

Making the IEP Process Work for Schools

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Preparation

- Staff and communicate
- Review new evaluations (“reevaluations”) with parents before meeting
 - Parents should be provided a copy of the evaluation report
- Give parents previews of major changes

Preparation

DO:

- Gather real evidence of progress (Keep in mind duty to provide FAPE)
- Carefully review implementation of modifications/accommodations
- Review behavior – talk to Assistant Principal
- Develop proposals for IEP team to consider

FAPE-Free Appropriate Public Education

How is FAPE determined?

Under *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S.176 (1982)

1. First, has the school district complied with the procedures set forth in the Act?
2. Second, is the individualized education program (IEP) developed through the Act's procedures, reasonably calculated to enable the child to receive educational benefits?

Gill v. Columbia, 217 F.3d 1027, 1035 (8th Cir. 2000);
Garcia v. Bd. of Educ. of Albuquerque Pub. Schs., 520 F.3d 1116, 1125 (10th Cir. 2008); *Andrew F. v. Douglas County Sch. Dist. RE-1*, 66 IDELR 31 (10th Cir. 2015).



How is “Reasonably Calculated” to provide an “Educational Benefit” for FAPE Determined?

Under *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997):

1. The program is individualized on the basis of the student’s assessment and performance;
2. The program is administered in the least restrictive environment (LRE);
3. The services are provided in a coordinated and collaborative manner by the Key Stakeholders; and
4. Positive academic and non-academic benefits are demonstrated.

Additional Preparation Recommendations

DO NOT: Participate in or allow Predetermination

- ***Deal v. Hamilton County Bd. Of Educ., 42 IDELR 109 (6th Cir. 2004).***
- The Court concluded that though the parents were present at the IEP meetings, their involvement was merely a matter of form and after the fact, because the district had, at that point, pre-decided the student's program and services. It concluded the district's predetermination violation caused the student substantive harm and therefore denied him FAPE.



Additional Preparation Recommendations

DO NOT: Participate in or allow Predetermination

- **FORT OSAGE R-1 Sch. Dist. v. Gray, 641 F.3d 996 (8th Cir. 2011)**
- The Court concluded that when a school district predetermines the educational program to be provided to a disabled student, including the student's placement, prior to meeting with the parents and closes its mind to the concerns or evidence of the parents, the IEP is procedurally flawed and must be set aside because the parents were deprived of any meaningful opportunity to participate in the formulation process.



Additional Preparation

DO NOT:

- Communicate inappropriately to parents
- Send out clever e-mails

Notice

DO:

- Send written notice of meeting
- Indicate purpose, time, location
- Indicate who will be there
- Inform parents of their right to bring an individual with knowledge or special expertise
- Be sure parents receive timely notice



Participants

DO:

- Include all essential members:
 - Parent
 - Regular education teacher
 - Special education teacher
 - School district representative
 - Person who can interpret instructional implications of evaluation



Participants

DO:

- Take steps to ensure parents are present and are given opportunity to participate
 - Timely notice
 - Mutually agreeable time and place
 - Other methods to ensure participation
 - Interpreters
 - Document steps to get parents to attend
 - Confirm waiver of attendance in writing

Participants

DO:

- Make sure the correct teachers are present
 - At least one regular teacher of the child (is or may be participating in regular ed environment)
 - Gives input about general curriculum or from own class
 - Gives input from other regular ed teachers
 - At least one special ed teacher, or special ed provider, of the child

Participants

DO:

- Make sure the representative of the school district
 - Is qualified to provide/supervise provision of special ed instruction
 - Is knowledgeable about general curriculum
 - Is knowledgeable about availability of resources in the district
 - Can commit district resources

Participants

DO:

- Make sure someone can interpret assessment data
 - Be able to translate data into instructional needs
 - Not necessarily a diagnostician
 - May fill this role and be the regular ed/special ed teacher or district representative
 - May be some other person with knowledge or special expertise

Participants

DO:

- Ensure the participation of other individuals who may be needed
 - Based on the child's disability
 - At discretion of parent
 - At discretion of school
 - By allowing the people/entity who invite others to determine their knowledge or special expertise

IDEA 2004 IEP Teams

- Parents and the school district may jointly excuse an IEP team member from attending the meeting if service/curricular area will not be discussed.
- Parents and the school district may excuse an IEP team member even if service/curricular area will be discussed; the excused member must provide written input to the team.

IDEA 2004 IEP Teams

- Agreement must be in writing and include parent consent.
- Video conference or conference call meetings permitted if agreed upon.

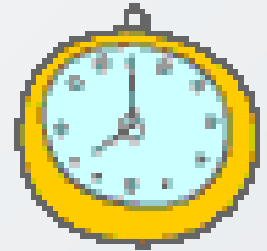
Policy/Practice Implications

- School district must clearly designate staff members who have the authority to enter into agreements with parents.
- Impact in IEP meeting notice regarding staff who will be present.
- Ensure that parents truly understand and voluntarily agree to excusing IEP team member.

