



# Individuals with Disabilities Education Act of 2004

**New York State  
Education  
Department**

**Spring 2006  
Information Sessions**

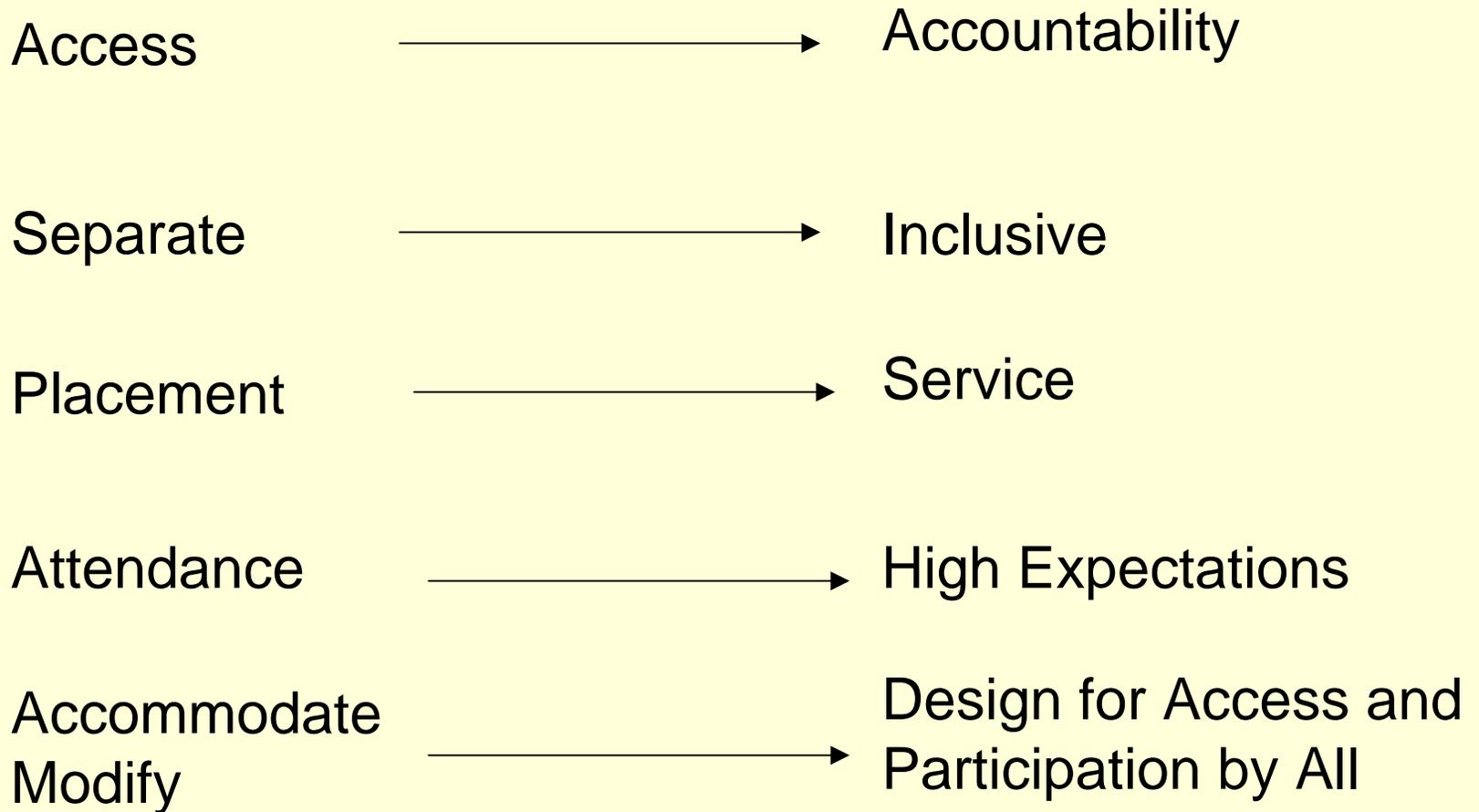
# Conforming to IDEA 2004

- Initial changes to State law
  - Chapter 352 of the Laws of 2005
- Initial changes to State regulations
  - effective September 2005 – emergency
  - effective December 2005 - permanent
- Federal regulations – ?
- Further changes to State law and regulations

# The history...

- Before EHA
- IDEA
- IDEA  
Reauthorized  
1997
- NCLB
- IDEA  
Reauthorization  
2004

