

IDEA 2004, P.L. 108-446
Impact on Physical Therapy Related Services*
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***prior to establishing new administrative regulation; regulations should clarify many of these changes**

Summary (Excerpts from Apling RN & Jones, NL. *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*. Congressional Research Service, The Library of Congress: Report for Congress. 1-5-05. Order code RL32716)

Increased emphasis on the need for general & special education to have challenging expectation to lead productive and independent adult lives to the maximum extent possible. States that one of the purposes of IDEA is to prepare students for further education, employment, and independent living. The words academic achievement and functional performance replace educational performance and the words developmental needs appear often.

1. Authorization for some states to reserve up to 10% IDEA funds to establish and maintain risk pools to assist local educational agencies (LEAs) to provide high-cost IDEA services.
2. Aligns more requirements with No Child Left Behind (Elementary & Secondary Education Act).
3. Authority for LEAs to use some of their local IDEA grant (up to 15%) for “early intervention services” (k-12) to reduce or eliminate the future need for special education for students in general education.
4. Exempts under the definition of Assistive Technology “a medical device that is surgically implanted, or the replacement of such device.”
5. Support the use of technology, including technology with Universal Design principles (Assistive Technology Act of 2004 and NCLB) and assistive devices to maximize accessibility to general education curriculum
6. Initial full and individual evaluations must occur within 60 calendar days of receiving parental consent with a few exceptions. Screening is not an evaluation.
7. IEP meetings may be held using alternate means such as videoconferencing or conference call if parent and LEA agree.
8. IEPs need measurable annual goals but no longer need short-term objectives or milestones unless the student’s IEP states that they require an alternate assessment.
9. Special education and related services in the IEP must be based on peer-reviewed research to the extent practical and refers to scientifically based instructional practices.

10. An IEP team member may be excused from attending if the parent and LEA agree that his/her area of service is not being modified or discussed. This must be in writing.
11. If an IEP member (including related services) cannot be present at a meeting, they must request and receive written permission from the parent and LEA and submit their input in writing.
12. The parent must give written consent for any special education and related service, not just the initial provision of special education.
13. The parent and LEA may agree that a 3-year reevaluation is not necessary
14. The parent and LEA may agree to amend the IEP without calling for a new IEP meeting.
15. Transitions services must be addressed in the IEP in the year in which the student turns 16 years old (eliminates the mandatory plan that was created when the student was 14 years old).
16. The LEA must provide a graduating student with a summary of their academic achievement and functional performance along with recommendations for ways to assist the student in meeting their post-secondary goals.
17. Added accountability to track post-school function of students as part of post high school transition.
18. New wording of personnel qualifications for related services personnel and paraprofessionals that emphasizes state control but eliminates emergency, temporary or provisional status. Major changes to definition of “highly qualified teacher” of core academic subjects, same as NCLB.
19. Changes to procedural safeguards adding a resolution session prior to due process hearing
20. 40% full funding is a goal for 2011, not a mandate.
21. Created pilot program grants to waive Part B requirements to reduce paperwork and grants to allow multi-year IEPs coinciding with natural transition points.
22. Authority to extend Part C services for infant and toddlers up to kindergarten, although FAPE would not apply.
23. Natural environments in Part C now include “to the maximum extent appropriate” (similar to Part B LRE language) as determined by the parent and IFSP team. There still must be a justification statement if any service is not provided in the natural environment.
24. Comprehensive System of Professional Development (CSPD) has been eliminated but Part D creates state professional development grants which must partner with other state organizations for training in effective instruction for children with low incidence disabilities and training to meet the needs of students with significant health, mobility, or behavioral needs. There are also grants for implementation of scientifically based research and parent training and information centers.
25. Part D establishes the National Center for Special Education Research and the Institute of Education Sciences (IES), effective October 2005. Eliminates previous language authorizing research and innovation in the Office of Special Education Programs (OSEP).

