educational setting ("IAES") as determined by the IEP Team on a case-by-case basis.

   Unfortunately, there is not a great deal of authority that helps to clarify what, exactly, this means. In 2006, the US DOE commented that "services so as to enable the student to continue to participate in the general educational curriculum" does not mean "that a school or district must replicate every aspect of the services that a student would receive if in his or her normal classroom. For example, it would not generally be feasible for a student removed for disciplinary reasons to receive every aspect of the services that a student would receive if in his or her chemistry or auto mechanics classroom, as these classes generally are taught using a hands-on component or specialized equipment or facilities."

   In addition, the US DOE commented that while students with disabilities removed for more than ten school days in a school year for disciplinary reasons must continue to receive FAPE, "we believe the Act modifies the concept of FAPE in these circumstances to encompass those services necessary to enable the student to continue to participate in the general curriculum and to progress

toward meeting the goals set out in the student's IEP. A school district is not required to provide students suspended for more than ten school days in a school year for disciplinary reasons, exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. However, the special education and related services the student does receive must enable the student to continue to participate in the general curriculum and to progress toward meeting the goals set out in the student's IEP."

8. When is a "manifestation determination" required?

The IDEA requires that a manifestation determination be made "within ten school days of any decision to change the placement of a student with a disability because of a violation of the code of student conduct." What we clearly know is that a manifestation determination is not required for the first ten days of suspension during a school year. As explained previously, however, any further removal will first require a determination as to whether it constitutes a disciplinary change of placement for the student. If it does, a manifestation determination is required to ensure that further disciplinary removal being contemplated is appropriate. For this reason, school administrators should closely monitor the days of suspension for a student with a disability and be concerned when suspensions are getting close to ten days in a school year.

9. Who makes the manifestation determination when a disciplinary "change of placement" is contemplated for a student with a disability?

Both the IDEA regulations and the AAC state "the LEA [school district], the parent, and the relevant members of the IEP Team (as determined by the parent and the school district) must review all relevant information in the student's file when determining if the student's behavior was a manifestation." Typically, it makes sense for the school district to convene the student's entire IEP Team to ensure that important placement decisions can be made in addition to the manifestation determination.

10. What is the required link between a student's disability and his misconduct for it to be considered a manifestation?

The IDEA requires that the manifestation determination be based upon whether "the conduct in question was caused by, or had a *direct and substantial relationship to*, the student's disability." In addition, the IEP Team is to determine whether the "conduct in question was the direct result of the LEA's failure to implement the IEP." The conduct must be determined to be a manifestation of the student's disability if the IEP Team answers yes to either question and the assumption is that a disciplinary change of placement that is being considered cannot occur.

In making a manifestation determination, it is important to have information and/or individuals available or present as IEP Team members who can interpret the evaluative data relevant to the student's disability in terms of why the student was determined to be a student with a disability in the first place. In addition, it is important that IEP Team members be fully aware of all facts and circumstances related to the incident for which the student is being disciplined.

11. **When the parents and school IEP Team members are in agreement that a student's placement should be changed (rather than moving toward suspension/expulsion) after the student has violated a code of student conduct, is it considered to be a removal under the discipline provisions?**

    Not if the parents of a student and the school district agree, via the IEP Team process, to a specific change in the current educational placement of the student. Where no suspension/expulsion is going to occur, the IDEA's discipline provisions would not be triggered. Rather, it would be an IEP Team decision that the student's placement should change via amending the IEP rather than suspending or otherwise imposing a disciplinary removal. For example, it might be the team's decision that the student needs to be evaluated and the LRE changed to a more restrictive setting. As long as the IEP Team agrees and the parent is properly provided written notice of the proposed change of placement and does not challenge it, the placement may be changed, and the disciplinary provisions of the IDEA would not apply.

12. **Is a student with a disability who is suspended for ten school days or less during a school year entitled to more than the due process procedures that are mandated for all students?**

    No. Essentially, the first ten days of disciplinary removal in a school year do not trigger any of the IDEA's special disciplinary procedures. Once ten days of disciplinary removals has been reached in the school year, however, it must be determined whether any further suspensions would constitute a pattern that is a change of placement that would trigger the IDEA's disciplinary requirements.