# Then and Now



# Individuals with Disabilities Education **Improvement** Act of 2004

- Congressional Findings:
  - Low expectations
  - Insufficient focus on applying replicable research on proven methods of teaching and learning
  - Limited English proficient population fastest growing population
  - Documented discrepancies in levels of referral and placement of limited English proficient and minority students
  - As graduation rates increase – need for more effective transition services

# Intent – IDEA 2004

- ✓ Timely and high quality evaluations and services for all students
- ✓ High-quality, research-based instruction
- ✓ Procedural relief
- ✓ Less adversarial dispute resolution
- ✓ Streamlined discipline procedures
- ✓ Accountability for results

*Its not only about  
special education....*

# General Education

## NCLB/IDEA

- Research-based instruction
- Response-to-intervention
- Early intervening services
- Highly qualified teachers
- Universal design for learning
- Universal design of assessments
- Accessible instructional materials

# Early Intervening Services

- Services to nondisabled students who need additional academic and behavioral support to succeed in a general education environment – include:
  - Scientifically-based academic instruction and behavioral interventions
    - Staff development
    - Educational and behavioral evaluations
    - Services and supports, including scientifically based literacy instruction

# Use of IDEA funds for early intervening services

- Up to 15% option for all districts
- Required districts to reserve maximum 15% of IDEA Part B funds for early intervening services for any finding of disproportionality based on race/ethnicity

# *Special Education Must Share in Creating the Conditions for Learning*



*Implications for IEPs*

# Agenda

- I. Individual Evaluations and Eligibility Determinations
- II. Individualized Education Programs
- III. Discipline
- IV. Due Process
- V. Accountability for Results

# Individual Evaluations and Eligibility Determinations



## ***To ensure:***

- Early intervening services are available to students.
- All children receive timely and appropriate evaluations.
- Children will not have to wait to fail before receiving interventions.
- Determinations of eligibility for students with learning disabilities are based on research-based approaches.

# Requirements

1. Child find
2. Parental consent
3. Evaluation procedures
  - Timelines
  - Response-to-Intervention
4. Eligibility Determinations
  - Determinant factors
  - Learning disabilities
5. Prohibition on mandatory medication

# Child Find

- Children who are homeless
- Children who are wards of the State
  - Ward of the State defined
- Children who are in private schools
  - Similar to public school child find services
  - Comparable time period

# Parental Consent

**There must be a parent representing the student throughout the special education process!**

## Definition of parent

- For students with foster parents
- For wards of the State
- If one or more individuals meet definition of parent, student's birth or adoptive parent presumed to be the parent
- Surrogate parent – timelines for appointment begin when a referral is made; may be appointed by judge; consultation with social services

# Parental consent

- **Initial evaluation - For school-age students**
  - School district may use due process to override parent's refusal
  - No due process override for preschool students
- **Initial provision of services for school-age students or preschool students**
  - District may not use due process to override parent refusal of consent

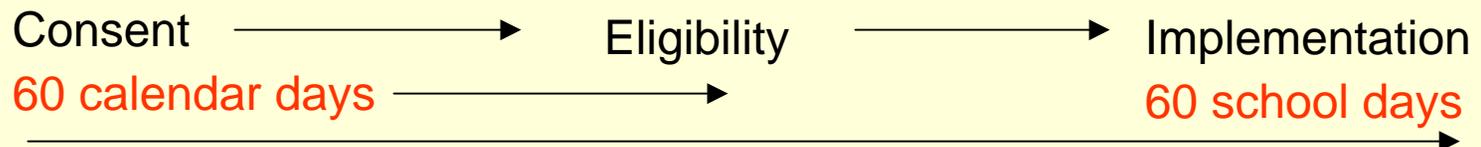
# Evaluation Timelines

- Initial evaluation and determination of eligibility in a CSE meeting must be completed within 60 calendar days\*\*\*
- Exceptions:
  - New student to district after the 60 days has begun and before eligibility determined
  - Or parent repeatedly fails or refuses to produce student for the evaluation