Part A

Section	Content	Change
Sec. 601-Subpart 4 – General Provisions: © (5) (A) (i) & (ii) Findings	Increase time in regular classroom to: “(i) meet developmental goals &, to the maximum extent possible, the challenging expectations that have been established for all children, and (ii) be prepared to lead productive and independent adult lives, to the maximum extent possible”	Increased emphasis throughout IDEA 04 on independent adult living Added need for PTs to provide services in this area. PTs have focused primarily on the “educational environment”.
Sec. 601-Subpart 4 © (14)	“providing effective transition services to promote successful post-school employment or education is an important measure of accountability”	Accountability: need to track post-school function of students who have a mobility impairment Added need for PT accountability. Once these students no longer have an IEP with PT, we have typically not tracked them through school, let alone post school.
Sec. 601-Subpart 4 (d)(1)(A)	The purposes of this title are to...”prepare them for further education, employment, and independent living.”	Added emphasis on independent living Added need for PTs to assist in living & mobility skills prior to transition to community
Sec 602 – Definitions Sec. 602(1)(B)	(1)Assistive Technology “EXCEPTION – “the term does not include a medical device that is surgically implanted, or the replacement of such device.	Added exception
Sec 602(26)(A)	“Related Services ...interpreting services...school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program”	Added to the list of related services

Sec. 602(34)(A)	Transition services that are designed to be a “results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;”	Adds: results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate
Sec. 602(35)	“Universal Design-- The term ‘universal design’ has the meaning given the term in section 3 of the Assistive Technology Act of 1998”	New term in IDEA, also in NCLB In this context it emphasized & strengthens the PTs role in providing access to the educational environment and learning materials

Part B

Section	Context	Change
Sec. 611 (e)(2)(C)(v)	Authorizes state activities “To support the use of technology, including technology with universal design principles and assistive devices to maximize accessibility to general education curriculum for children with disabilities”	New Added emphasis to support PT role in access through mobility and positioning assistive technology services and devices.

Sec. 611 (e)(3)(C)	State plan for high cost fund (bb) Defines a high cost student as “greater than 3 times the average pupil expenditure”	All new language Anticipate that this will assist LEAs to remove architectural barriers consistent with ADA for students with mobility limitations (i.e.; putting in elevator) and funds power mobility or other expensive assistive technology in a student’s when Medicaid does not cover the student.
Sec 611 (e) (3)(H)	“Medicaid Services Not Affected”	Medicaid still responsible as payer prior to accessing this fund
Sec. 612 (a)(1)(C)	“State flexibility – A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, is not required to provide such child with a free appropriate public education”	All new. If Part C is extended until kindergarten: *PT would remain a primary, not related, service and some students 3-5 years old without a need for specialized instructions under Part B, could continue to receive PT. *FAPE would not apply. If Part C had a sliding fee scale, families would still have to pay for services, which would be free if the child qualified for Part B services.
Sec. 612 (a)(10)	“Children in Private Schools” -A greatly expanded section attempting to clarify and expand child find responsibilities and increased emphasis to “Amounts to be expended for the provision of these services (including direct services …)” for children placed unilaterally by their parents. All references to “parochial” have been changed to “religious”	New. Emphasis could increase the number of children, unilaterally placed in private schools, receiving evaluation and direct PT services. Previous emphasis was on indirect services such as professional development for private school personnel.
Sec 612 (a)(14)(A & B)	Personnel qualifications –“The State education agency has established and maintains qualifications to ensures...including that those personnel have the content knowledge and skills to	The Comprehensive System of Personnel Development (CSPD) no longer exists. New wording emphasizing state control of personnel qualifications and content knowledge.

	<p>serve children with disabilities”.</p> <p>“qualifications for related services personnel and paraprofessionals that are consistent with any State-approved or State-recognized certification, licensing, registration or other comparable requirements” and “have not had certification or licensure requirements waived on an emergency, temporary or provisional basis.</p>	<p>Eliminates the concern that staff shortages could be a reason to reduce qualifications for the position.</p>
<p>Sec 613 (a)(4)(A)(iii)</p>	<p>“Permissive Use of Funds - High Cost Education and Related Services: to establish or implement cost or risk sharing funds, consortia, or cooperatives for the local education agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services”</p>	<p>New wording. Related services could include PT and assistive technology especially power mobility, other mobility devices or architectural accessibility changes.</p>
<p>Sec. 613(f)</p>	<p>“A local educational agency may not use more than 15% of the amount such agency receives under this part for any fiscal year...to develop and implement coordinated, early intervening services...for students in kindergarten through grade 12...who have not been identified as needing special education or related services”</p>	<p>This is an attempt at preventing a disability while the student is still in general education.</p>