Policy/Practice Implications

- Ensure that if the district representative is excused, a team member present has the authority to commit the school district.
- Consider reconvening if unanticipated service/curricular area is raised at the meeting without the excused attendance and input from that team member.

1st Few Minutes:



- DO identify consensus members
- DO establish an agenda
- DO establish ground rules
- DO listen to parents' issues

During the Meeting

DO:

- Review Progress
 - Standardized grades
 - IEP Goals and Objectives results
 - State assessment scores
 - Benchmark testing results (CLASS, etc.)
 - Work portfolio
 - Input from all teachers
 - Information from parents
 - Attach or clearly identify any supporting documents
 - Record in detail in lay language

During the Meeting

DO:

- Review Behavior
 - Conduct grades
 - Student discipline record
 - Behavior plan (if any)
 - Teacher observations and documentation



During the Meeting

DO NOT:

- Ask persons to sign who were not there
- Let consensus members/decision makers leave before it is over
- Set artificial time limits
- Stop because there is a disagreement – finish the agenda
- Force staff to agree

During the Meeting

DON'T SAY:

- “We don’t have that program”
- “That is too expensive”
- “That program is not for children with this label”

During the Meeting

DON'T SAY:

- “You have to be in resource to get”
- “No matter what the federal law says, we expel for that”
- “We do not have the authority to make that decision”

During the Meeting

DO:

- Listen to the parents
- Ask questions
- Continually check for understanding
- Identify any reevaluation to be done



Modifications/Accommodations

DO:

- Have a rationale and purpose
- Note frequency or triggering event
- Consider grade level changes
- If you write them, DO THEM

Modifications/Accommodations

DO NOT:

- Write AS NEEDED without clarification
- Check each modification for each class
- Check each one of last year's modifications
- Check only because the parent requests it

Related Services

DO:

- Set date to begin
- Duration
- Frequency
- Location
- Note who will provide the service



Minutes

- DO have a separate note taker
- DO make sure they are clear, complete and extensive
- DO document even if the meeting is tape recorded
- DO take the time to re-read and correct
- DO have everyone sign who has attended
- DO NOT ALTER AFTER THE FACT

Content of the IEP

Be sure to review:

- Progress toward goals
- Results of reevaluation
- Information provided by the parents
- Child's anticipated needs

IDEA 2004

Content of the IEP

Make sure the IEP includes:

- Short-term objectives and benchmarks are eliminated, except for students who are assessed using alternate achievement standards (students with significant cognitive disabilities).
- Annual measurable IEP goals must include academic and functional goals.
- Special education and related services must be based on peer-reviewed research to the extent practicable.

IDEA 2004

Content of the IEP

Make sure the IEP includes:

- Frequency, location and duration of services.
- Description of how progress toward IEP goals will be measured and when periodic progress reports will be provided to the parents.
- Schools are prohibited from requiring a child to obtain a prescription for medication as a condition of attendance, an evaluation or receipt of services.

Addendums / Supplements

- DO allow parent to attach written disagreement
- DO NOT overlook correct supplements
 - ESY
 - Autism
 - Refusal of services
 - Transition services
 - Behavior intervention plan
 - Manifestation determination review

IDEA 2004

IEP Amendments

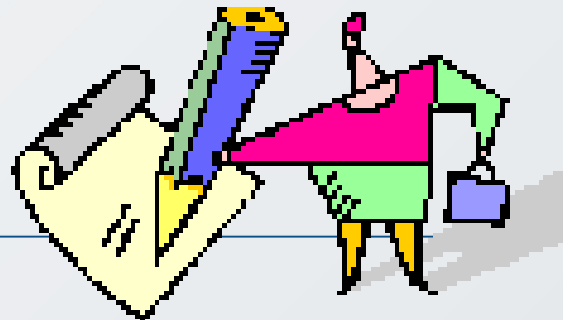
- IEP may be amended between the annual IEP meetings without calling a new IEP team meeting, if agreed to by the parents and school district.
- IEP amendment shall be in writing.
- Upon request, the parent shall be given a revised IEP with the amendments incorporated.

Policy/Practice Implications

- School district must clearly designate staff who have the authority to amend the IEP with parent agreement.
- Agreement should reflect the process of amendment without a meeting.
- Prior written notice as appropriate.
- Generally, not recommended for placement changes.

ESY

- DO document purpose
- DO specify IEPs to be worked on
- DO tailor it to the individual child
- DO NOT just “continue the identical educational program”



At the End of the IEP Meeting

- DO verify agreement or disagreement
- DO NOT give in if the request is educationally inappropriate

After the IEP Meeting

- DO give parent and every teacher copies of the IEP, modifications and behavior plans
- DO give BIP to Assistant Principal
- DO document receipt
- DO ensure the IEP and modifications are followed