\*\*\* Monitoring Priority

# School-Age Students

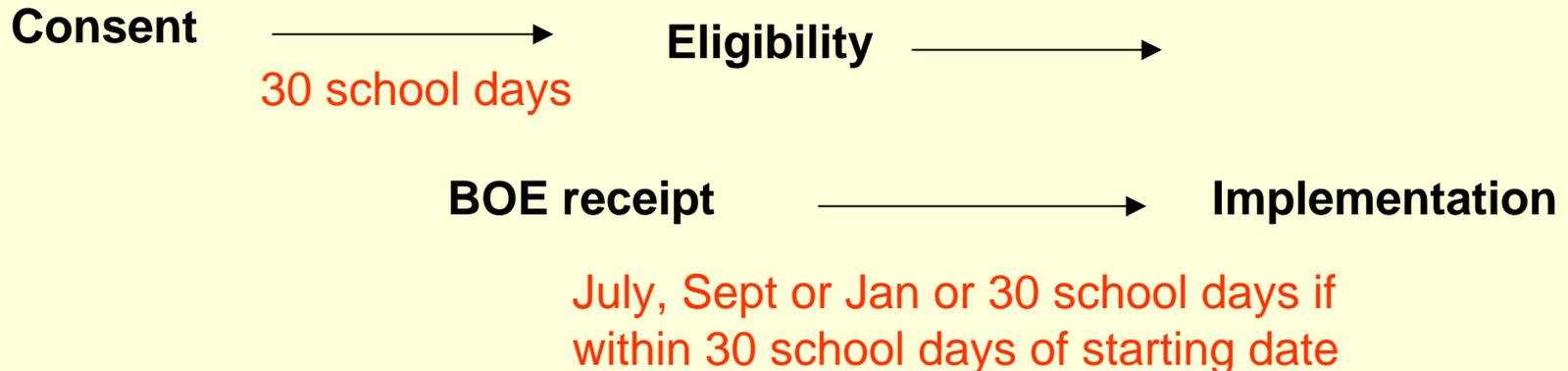
- From consent to initial evaluation completed and eligibility for special education determined = 60 calendar days
- From consent to IEP implementation = 60 school days
- Private school placements - within 30 school days of BOE's receipt of IEP recommendation = 30 school days



# Preschool Students

The BOE must arrange for services commencing with the July, September or January starting date.

If IEP developed less than 30 school days before or after starting date, IEP must implemented no later than 30 school days of the BOE receipt of the recommendation.



# Eligibility for Special Education

- Student shall **not be** determined eligible for special education if the determinant factor is
  - lack of appropriate instruction in reading, including explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills) and reading comprehension strategies;
  - lack of instruction in math; or
  - limited English proficiency.

# Learning Disabilities

- Definition of learning disability amended to repeal 50% discrepancy rule.
- School district:
  - **may** use a process that determines if the student responds to scientific, research-based intervention as part of the evaluation procedures.
  - **is not required** to consider whether a student has a severe discrepancy between achievement and intellectual ability.

# Learning Disabilities

Process that determines if the student responds to scientific, research-based intervention as part of the evaluation procedures.



# Components of Response-to-Intervention

1. Research-based instruction
  - Reading
  - Early grades
2. Increasing levels of intervention
3. Ongoing assessments of how student responds

# Reevaluations

- Limit to once a year, unless the parent and LEA agree that a reevaluation more frequently is needed
- In NYS, a student must be reevaluated at least once every three years.
  - In NYS, parent and LEA cannot agree that the three-year reevaluation is not necessary\*
  - \*pending final federal regulations

# Prohibition on Mandatory Medication

A school district can not require a student to obtain a prescription for medication as a condition of:

- attending school,
- receiving an initial or reevaluation, or
- receiving special education services.

# Transfer Students

- Within the State

- FAPE
- Services comparable to previous IEP
- In consultation with parents
- Accept previous IEP or develop, adopt and implement new IEP

- From another state

- FAPE
- Services comparable to previous IEP
- In consultation with parents
- Until new school conducts evaluation (if necessary) for NYS eligibility
- Develop a new IEP

*On your own –*

✓ ***CHECK YOUR  
UNDERSTANDING***

✓ ***IDENTIFY  
IMPLEMENTATION  
STEPS***

# Individualized Education Programs (IEPs)



## *To ensure....*

- More time is spent providing instruction to students with disabilities (procedural relief)
- Transition services results-oriented, focused on improving academic and functional achievement.

# Annual Goals

- Must be measurable
- Must include a description of how they will be measured
- Each annual goal must include:
  - Evaluative criteria
  - Evaluation procedures
  - Schedules for measuring progress

# Annual Goals

**ANNUAL GOAL:**

Tom will independently transition from one activity to the next at school (i.e., end one activity and begin a new one).