School-based Improvement Plan Sec. omitted		
Sec. 614:	Evaluations, Eligibility Determinations, “Individualized Education Programs and Educational Placements”	Expands who can request a full and individual evaluation to include state agencies other than educational agencies
Sec. 614 (a)(1)(C) (i)	“Such Initial evaluation shall consist of procedures to determine whether a child is a child with a disability within 60 days of receiving parental consent”	Newly established timeframe
Sec. 614(a)(1)(D)(1)(ii)(II & III)(aa)	“If the parent of such child refuses to consent to service...the local education agency shall not provide special education and related services to the child” [and] “shall not be required to convene an IEP meeting or develop an IEP...”	New
Sec. 614(a)(1)(E)	“The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for special education and related services.”	This removes the previous “black” line that prohibited PT services to students in general education prior to a full and individual evaluation.
Sec 614(a)(1)(D)(2)(B)	“A reevaluation...shall occur not more frequently than once a year, unless the parent and the local education agency agree otherwise”	New In the past, parents could requested multiple therapy reevaluations (e.g.; when a new person takes over or just to see if the results are different.)
Sec 614(b)(2)(A)	“In conducting the evaluation the local education agency -shall use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including	The inclusion of the words “functional” and “developmental” were omitted in the original house bill and are essential for continue to include PT evaluations that are functional and development. The inclusion of information from the parent is emphasized.

	information provided by the parent”	
Sec 614(c)(1)(A & B)	“Review of Existing Evaluation Data—As part of an initial evaluation (if appropriate) and as part of any reevaluation ...the IEP team and other qualified individuals, as appropriate, shall—(A) review existing evaluation data on the child, including (i) evaluations and information provided by the parents of the child; (ii) current classroom-based, local, or State assessments, and classroom-based observations; and (iii) observations by teachers and related services providers; and...what additional data, if any, are needed to determine...the present levels of academic achievement and related developmental needs of the child”	This clearly requires PTs to include an ecological assessment in educational environments as part of their evaluation. It is important that the words “and developmental” were added since the original House Bill only academic needs. In this phrase, functional needs are omitted and this needs to be clarified to add functional in the regulations.
Sec. 614(x)(5)(B)(ii)	‘Summary of Performance – for a child whose eligibility under this part terminates [due to graduation from secondary school] a local educational agency shall provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how t assist the child in meeting the child’s postsecondary goals.’	New – strengthens transition requirements and is part of the new emphasis on post-secondary accountability. PTs may need to be a part of this functional summary and perhaps transition goal follow-up.
Sec. 614(d)(1)(A)(i)(I)	“IEP... includes a statement of academic achievement and functional performance”.	This replaces the term present level of educational performance (PLEP), and thankfully adds the word “functional” which was left out of the original House bill.

Sec. 614(d)(1)(A)(i)(1)(cc)	“for children with disabilities who take alternate assessment aligned to alternate achievement standards, a description of benchmarks or short-term objectives.”	This is the only population of students required to have benchmarks or short-term objectives.
Sec 614(d)(1)(A)(i)(II)	“a statement of measurable annual goals, including academic and functional goals”	Annual goals must be measurable. Thankfully, functional goals are addressed. Except for the provision above, short-term objectives or milestones are not listed as required parts of the IEP.
Sec 614(d)(1)(A)(i)(IV)	Special education and related services and supplementary aids and services based on peer reviewed research to the extent practicable	Less restrictive than NCLB and more realistic PTs are working on this data base of peer reviewed research
Sec. 614(d)(1)(A)(i)(VII I)(aa)	“beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter—(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.”	Omits planning requirements beginning at age 14. Added emphasis includes independent living skills For students with mobility limitations this would suggest the need for a PT evaluation of independent living skills. This has not been emphasized before.
Sec. 614(d)(1)(C)	“IEP Team Attendance...A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member’s area of curriculum or related services is not being modified or discussed in the meeting” (ii) Excusal – a member of the IEP Team may be excused from attending an IEP	In the past, related service providers were encouraged but not required to attend IEP meetings. This requirement should encourage more to attend to avoid written input and LEA and parent written consent. . Also, some teams forgot to invite support staff and this may improve communication if they need written permission and written input. PTs should be at the meeting when the planning process takes plan whenever their services are being discussed

	meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if--, the and the local educational agency 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...A parent's agreement...shall be in writing.	
Sec. 614(d)(2)(B)	“Program for Child Aged 3 Through 5...the IEP Team shall consider the individualized family service plan...and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is consistent with State policy and agreed to by the agency and the child's parents”.	
Sec 614(d)(3) (A)	“In General—In developing each child's IEP, the IEP Team... shall consider—(iv) the academic, developmental & functional needs of the child	All 3 areas appear here, not just academic. These three areas replace the word “educational”.
Sec 614 (d)(3)(D-F)	“In making changes to a child's IEP after the annual IEP meeting for a school year, the parent...and the local educational agency may agree to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP”	New This would seem to be a huge problem and needs revision in the Regulations. As written it would permit a parent and LEA to add, delete or change a PT service without the PT being present.

Sec 614(f)	“Alternative Means of Meeting Participation—When conducting IEP team meetings and placement meetings...the parent of a child with a disability and local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.”	New Could become a primary method rather than alternate but might increase participation of itinerant personnel (PTs)
Sec 616 (a)(2)(A)	“Focused Monitoring--...shall be on improving educational results and functional outcomes”	Emphasis on results and outcomes rather than compliance and procedures is new.
Sec. 617(e)	“Model Forms –Not later than the date that the Secretary publishes final regulations...the Secretary shall publish and disseminate...(1) a model IEP form; (2) a model individualized family service plan (IFSP) form”	
Sec 619(f)(5 & 6)	“Other State-Level Activities--...(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten; or (6) at the State’s discretion, to continue service coordination or case management for families who receive services under part C.	New Adds the option of keeping service coordination and case management for children with disabilities served under Sec. 619 Preschool Grants.

Part C—Infants and Toddlers With Disabilities

Section	Content	Change
Sec. 632 (4)(E)(iii)	Early Intervention Services...”speech-language pathology and audiology services, and sign language and cued language services”	Added sign language and cued language services
Sec 632(4)(F)(viii & x)	Early Intervention Services are “provided by qualified personnel, including...registered dietitians;...vision specialists, including ophthalmologists and optometrists”	Added There could a large cost to grantees associated with ophthalmologists and optometrists as a EI service provides
Sec. 632(4)(G)	“to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate”	Reemphasis, seen again in Sec 635(a)(16)(B)
Sec. 632(5)(B)(ii)	Infant or Toddler with Disability...may also include, at a State’s discretion...”children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such children shall include—(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and	Repeat of earlier statements. This program is “at the State’s discretion”. Also in Sec. 635 (c)(1-5)

	numeracy skills; and (II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619”	
Sec 634(1)	Eligibility...infants and toddlers with disabilities who are homeless children and their families and infants and toddlers with disabilities who are wards of the State”	New
Sec 635(a)(5) & (6)	“A comprehensive child find system...that ensures rigorous standards for appropriately identifying infants and toddlers ... that will reduce the need for future services”	Addition of words rigorous standards. Unsure of implications. Hope Regulations clarify this.
Sec. 635(a)(6)	“A public awareness program...to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications.”	Addition of emphasis on premature infants and infants with other physical risk factors
Sec. 635(a)(8)(A)(iii) & (B)	“A comprehensive system of personnel development...that “shall include training personnel to coordinate transition services for infants and toddlers... (B) may include...(ii) training personnel in the emotional and social development of young children.”	(A)(iii) is not new but (B)(ii) is a new addition.