13. **If a parent revokes consent for special education services and the student is dismissed as required, do IDEA's special discipline provisions still apply if the student violates the school district's code of student conduct?**

    No. As discussed previously, parents may revoke consent in writing for special education services at any time and unilaterally withdraw their children from further receipt of special education and related services. When a parent revokes consent for special education and related services, however, the IDEA regulations specifically provide that the school district will not be "deemed to have knowledge" that the student is a student with a disability for purposes of

discipline. The student will be subject to the same disciplinary procedures and timelines applicable to general education students. In other words, the student is no longer entitled to IDEA's special discipline protections. It is expected that parents will take into account the possible consequences under the discipline provisions before revoking consent for the provision of special education and related services.

D. Change of Placement to the Alternative School

1. May students with disabilities be placed in an alternative school program?

Yes, by an IEP Team through the traditional IEP "change of placement" process. In addition, a student with a disability could be placed in an alternative school program for disciplinary purposes where the student's behavior is found not to be a manifestation of the student's disability, and the IEP Team decides that the student will be "expelled" to the alternative school to receive "FAPE" during the "expulsion" period.

2. What do schools do when students with disabilities continue to misbehave in an alternative school?

Continue to address placement issues via the IEP Team process, review and revise BIPs, explore the possibility of changing the placement to a more restrictive setting, conduct a reevaluation, etc.

E. Questions Regarding the Use of ISS and Bus Suspension

1. May students with disabilities be placed in "in-school suspension" programs?

Yes. According to the US DOE, a day of in-school suspension ("ISS") is not necessarily considered a removal from a student's current educational program for disciplinary reasons (and, therefore, would not be counted toward the ten-day change of placement count), *as long as* the student is afforded in the ISS setting the opportunity to continue to appropriately participate in the general education curriculum, to continue to receive the services specified on the student's IEP and to continue to participate with nondisabled students to the extent the student would have in the current placement.

2. Does a bus suspension constitute a day of suspension?

It depends. The AAC provides that whether a bus suspension would constitute a day of suspension that would be counted toward a change of placement (e.g., the ten-day count) depends on whether the bus transportation is on the student's IEP as a related service. If the bus transportation is a related service that is specialized to address the student's disability in some way, it would be treated

as a change of placement day, even if the student gets to school in some other way. This is so because transportation, as a related service, is part of the student's "placement" when listed as a specialized service in the student's IEP.

If bus transportation is *not* part of the student's IEP as a related service, a bus suspension would not be a suspension that counts toward the ten days that would be a disciplinary change of placement. According to the US DOE, the student and his or her parents would have the same obligations to get the student to and from school as a nondisabled student who had been suspended from the bus. However, school districts must address whether the behavior on the bus is similar to behavior in the classroom that is addressed in an IEP and whether the bus behavior should also be addressed in the IEP or BIP for the student.

F. Questions Concerning Truancy and Attendance Problems

1. Are truancy and attendance problems behavioral issues that an IEP Team must address?

If the behavior/attendance problems are those of the student, yes. Clearly, failure to attend school is a behavior that is disruptive to the education of that student. Therefore, the IEP Team must address that behavior by considering positive behavioral strategies and interventions to address it. In such situations, it would not be appropriate to report truancy without also appropriately addressing it as a potential behavioral issue on the part of the student.

2. What is a principal's obligation if a student with a disability is hospitalized or experiences a lengthy illness necessitating absence from school?

The principal should contact the parent to determine the degree of illness and the approximate duration of the student's absence. Any student with a disability who is covered under IDEA may be served within the home or hospital if the IEP Team determines that it is the student's least restrictive environment. The school needs to be proactive in following up on the student's condition to ensure that the student's educational needs are addressed in the LRE.

G. Questions Concerning Dangerous or Criminal Behavior

1. Why do we have to be responsible for students in local jails?

Students in local jails reside in your school district's jurisdiction. Child find and service requirements must be met for *all* students with disabilities who reside within your district's jurisdiction, including those in local jails. For each student who is in jail, the student's IEP must be followed and, if services are not provided, an explanation of why such services are not being provided must be documented (e.g., the local jail will not allow for service providers to come in to serve).