**Evaluative Criteria:**

Four out of five transitions on 3 consecutive weekly probes

**Procedures to Evaluate Goal:**

Checklist rating of behaviors

**Evaluation Schedule:**

Every eight weeks

# Annual Goals

<b>ANNUAL GOAL:</b>	Dylan will remove himself from environments that cause him to lose control of his behavior so that he eliminates the need for disciplinary notices.
<b>Evaluative Criteria:</b>	All instances for four consecutive weeks
<b>Procedures to Evaluate Goal:</b>	Teacher checklist of behaviors Disciplinary referrals
<b>Evaluation Schedule:</b>	Monthly

# Annual Goals

<b>ANNUAL GOAL:</b>	Heather will write notes from science and history classes that include 80% of the critical information.
<b>Evaluative Criteria:</b>	3 consecutive daily classes
<b>Procedures to Evaluate Goal:</b>	Teacher note-taking checklist
<b>Evaluation Schedule:</b>	Every eight weeks

# Short-term Instructional Objectives and Benchmarks

- Required for:
  - all students who meet the eligibility criteria to take New York State Alternate Assessment (NYSAA)
  - all preschool students

# Transition Services

- Results-oriented process
- Improving academic and functional achievement
- Facilitate movement from school to post-school activities
- Beginning with the IEP to be in effect when the student turns age 15

# Transition Services on the IEP

- Student needs relating to transition
- Measurable post-secondary goals
  - Based upon age appropriate transition assessments
- Needed courses of study
- Needed activities
  - instruction, related services, community experiences, employment, post-school living, daily living skills, functional vocational assessment
- Responsible agencies

# Post-secondary goals

(projected post school outcomes)

- Carlos will attend a four year college to study computers.
- Marcy will live in her own apartment.
- Lucinda will be a nurses aid.
- Donny will be a chef.
- Adrianna will work in a job where she can help other people with disabilities.
- Yolanda will work with animals.

## MEASURABLE POST-SECONDARY GOALS (AGES 15 AND OLDER)

For students beginning with the first IEP to be in effect when the student turns age 15 (and younger if deemed appropriate), identify the appropriate measurable postsecondary goals based upon age appropriate transition assessments relating to training, education, employment and, when appropriate, independent living skills.

**Training:** Don will go to welding school.

**Education:** Carlos will graduate from a two-year community college.

**Employment:** Sharon will work as a chef.

**Independent Living Skills (when appropriate):** Patrick will drive a car and live in his own apartment

# Summary Report of Performance (Student Exit Summary)

- Upon graduation or aging out (including receipt of IEP diploma):
  - School district must provide the student with a **summary** of his/her academic achievement and functional performance,
  - which must **include recommendations** on how to assist the student in meeting his or her postsecondary goals.

## SUMMARY OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE

<b>AREA</b>	<b>Present Level of Performance (upon student exit)</b>	<b>Needs</b> Essential accommodations, assistive technology, environmental or material resources or modifications needed
<b>Academic achievement, functional performance and learning characteristics</b>		
<b>Social development</b>		
<b>Physical development</b>		

## POST-SECONDARY GOALS

<b>Post secondary goal</b>	<b>Recommendations to Assist Student to Meet Post-Secondary Goals</b>
<b>Education/training goal:</b>	
<b>Employment goal:</b>	
<b>Independent Living Goal (if appropriate):</b>	

# CSE Meetings

- **At this time**, in NYS:
  - Any changes to an IEP must be made in a CSE or CPSE meeting
  - All required members must participate in CSE and CPSE meetings.
    - A parent and LEA cannot agree that attendance of certain members is not necessary or that certain members can be excused.

# Additional Parent Member

- CSE and CPSE
  - Parent of student can decline participation of additional parent member.
- CSE only
  - Additional parent member for CSE can be a parent of a declassified student or a student who has graduated within 5 years.
    - Does not apply to CPSE

# Amendments to IEP after Annual Review

- For IEP changes made **after the annual review meeting** in a subsequent CSE/CPSE meeting, the CSE/CPSE may modify the IEP without rewriting it by developing a written document that amends the IEP.
- School **must rewrite** IEP with changes incorporated if requested by parents.