<p>Sec 635(a)(C) Policy</p>	<p>“Flexibility To Serve Children 3 Years of Age Until Entrance into Elementary School ... (A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains—(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under part B; and (ii) an explanation of the differences between services provided pursuant to this subsection and services provided under part B, including—(i) types of services and the locations at which the services are provided; (ii) applicable procedural safeguards; and (III) possible costs (including any fees to be charged to families as described in section 633(4)(B)), if any, to parents of infants or toddlers with disabilities... The State shall submit to the Secretary... a report on the number and percentage of children with disabilities who are eligible for services under 619 but whose parents choose for such children to continue to receive early intervention services under this part.”</p>	<p>All new section. Repeats parts if Sec. 632(5)(B)(ii). Added data collection requirement. Extension of Part C does not require FAPE.</p>
<p>Sec 636 (d)(3) IFSP content</p>	<p>“Individualized Family Service Plan... shall be in writing and contain... measurable results... including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures and timelines”</p>	<p>Prior to this, outcomes did not specifically need to be stated as measurable. Pre-literacy language added as in other sections.</p>

Sec 636 (d)(4)	IFSPs shall contain “a statement of the specific early intervention services based on peer-reviewed research, to the extent practicable”	Added reference to peer-reviewed research, to the extent practicable. This is a less strict statement than what is in NCLB.
Sec. 637(a)(6)	State application shall contain...”(6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who—(A) is involved in a substantiated case of child abuse or neglect; or (B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;”	Reflects the increased focus on infants and toddlers who are abused, neglected or drug affected.
Sec. 637(a)(9)(A)	State application shall contain...”policies and procedures to be used—(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(c)) to preschool, school, other appropriate services, or exiting the program”	New accountability of what happens when an infant or toddler exits Part C.
Sec 637(a)(10)	State application shall contain...”(10) a description of State efforts to promote collaboration among Early Head Start programs under section 645A of the Head Start Act, early education and child care programs and services under part C”	New to improve collaboration between different programs for children.

Sec. 640	Payor of Last Resort...The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement...is in effect...in order to ensure—(i) the provision of, and financial responsibility for, services provided under this part”	This entire section has been unclear in the past and has been expanded greatly. More clearly requires interagency agreements for financial responsibility.
Sec. 641(b)(1)(K-M)	State Interagency Coordinating Council adds representation from. “(K) Office of the coordinator of education of homeless children and youth...(L) State foster care representative...(M) Mental health agency...”	Again, stresses more comprehensive interagency collaboration.

Part D—National Activities to Improve Education of Children with Disabilities

Section	Content	Change
Sec. 653(2)	Applications---“The application shall include a plan that identifies and addresses the State and local needs for the personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities”	Eliminates the concept of a State Improvement Plan found in IDEA 97 but contains more specific instruction regarding what professional development must include in this section and Sec. 654.
Sec. 654(a)(1)	Professional Development Activities – A state educational agency that receives a grant...shall...[include]...1 or more of the following: (1) Carrying out programs that provide support to both special education and regular education teachers of children	Emphasis on caseload and collaborative and consultations models should assist delivery of physical therapy services.

	with disabilities and principles, such as programs that—(A) provide teacher mentoring, team teaching, reduced class schedules and case load...(C) encourage collaborative and consultative models of providing early intervention, special education and related services”	
Sec 654(a)(3)(B)(iii & iv)	Professional Development Activities... (iii) provide training in methods of-- ... (III) early and appropriate interventions to identify and help children with disabilities; (IV) effective instruction for children with low incidence disabilities; (V) successful transitioning to postsecondary opportunities...(vi) provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students”-	PTs should seek professional development activities that related to instruction for early intervention, children with low incident disabilities, transition, and those with significant health and mobility needs. This covered a significant portion of the individuals we serve under IDEA
Sec 662(b)(2)	Personnel Development to Improve Services and Results for Children with Disabilities...(C) providing continuous personnel preparation, training, and professional development designed to provide support and ensures retention of special education and general education teachers and personnel who teach and provide related services to children with disabilities...(H) Providing continuous personnel preparation, training, and professional development designed to provide support and improve the	This grant could assist PT programs to obtain funding.

	qualifications of personnel who provide related services to children with disabilities, including to enable such personnel to obtain advanced degrees.	
Sec. 662 (c)	Low Incidence Disabilities; Authorized Activities	This entire section applies to personnel preparation of PTs, who typically serve students with low incidence disabilities.
Sec. 663	Technical Assistance, Demonstration projects, Dissemination of Information, and Implementation of Scientifically Based Research	Research activities of pediatric PTs could be supported through this section and Sec. 674(b)(2) which references research related to universally designed technologies