2. **Can a school unilaterally (without an IEP Team meeting) place a "dangerous" student with a disability in an interim alternative educational setting for more than ten school days?**

   Yes, but in rare circumstances. This can occur only if a pattern of removals during the school year does not constitute a "change of placement" or in cases involving "special circumstances" involving specific behaviors, even where the behavior is a manifestation of the student's disability as outlined by the IDEA and referenced in the following question.

3. **What are the "special circumstances" that would allow the school district to unilaterally move a student with a disability and not require an IEP Team meeting ahead of time?**

   The IDEA contains "special circumstances" that will allow school personnel (rather than a full IEP Team) to move a student to an interim alternative educational setting (IAES) for not more than 45 school days, without regard to whether the behavior is a manifestation of the student's disability. This special circumstance applies if the student:

   a) Carries a weapon to or possesses a weapon at school, on school premises or at a school function under the jurisdiction of the school district or the ALSDE;

   b) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, while at school, on school premises or at a school function under the jurisdiction of the school district or the ALSDE; or

   c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district or the ALSDE.

   School district personnel may move a student to an IAES for up to 45 school days without an IEP Team meeting, when a "special circumstances" offense has been committed as described above. The IEP Team meeting can occur at a later date to address the manifestation determination and the need for any FBA and BIP, as appropriate.

4. **Does the 45-day "special circumstances" provision cover threatened behavior?**

   No, it does not. Threatening to commit a weapons or drug violation or threatening to commit serious bodily injury is not covered.

5. **What is the maximum number of days a student with a disability can be placed in an IAES for one of these "special circumstances?"**

   Unilaterally, the school can move the student to an IAES for not more than 45 school days without regard to whether the behavior is a manifestation of the student's disability. However, *the student's IEP Team* could decide to change the placement for a longer period of time via the IEP Team process, and the IEP Team can determine how long that setting would be appropriate and how long the new IEP would be in place. Just like any other IEP-based change of placement, however, the parent must be given written Notice of the proposed change in placement and a copy of procedural safeguards informing them that they have the right to challenge the proposed placement. If the parent challenges the proposed change of placement via a due process hearing request, the student will remain in the IAES pending the decision of the due process hearing officer, unless the parties otherwise agree otherwise.

6. **So, what is a "weapon"?**

   Under the IDEA's disciplinary provisions, the term "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of Sec. 930 of title 18, United States Code. Under this Code section, the term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 and ½ inches in length. Alabama criminal law definitions do not apply for purposes of discipline of students with disabilities.

7. **What is an "illegal drug"?**

   The IDEA defines both "controlled substances" and "illegal drugs" as follows:

   "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV or V in Section 202(c) of the *Controlled Substances Act.*

   "Illegal drug" means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

8. **What is "serious bodily injury"?**

   The IDEA references a definition contained in the U.S. Code at 18 U.S.C. § 1365(3)(h). There, the term "serious bodily injury" means bodily injury which involves: (a) a substantial risk of death; (b) extreme physical pain; (c) protracted and obvious disfigurement; or (d) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

9. **Can a school press charges against a student with a disability?**

   Yes, but caution is advised. The IDEA specifically provides that "nothing in this part prohibits an agency from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability." While the law does not prohibit contacting criminal authorities to report criminal behavior, school administrators need to consider each instance on a case-by-case basis and ensure that the school has been addressing the student's behavior appropriately within the educational context and that the student's IEP and BIP have been implemented. It is important not to rely on the criminal process as a substitute for what the IDEA requires the school to do.

10. **Can the school call the police when a student with a disability has a behavioral intervention plan?**

    Yes, with the same considerations discussed in the answer to the previous question.