*On your own –*

✓ ***CHECK YOUR  
UNDERSTANDING***

✓ ***IDENTIFY  
IMPLEMENTATION  
STEPS***



# Discipline Procedures



## *To ensure....*

- ✓ Safe schools
- ✓ Streamlined discipline procedures
- ✓ Behavioral issues are assessed and addressed to prevent disciplinary issues
- ✓ Students are not suspended because of behaviors related to their disabilities
- ✓ Students continue to receive appropriate instruction during suspensions

# Authority of School Personnel

- Up to 10 days – same as nondisabled
- Removals to interim alternative educational settings (IAES) for drugs, weapons, controlled substances and serious bodily injury
- May be suspended to the same extent as nondisabled students if behaviors are not related to their disabilities
  - Entitled to free appropriate public education (FAPE) during all removals for more than 10 days
- Request impartial hearing to remove a student for dangerousness
- Court removals

# Responsibilities of School Personnel

- Ensure manifestation determinations are made
- Assess and address behaviors to prevent behaviors
- Consider unique circumstances on a case-by-case basis
- Provide appropriate education services  
Determine appropriate settings for suspensions (IAES)
- Expedited evaluations

# Functional Behavioral Assessments (FBA) and Behavioral Intervention Plans (BIP)

- When
  - Student is removed for more than 10 consecutive school days or constitutes a disciplinary change in placement
- If
  - Conduct is a manifestation of the student's disability; and
  - FBA and BIP not conducted before the behavior that resulted in change of placement

# FBA

1. Determine why a student engages in behaviors
  2. How student's behavior relates to the environment
- Includes, not limited to:
    - Identification and definition of behavior
    - Contextual factors
    - Hypothesis – conditions under which behavior occurs
    - Consequences that serve to maintain it

# Behavioral Intervention Plan

- Plan based on results of FBA
- Minimally includes:
  - Description of problem behavior
  - Hypotheses as to why behavior occurs
  - Intervention strategies to address the behavior

# Manifestation Determinations

## Manifestation Team (not entire CSE)

- Representative of school district who is knowledgeable about student and the interpretation of information about child behavior (e.g., school psychologist)
- Parent
- Relevant members of CSE as determined by parent and school district
- Parent must be notified of meeting

# Conduct of the meeting

Review all relevant information in the student's file including:

- Student's IEP
- Any teacher observations
- Any relevant information provided by the parents

# To determine if:

- The conduct in question was **caused by or had a direct and substantial relationship** to the student's disability;

and/or

- The conduct in question was the **direct result of the school district's failure to implement the IEP.**

# Interim Alternative Educational Setting (IAES)

- Up to 45 school days (for drugs, weapons, serious bodily injury related to disability)
- IAES for suspensions more than 10 days for behaviors not related to the student's disability
- IAES determined by the CSE
- Services for removals for more than 10 days determined by CSE
- School must have an IAES as part of its continuum of services

# Education Services

- Up to 10 days
  - alternative education services
- More than 10 days (consecutive or pattern)
  - FAPE
  - Determined by CSE or CPSE

# FAPE

- Services necessary to enable the student to:
  - continue to participate in the general education curriculum; and
  - progress toward meeting the goals set out in the student's IEP.
- While in IAES, include, as appropriate:
  - FBA,
  - behavioral intervention services, and
  - modifications to address the behavior subject to discipline to prevent behavior from recurring.

# Students Presumed to Have a Disability

- **Basis of knowledge**

- Parent expressed concern in writing to supervisory or administrative personnel.
- Parent requested an evaluation of student.
- Teacher or other school personnel expressed specific concerns about a pattern of behavior to supervisory personnel.

- **Exceptions**

- Parent refused special education services.
- CSE determined student not eligible for special education.

*On your own –*

✓ ***CHECK YOUR  
UNDERSTANDING***

✓ ***IDENTIFY  
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STEPS***



# Due Process

Due Process Complaint Notice

Resolution Sessions

Impartial Hearings

Appeals



# ***To ensure....***

- ✓ Less adversarial mechanisms to resolve disputes
- ✓ Communication on complaint issues between parents and school personnel
- ✓ Opportunities to resolve issues before an impartial hearing
- ✓ Impartial hearing decisions based on free appropriate public education vs. procedural issues

# **Due Process Complaint Notification Requirements**

- **A party may not have an impartial due process hearing until the party, or the attorney representing the party, files a due process complaint notice that meets the requirements for a DPCN.**
- **Written Due Process Complaint Notice (DPCN)**
  - **NYS has developed a sample DPCN (form to request an impartial Hearing)**

# Party requesting the hearing

- In writing
- Identifying information
- Describe nature of problem, including facts relating to the problem
- Provide a proposed resolution

# Response to DPCN

## 1. Prior written notice

- if school is party receiving the due process request

## 2. Other party response

- Address the issues – within 10 calendar days

## 3. Challenging sufficiency of the notice

- Within 15 calendar days

## 4. Amending the due process complaint notice

- The other party consents in writing
- The IHO grants permission
- Timelines recommence

# Sufficiency Challenge of a DPCN

- Notice deemed sufficient unless challenged
- Challenge must be in writing to IHO and other party within **15 days**
- IHO makes sufficiency determination within **5 days** and notifies parties in writing
  - **Sufficient:** Timelines for resolution session and impartial hearing continue
  - **Insufficient:** Party must submit a new Due Process Complaint Notice and process starts over

# Amended DPCN

- For a due process complaint notice that is sufficient:
  - Party may amend a notice only if:
    - Other party consents in writing and has opportunity to resolve matter through a resolution session
    - IHO grants permission
      - At any time not later than 5 days before an impartial hearing commences
- Amended notice recommences timelines for an impartial hearing

# Subject Matter of the Complaint

Only those issues raised  
in the due process  
complaint notice, unless  
the other party agrees

# Resolution Session

*Prior to the opportunity for an impartial due process hearing, the school district has the opportunity to resolve the complaint.*

# What is a resolution session?

- Meeting convened by school personnel
- Parents discuss their complaint and the facts that form the basis of the complaint
- Opportunity for school personnel to resolve the problem to the parent's satisfaction before proceeding to an impartial hearing

- Resolution Session must include:
  - Parents
  - Relevant members of CSE or CPSE
  - Decision-making representative of agency
  - May not include school attorney unless parent brings attorney
  - May agree to alternate means of meeting participation

# Resolution Session

- The school district must convene a resolution session unless:
  - Parents and school agree in writing to waive the resolution session and go to hearing or
  - Parties agree to go to mediation
- Meeting must be convened within **15 days** and completed within **30 days** of receiving Due Process Complaint Notice

# Resolution Session Agreement

- Written, court enforceable, legally binding agreement, signed by parent and school representative with authority to bind the school district
  - 3 business day void

- If the school district has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the DPCN, the impartial due process hearing may occur and the timelines commence.

# Impartial Hearing

- Hearing or prehearing conference commences within the first 14 days after:
  - IHO receives parties' written waiver; or
  - IHO receives parties' written confirmation that a resolution session was held, but no agreement reached; or
  - Expiration of the 30-day period, whichever occurs first.

# Decision of the IHO

- Must be made on substantive grounds – did the student receive FAPE?
- Procedural issues - No FAPE if issues:
  - impeded parent opportunity to participate in decision making process
  - caused a deprivation of educational benefits
- IHO can order school district to comply with procedural requirements

*On your own –*

✓ ***CHECK YOUR  
UNDERSTANDING***

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# *Accountability for Results*

*State Performance Plan*

*improving educational results and  
functional outcomes for all children  
with disabilities...*

# *To ensure.....*

- **Accountability for Results**
  - ✓ Data collection
  - ✓ Public reporting of results
  - ✓ Measurable and rigorous targets
  - ✓ Focused monitoring
  - ✓ Technical assistance
  - ✓ Enforcement

# Monitoring Priorities and Indicators

- Graduation
- Drop out
- Achievement (AYP)
- Suspension
- Least restrictive environment
- Preschool student outcomes
- Post school outcomes
- Disproportionality
- Evaluations within 60 days
- Parent Involvement
- Effective transitions
- Due Process

# Data from every district

- Graduation
- Drop-out
- Performance on State Assessments
- Rates of Suspension
- Preschool LRE
- School-age LRE
- Race/ethnicity

# New Measures of Performance

## NYS' SPP Design

- Six-year timetable for continuous improvement
- Added rigor to definitions of significant discrepancy
- New processes for self-reviews and compliance correction

# Six-year Timetable for Continuous Improvement

- New York State will collect data for federal Indicators 7, 8, 11, 12, 13 and 14 from a different group of one sixth (1/6) of the school districts on each indicator each year, except that New York City will submit data on all indicators annually.