11. **Must there be an IEP Team meeting for a student with a disability who is detained by juvenile authorities as a result of the school calling the police but returns to the school district?**

    Yes. The AAC provides that where law enforcement or judicial authorities are contacted by school district personnel reporting an alleged crime committed by a student with a disability, the student's IEP Team must meet within two weeks of the student's return to a school setting. At that time, the IEP Team must:

    a) Conduct an FBA, unless the school district has conducted an FBA during the previous 18 months before the behavior at issue occurred and implement a BIP for the student; or

    b) If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

XI. TRANSFER STUDENTS—IN AND OUT OF STATE

1. **Are there special rules concerning development of IEPs for transfer students?**

   Yes. The IDEA regulations and AAC contain provisions regarding in- and out-of-state transfer students.

   IEPs for students who transfer between school districts in Alabama: If a student with a disability (who had an IEP that was in effect in a previous school district in Alabama) transfers to a new district in Alabama and enrolls in a new school within the same

school year, the new district (in consultation with the parents) must provide FAPE to the student (including services "comparable" to those described in the student's IEP from the previous district) until the new district either (1) adopts the student's IEP from the previous district or (2) develops, adopts and implements a new IEP that meets the IDEA's applicable requirements.

IEPs for students who transfer from another state: If a student with a disability (who had an IEP that was in effect in a previous district in another state) transfers to Alabama and enrolls in a new school within the same school year, the Alabama district (in consultation with the parents) must provide the student with FAPE (including services "comparable" to those described in the student's IEP from the previous district) until the Alabama school district (1) conducts an initial evaluation pursuant to the IDEA and AAC (if determined to be necessary by the new district in order to meet Alabama criteria for eligibility) and (2) develops, adopts and implements a new IEP, if appropriate, that meets the IDEA's applicable requirements.

Transmittal of records. To facilitate the transition for a student who has transferred, (1) the new district in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous district in which the student was enrolled; and (2) the previous district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new district.

2. **If evaluation data received on an out-of-state transfer student is consistent with the AAC but is more than one year old, is the new district required to retest to determine eligibility?**

   No. As of May 14, 2009, the school district has the discretion to use evaluations that transfer with the student from out of state.

3. **If an out-of-state transfer student comes to Alabama with an eligibility report that does not meet AAC requirements and an initial evaluation needs to be conducted, what do we do if a parent does not give consent for the initial evaluation?**

   Accept the parent's refusal and send a "*Notice of Proposal or Refusal to Take Action*" form stating that the agency stands ready to evaluate should the parents choose to give consent at a later time. The student will be considered a regular education student, since eligibility cannot be determined under Alabama's guidelines and requirements. The new school district may also consider requesting mediation or a due process hearing to override the parent's refusal to consent to the initial evaluation but is not required to do so.

4. **When a student transfers from another state, is it necessary to get the "*Notice and Consent for the Provision of Special Education Services*" signed before we provide services?**

   Yes, but only after eligibility in Alabama has been determined. If the student transfers into Alabama with an IEP that was in effect in the previous district in another state, the Alabama district, in consultation with the parent, must provide services that are "comparable" to those described in the previously held IEP until it conducts the initial evaluation to determine eligibility under the AAC, if needed.

   If the parent refuses consent for the initial evaluation, the new Alabama district may not evaluate. The school district may pursue the evaluation through mediation and/or a due process hearing but is not required to do so. If the parent does consent to the initial evaluation and the student meets eligibility criteria under the AAC, the "*Notice and Consent for the Provision of Special Education Services*" must be obtained before services may be provided under the new Alabama district's IEP.

5. **When a student transfers from out of state and the parent/guardian cannot produce an IEP, what is the procedure if records don't arrive or, upon arrival, are incomplete?**

   The federal regulations require that to facilitate the transition for a transfer student, the new school district in which the student enrolls must take "reasonable steps" to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous school district in which the student was enrolled. In turn, the previous school district in which the student was enrolled must take "reasonable steps" to promptly respond to the request from the new school district.