# Added rigor to definitions of significant discrepancy

- State defines “significant discrepancy” for suspension and disproportionality.
- In the initial years, the definition is set to identify school districts with the **greatest discrepancy**.
- In subsequent years, the definition becomes more rigorous.
- Example: for suspensions of more than 10 days
  - 2005-07- 3X statewide baseline average
  - 2007-11 - 2X statewide baseline average

# New processes for self-reviews and compliance correction

- State-developed self-review monitoring protocols
- Resources for technical assistance
- Provided in advance of reporting year for school districts – **Be proactive**
- Monitor more school districts

# Significant Discrepancy in Suspension Rates

## Indicator 4

- Two measures
  - 4a - Significant discrepancy – (compared to other school districts) of suspensions of greater than 10 days in a school year
  - 4b - Significant discrepancy in long-term suspensions based on race/ethnicity

- Data identification requires the
  - Self-review of the school district's policies, procedures and practices relating to:
    - Development and implementation of IEPs
    - Use of positive behavioral interventions, and
    - Procedural safeguards
  
  - If based on race/ethnicity, reserve 15% of IDEA Part B funds for early intervening services

# Preschool Outcomes

## Indicator 7

Improved:

- Positive social-emotional skills
  - including social relationships
- Acquisition and use of knowledge and skills
  - including early language/communication and early literacy
- Use of appropriate behaviors to meet their needs

- All preschool students will be evaluated as part of their initial evaluations
  - Preschool evaluators submit entry assessment information to CPSEs through Summary Evaluation Report
  - CPSE determines entry assessment status
  - Retain information in student's record
- Reporting of State data
  - Representative sample of school districts
  - Over six-years, all districts will report
- In year selected to report
  - School district must report (PD-10) on
    - 2006 - entry assessment data only
    - 2007 - exit improvement data only

# Parental Involvement

## Indicator 8

- Parents who report schools facilitated their involvement to improve services and results for children with disabilities.
- 25 question parent survey
- Reporting by representative sample of districts annually – in year required to report, schools must disseminate surveys to parents
- CyberData, Inc. will collect, analyze and report on results

# Disproportionality by Race/Ethnicity

## Indicators 9&10

- Disproportionality that is the result of inappropriate identification in:
  - special education
  - specific disability categories
  - placement
- Data identification requires school district to:
  - conduct a self-review of its policies, procedures and practices; and
  - reserve 15% of IDEA Part B funds for early intervening services

# Timely Evaluations and Eligibility Determinations

## Indicator 11

- Percent of children who were evaluated and eligibility determined:
  - within 60 calendar days (school age)
  - 30 school days (preschool)
- Representative sample of school districts
  - in year required to report, PD-9 form
- Reasons why timelines not met

# Early Childhood Transition

## Indicator 12

- Percent of children referred from early intervention services to preschool who have an IEP developed and implemented by their 3<sup>rd</sup> birthday
- Sampling: in year required to report – PD-9 form
- Reasons why services not provided by child's 3<sup>rd</sup> birthday

# Transition IEPs

## Indicator 13

- Percent of youth with IEPs that include coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals
- Representative sample of school districts each year
- Monitoring through self-review

# Post-school Outcomes

## Indicator 14

Percent of youth with IEPs who are no longer in secondary school and who have been competitively employed, enrolled in some type of postsecondary school, or both, within one year of leaving high school.

- Representative sample of school districts each year
- In year required to report – school districts collect exit contact information for students and submit to SUNY Potsdam
- SUNY Potsdam will conduct follow-up interviews in following year

# Resolution Sessions

## Indicator 18

- Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements
- Impartial hearing reporting system (IHRS)

# Public Reporting of Data

- The State must issue an Annual Performance Report in February 2007 on:
  - the State's performance in meeting targets for improvement; and
  - For new indicators – State baseline data, improvement targets and improvement strategies.

# State public report on school district performance

- The State must annually report to the public on the performance of each local educational agency (LEA) in the State on the targets in the State Performance Plan.

# Monitoring

- States must ensure correction of compliance **within one year** of the date an issue is identified
- Primary focus of monitoring activities is to:
  - improve educational results and functional outcomes for students with disabilities; and
  - ensure compliance with program requirements, particularly those that are most closely related to improving educational results
- The State must use the targets established in the SPP and priority areas to analyze the performance of each LEA in the State.

# Enforcement

- Based on information in the State Performance Plan, monitoring visits and any other public information made available, the State shall determine if the school district:
  - Needs assistance
  - Needs intervention
  - Needs substantial intervention



**Planning is bringing the future into the present so that you can do something about it.**