   If, after taking reasonable steps to obtain the student's records from the school district in which the student was previously enrolled, the new school district is not able to obtain the IEP from the previous district or from the parent, the school district is not required to provide services to the student. This is because the new school district, in consultation with the parent, would be unable to determine what constitutes comparable services for the student, since that determination must be based on the services contained in the student's IEP from the previous school district. In this case, the new school district must place the student in the regular school program and conduct an evaluation, if determined to be necessary by the new school district. If there is a dispute between the parent and the new school district regarding whether an evaluation is necessary or regarding what special education and related services are needed to provide FAPE to the student, the dispute may be resolved through mediation procedures or, as appropriate, the due process procedures.

XII. FERPA AND CONFIDENTIALITY OF EDUCATION RECORDS

1. Is there a specific location that special education records should be kept?

Education records for students with disabilities should be maintained in a limited access location, such as a locking file cabinet or other secure location.

2. Is an IEP considered a confidential education record?

Yes. The IEP and other education records of a student with a disability are protected by the provisions of the Family Educational Rights and Privacy Act (FERPA) and the IDEA's records provisions. In fact, all education records maintained by the school district that contain personally identifiable information (PII) about any student are subject to FERPA.

3. Who has access to special education records?

In general, without parent/adult student consent in writing (or a proper Release), no one. However, the following can have access without prior parent/adult student consent:

a. Parents
b. Adult students
c. ALSDE representatives (when conducting monitoring activities, etc.)
d. Federal education agency representatives (when conducting complaint investigations, etc.)
e. School district representatives*

*Limited to those representatives who are "school officials" with a "legitimate educational interest" in the student's educational program.

There are also other exceptions to the requirement to obtain prior consent set out under the law. When there is any question, principals should consult with their Special Education Coordinator prior to allowing access to a student's education records.

4. May courses taken be coded for special education on a cumulative record?

Yes.

5. What specific records must be sent to another education agency when a student transfers?

ALL educational records should be transferred with the student.

6. Must parent consent be obtained to transfer records to another educational agency?

Parental **consent** is not required for the transmission of special education records between sending and receiving school districts, but parent **notice** is required. The ALSDE website contains a sample form that may be used for transfer of records.

7. **How long must special education records be kept after a student exits the program?**

   At the end of a five-year retention period, the school district must inform the parents when personally identifiable information contained in education records that has been collected, maintained or used by the district is no longer needed. Information must be destroyed in a manner whereby confidentiality of the information is maintained.

8. **Must parental consent be obtained prior to destroying education records?**

   No. At the end of the mandated five-year retention period, the school district must provide written notice to the parent informing him/her that the special education records are no longer needed via posting on the school district's website, notice in a local newspaper or other appropriate avenues. The parent may choose to receive the records or to have them destroyed by the district. When the school district is unable to reach the parent, the information no longer needed may be destroyed.

9. **If a parent believes that information in the student's education record is misleading or inaccurate, must the school district remove the information upon the parent's request?**

   A parent who believes that information in the education records collected, maintained or used is inaccurate, misleading or violates the privacy or other rights of the student may request that the district amend the information. The district must decide whether to make the requested amendment within a reasonable period of time from receipt of the parent's request. If the school district decides not to amend the information in accordance with the request, written notice must be provided to the parent. The notice must advise the parent of the right to a local records hearing before the school district in accordance with the school district's records policies and procedures.

10. **Must a school district provide a parent with copies of a student's education records upon request, or is it legally acceptable for the school district to provide the parent access to these records for review and inspection?**

    Under the law, parents are entitled to inspect and review all education records relating to the student that are collected, maintained or used by the school district, but they are not necessarily entitled to copies. Parents must be given the opportunity to review their child's educational records without unnecessary delay and before any meeting regarding an IEP or before a due process hearing or resolution session is conducted. While copies are not required, most districts, as a matter of practice, will provide copies of education records when requested and when proper releases are provided.

XIII. STUDENTS WITH DISABILITIES PLACED IN PRIVATE SCHOOLS

A. Question Regarding Students Placed by their Parents

1. What are our financial responsibilities for students placed by parents in a private school?

A school district is not required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if the district made FAPE available to the student but the parents elected to place the student in a private school or facility anyway. However, the IDEA contemplates that school districts are to determine what, if any, "equitable services" they might make available to these private school students, such as providing them the opportunity to receive speech services, if eligible. As a result, there may be times that school personnel are required to go to a private school to serve a student, or a private school student may come to the local school to receive their "equitable services."

B. Question Regarding Students Placed by the School District

1. What are our responsibilities for the IEPs of students placed by the school district in a private school?

The school district must ensure that students with disabilities who have been placed in or referred to private schools or facilities by the district are provided special education and related services in accordance with the student's IEP and at no cost to the parent. Students with disabilities placed by the school district must receive an education that meets state and local standards that apply to education (including the requirements under IDEA and the AAC, except provisions related to highly qualified and personnel qualifications) and provided all of the rights of a student with a disability who is served by a school district.

Specific provisions apply when a school district places a student in a private setting as follows:

a) Before the school district places a student with a disability in or refers a student to a private school or facility, the district must conduct an IEP meeting for the student. The school district must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the district must use other methods to ensure participation by the private school, including individual or conference telephone calls.

b) After the student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be conducted by the private school or facility, at the discretion of the district.

c) If the private school or facility initiates and conducts an IEP meeting, the district must ensure that the parents and a district representative are involved

in any decision about the student's IEP and agree to any proposed changes in the program before those changes are implemented.

d) The district must ensure that an IEP is developed and implemented for each student with a disability who is enrolled in a private school and receives special education and related services.

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

XIV. STATE STANDARDS, ASSESSMENT, GRADING AND CREDITS

A. State Standards Question

1. What is the difference between the Alabama Alternate Standards and general education standards?

The AAS are for students who meet the criteria for participation in the ACAP Alternate. Federal law requires that all students with disabilities be provided access to the general education curriculum, and students with significant cognitive disabilities may access the general education curriculum by being taught and tested on AAS. The AAS for English Language Arts, mathematics, science and social studies are aligned to the state academic content standards for each grade level and are based on the academic content standards found in the Alabama Courses of Study. They are designed to allow students with significant cognitive disabilities to progress toward state standards while beginning at each student's present level of performance. As required by law, the AAS are clearly related to the grade-level content but are reduced in scope and complexity.

The federal *Every Student Succeeds Act* (ESSA) requires states to ensure that the total number of students assessed in each subject using an alternate assessment does not exceed one percent (1%) of the total number of students in the state assessed with statewide assessments. The ACAP Alternate is designed for a student with the most significant cognitive disability. In Alabama, the definition of a student with a significant cognitive disability is a student with an intelligence quotient (IQ) of three standard deviations below the mean, which is an IQ score of 55 or below that significantly impacts intellectual functioning and exists concurrently with deficits in adaptive functioning (defined as essential for someone to live independently to function safely in daily life). Having a significant cognitive disability is not solely determined by an IQ test score, but rather by a holistic understanding of a student.

B. Assessment Questions

1. **Is the IEP Team required to explain the reasons for a determination that a student must take an alternate assessment?**
   Yes. The IDEA regulations provide that where the IEP Team determines that a student with a disability must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, the IEP must include a statement of (1) why the student cannot participate in the regular assessment and (2) why the particular alternate assessment selected is appropriate for the student.

2. **Are students with disabilities to be administered school district-generated assessments as well as state assessments in the general education setting?**The IEP Team determines the location where a student will be assessed.

3. **Who determines whether a student with a disability will participate in state and district-wide assessments?**
   The extent of participation is determined by the student's IEP Team.

4. **May assessments utilized in the state assessment program be accommodated for students with disabilities?**
   Yes. In general, each school district must implement procedures that will ensure that all students with disabilities are provided the opportunity, consistent with their ability and as determined by the IEP Team, to participate in state assessments as their nondisabled peers do. The IEP Team must determine what kinds of accommodations are necessary and appropriate and, unless the assessment manual states otherwise, students with disabilities must be administered assessments appropriately accommodated for their individual needs.
   For more information, refer to the following website link and click on the "Manuals" tab:

5. **Why do students with disabilities have to be administered state assessments on their grade level rather than their actual level of functioning?**
   It is a requirement of *Every Student Succeeds Act* (ESSA).

6. **Why are students with disabilities held to the same standards as their nondisabled peers?**

   The ESSA requires certain things to be done in order to ensure that all students have an equal opportunity to receive a high-quality education. Although there is some flexibility for students with significant cognitive disabilities, the majority of all students, including students with disabilities, are to be held to high standards. While the idea that students with disabilities should be expected to achieve grade-level standards and high expectations are in place, it is hoped that future revisions to the federal law will consider the need for more flexibility for students with disabilities based upon their individual circumstances, needs and abilities.

C. Grading and Earning Credits Questions

1. **How many times should a student be retested on work that has been accommodated?**

   This is an individual decision based on the content and the student's individual needs. Because accommodations are things that are done for students with disabilities to lessen the impact of the disability in the teaching/learning environment, those accommodations should not be held against the student. An example of an accommodation for the same assignment would include that the student with a disability is required to complete only 15 multiplication problems or is allowed more time to complete the work. When accommodations are made for the student with a disability, the content standards are the same. Accommodations in secondary coursework will not prevent the student from receiving course credit toward his/her selected diploma option.

   Retesting a student on unmastered work could also be seen as teaching to mastery. Teaching to mastery can reduce achievement gaps when teachers ensure students master concepts before moving on to more advanced concepts.

2. **Is there a specific procedure for assigning grades for students with disabilities?**

   Procedures for assigning grades and grading policies are within the discretion of the school district. The same procedures/policies must be applicable to students with disabilities and students without disabilities.

3. **Must students with disabilities be given the opportunity to earn Carnegie Units?**

   Yes. Each student with a disability must be given the opportunity to earn Carnegie Units consistent with the IEP Team decision and the program of study.

XV. PROMOTION, RETENTION AND GRADUATION

A. Promotion and Retention Question

1. What are the legal ramifications of not promoting a student with a disability with his/her nondisabled peers?

The AAC and IDEA do not contain provisions for promotion and retention. Each school district should have its own policies regarding promotion and retention based on the number of credits required for graduation from high school and the time required for the completion of these credits in Grades 9-12. The same applies for elementary grades with the school/school district deciding what classes, number of classes, etc., must be passed in order to progress from one grade to the next grade.

Students with disabilities may be retained. However, careful consideration in the development and implementation of the student's IEP should prevent student failure in most cases.

If it appears that a student with a disability is not on track to meet promotion standards, the IEP Team should reconvene immediately to consider the following:

- Is the current IEP for the student's academic, social, emotional and behavioral needs appropriate?
- Is the manner of assessment appropriate, including accommodations and modifications identified in the IEP?
- Are all the services required by the student to make progress in the general education curriculum appropriately identified in the student's IEP?
- Is the student receiving all the services identified in the IEP?
- Are assessments conducted consistent with the IEP?

B. Graduation Question

1. Is graduation a change of placement for a student with a disability?

Generally, graduation is the ultimate change of placement. As noted previously in answer to Question 4 in Section I, B. of this guide, graduation with a regular high school diploma, via the General Education pathway, *is* a change of placement because the student will no longer be receiving services/FAPE. Obviously, then, written notice of a proposed change of placement via graduation must be provided to the parent. However, a reevaluation is not required before graduation with a regular high school diploma or exit due to exceeding the state's age requirement of 21. Rather, the school district must provide such students with a "summary of the student's academic achievement and functional performance," which is to include recommendations on how to assist the student in meeting the student's postsecondary goals.

XVI. EQUAL OPPORTUNITY, ACCESS, AND TREATMENT

A. Equal Access Question

1. Are students with disabilities entitled to a full school-day program of instruction?

Yes, unless a student's IEP Team determines otherwise because the student's individual needs are such that an entire school day is not appropriate for the student. Generally, students with disabilities have a right to access the same services that nondisabled students have available to them, including the regular length of the school day.

By way of example, the Office for Civil Rights (OCR) recently required the ALSDE to enter into a Resolution Agreement to ensure that no Alabama student with a disability has a shortened school day due to transportation issues. Therefore, unless a student's IEP provides otherwise and is based upon the individual needs of the student, the student must be in class when the bell rings in the morning to begin school and when the bell rings in the afternoon to end school. The school day for students with disabilities may not be shortened in order to accommodate the transportation department or for any other administrative reason.

B. Participation in Nonacademic and Extracurricular Activities

1. Must nonacademic or extracurricular activities be provided for students with disabilities?

Yes. Students with disabilities must be afforded an equal opportunity to participate in all nonacademic and extracurricular activities that are available to students without disabilities, such as clubs, organizations, athletics, afterschool and summer programs, etc. However, for certain activities such as athletics, students with disabilities are required to meet eligibility requirements in spite of their disabilities—meaning that they must be allowed to try out for but be judged under the same criteria as are nondisabled students for participation in that same activity.

XVII. PERSONNEL AND PROFESSIONAL DEVELOPMENT REQUIREMENTS

1. What kind of special education in-service is appropriate for teachers?

This is within the school district's discretion. It is suggested that you consult your district's *Special Education Plan for Students with Disabilities*, as it should specify appropriate in-service training opportunities for teachers. In addition, you should consult with your district's special education Coordinator, who can assist with further information regarding appropriate trainings for teachers.

There are specific in-service topics that are required for all teachers, administrators and support staff that must be addressed annually. These include (1) Confidentiality; (2) Special Education Process; and (3) Shortened School Day. Additionally, Awareness Training is a required in-service for all **new** employees who have not previously participated in this training. The SES monitoring manual lists all the items that must be covered.

2. **May a special education teacher provide instruction to students with more than one disability in his/her classroom?**

   Yes.

3. **Must paraprofessionals be trained to work with students with disabilities?**

4. **Can special education teachers or therapists be assigned other duties?**

   Yes. Special education teachers can be assigned other school-related duties as specified by their contracts (and "other duties as assigned"). However, if the needs of a particular student are not being met because a special education teacher or other service provider has been assigned to do something other than to implement the student's IEP, the obligation to ensure FAPE always prevails.

   School administrators should exercise extreme caution when asking special education teachers and other service providers to do things that will take them away from the implementation of IEPs and provision of services to their students with disabilities. If a pattern or practice develops where this regularly or frequently occurs, even providing compensatory therapy sessions or instructional services will typically not provide a sufficient remedy for a consistent failure to properly implement a student's IEP.

5. **Can a special education teacher be assigned/required to teach a general education class/subject?**

   Special education teachers paid with state and federal special education funds cannot be assigned to non-special education duties aside from their normal school-wide duties, unless paid from non-special education monies for performance of those duties.

4. **To what extent can a teacher carry out recommendations of a related service provider?**

   The school district is required to provide qualified personnel to provide all special education and related services to its students. Service providers must hold proper

certification or licensure in the areas in which they provide services to students. When an IEP is developed, the frequency, duration and location of the related service is determined and, at that time, the roles of each person providing the education and services to the student is determined. For example, if it is determined that a student will receive physical therapy as a related service, the IEP Team should discuss to what extent and under what conditions others can assist in carrying out activities under the direction of the therapist in order for the student to meet his/her IEP goal(s). In this case, the teacher or paraprofessional is assisting the student in meeting his/her goal; not providing physical therapy.

7. Does a substitute teacher have to be provided to cover special education classes?

Yes. In the absence of a special education teacher or other staff member essential to the implementation of an IEP, providing appropriate daily supervision and meeting the safety needs of students with disabilities, a substitute teacher must be provided.

8. Is there a caseload number for collaborative teachers/case managers?

In Alabama and according to the AAC, special education teachers are assigned as a case manager for a maximum number of student records to ensure the implementation of special education and related services for these students. The number of records to manage does not, however, represent the number of students that a teacher will serve. Those numbers will be determined by the school district by taking into consideration a number of factors, including severity of the needs of the students, location of the services (e.g., general education classroom, resource room), the number of campuses a teacher serves and whether all IEPs can be implemented as written.

The AAC provides that the maximum number of records per case manager/teacher is 20, and for a speech/language pathologist, the maximum number of records is 30.