



RESEARCH TO PRACTICE #2:
AVOIDING ERRORS IN THE IEP PROCESS

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INDIVIDUAL EDUCATION PROGRAMS: THE BASICS

In 1978 Senator Robert Stafford, one of the original sponsors of the Education of All Handicapped Children Act (EAHCA: renamed the Individuals with Disabilities Act in 1990), wrote that the IEP was the central part of the EAHCA “as we wrote it and intended it to be carried out” (Stafford, 1978). The purpose of the IDEA was to make a free appropriate public education (FAPE) available to every student for a special education. Since the original passage of the law, the IEP has been the heart and soul of every student's special education program, and thus is the embodiment of a student's FAPE.

When a school district fails to make a FAPE available to a student and his or her parents then obtain a private school education, the school district may be required to reimburse the parents' expenses. Schools that fail to provide FAPE may also have to pay compensatory expenses and tuition reimbursement. The IEP is the center of most IDEA disputes that involve possible denial of FAPE. This is because the IEP is the primary evidence of the appropriateness of a student's educational program (Bateman, 2011).

In addition to being the blueprint of a student's FAPE, the IEP also shares some similarities to contracts. That is, in the IEP a school district specifically promises in writing to provide certain levels special education services, related services, supplementary services, and program modifications as well as services in the general education program to individual students (Lake, 2007). The IEP guarantees access to educational services, however, it is not a guarantee of a specified level of performance. Nonetheless, the IEP guarantees the a school district will make good-faith efforts to assist a student to achieve his or her goals contained in the IEP.

The purpose of this research to practice guide is to assist teachers, administrators, and parents to develop IEPs that are legally compliant and educationally appropriate. The most effective way to ensure that IEPs are developed correctly is to become aware of, and avoid, the most common errors made in IEP development. Our goal is to help IEP teams to develop IEPs that (a) adhere to legal requirements, (b) involve parents and school personnel acting as equal partners, and (c) provide an educational meaningful education.

BASIC LEGAL REQUIREMENTS OF IEPs

- According to Bateman (2011) the most basic of all requirements related to IEPs is that parents are equal partners with school district personnel in IEP development. The IDEA makes parental participation central in all decisions regarding the student's program and

placement and when a student's parents are not full and equal participants in IEP development, a denial of FAPE will most likely be found.

- The IEP team must include the following participants: (a) the student's parents; (b) a regular education teacher, if the student is or may be participating in general education; (c) the student's special education teacher or provider; (d) a representative of the public agency who is qualified to provide or supervise the provision of special education; (e) someone who can interpret the instructional implications of evaluation results, the position can be another person who is already on the team (e.g., special education teacher); (f) other persons the district or parent may invite; and (g) the student as appropriate.
- The IEP must include the following components: (a) present levels of academic achievement and functional performance; (b) measurable annual goals; (c) a description of how progress toward meeting goals will be measured; (d) a statement of the needed special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, and a statement of the program modifications or supports for school personnel; (e) an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in [other] activities; (f) a statement of accommodations, if any, necessary in assessments and/or in assessment standards; and (g) the projected date, frequency, location and duration of services and modifications. Also beginning with the first IEP when the student turns 14, or earlier if determined necessary by the case conference committee, a transition plan must be included in the IEP
- IEP meetings must be held at a mutually agreeable time and place. If a schools district fails to make adequate efforts to schedule an IEP meeting at a time and place agreeable to the parent as well as to the district, that failure may be a denial of FAPE.

IDENTIFYING AND AVOIDING THE MAJOR ERRORS IN IEP DEVELOPMENT

Error: Lack of parental involvement in IEP development. Parental participation is so important in the special education decision-making process that is one of the two procedural errors that will result in a finding that a school district has denied a student a FAPE. Because it is such a key procedural safeguard that school district personnel must cooperate with and strongly encourage participation of parents in the development of their child's IEP. Parents are to be equal partners in developing, reviewing, and revising a student's IEP. This means that parents are informed beforehand what will occur at the meeting and parent opinions and considerations are given serious consideration. IEP meetings can be held without parents in attendance but only when school district personnel have been unable to convince the parents to attend. In such situations, school district personnel must keep thorough records of their attempt to contact and convince the parent.

Error: Predetermination of the IEP services or placement. Predetermination occurs when school district personnel decide on a student’s program or placement prior to the IEP meeting and without parental input. The problem of predetermination is a very serious issue. If a school district is found to have predetermined the IEP or placement, a due process hearing officer or judge will almost certainly find that the district has violated the IDEA. When school district personnel at an IEP team meeting make definitive statements such as “We always…” or “We never…” that is a red flag that predetermination has occurred. This may constitute evidence that parent participation was a charade. School personnel may come to an IEP with suggestions and opinions, but must be open to discussing parental suggestions. Additionally informal preparatory activities and even draft IEPs (as long as they are clearly understood by the parents to be drafts and are marked “Draft”) do not constitute predetermination. The watch word is “Prepare, don’t predetermine.” As a judge in *Doyle v. Arlington* (1992) noted in his opinion “School officials must come to the IEP table with an open mind. But this does not mean that they should come to the IEP table with a blank mind” (p.1552).

Error: Improper IEP team membership. According to Lake (2007) almost nothing will foil a school district’s ability to develop and provide a FAPE to a student than failing to ensure that a properly constituted IEP team crafts a student’s educational program. In fact, a state hearing officer in New York invalidated a school’s IEP, writing that an IEP prepared by an improper IEP team was a “nullity” (Board of Education of the Monroe-Woodbury School District, 1999). It is likely that hearing officers and courts may conclude that an IEP that is developed by an improperly constituted IEP team will be invalid. We previously listed the IEP team members who are required by federal law. School districts should also allow the parents to bring additional persons to the IEP meeting who have knowledge of special expertise regarding their child.

The IDEA also allows a member of the team to be excused from an IEP meeting when the attendance of the member is not necessary because his or her area is not being modified or discussed in the meeting if the student’s parents and school district members agree that the attendance of the member is not necessary. Additionally when the IEP meeting does involve a modification or discussion of the member’s area the member may be still be excused if he or she submits input to the IEP team in writing and the parents consent to the excusal of the team member. Parental consent to any excusal must be in writing. It is important the school district personnel avoid overuse of the excusal procedure; the purpose of the excusal provision is to provide school districts with flexibility when needed and it must not be abused.

Error: Conducting inadequate assessments. The purpose of the assessment/ evaluation requirements of the IDEA are twofold: First a full and individualized assessment provides information to assist a multidisciplinary team to determine if a student has a disability under the IDEA and requires special education and related services. Second, the assessment is used to develop a student’s present levels of academic achievement and functional performance (PLAAFP) upon which the rest of the IEP is based. Too often, multidisciplinary teams focus on the first purpose of assessment, which is eligibility determination, and neglect the second purpose, instructional planning. Unfortunately, without data and

information on a student's instructional needs, an IEP will not be educationally appropriate and neither will it be legally sound.

According to a U.S. District Court judge in *Kirby v. Cabell County Board of Education* (2006):

If the IEP team fails to assess the 'child's present levels of academic achievement and functional performance' the IEP does not comply with [IDEA]. This deficiency goes to the heart of the IEP; the child's level of academic achievement and functional performance is the foundation on which the IEP must be built. Without a clear identification of present levels, the IEP cannot set measurable goals, evaluate the child's progress p. 694).

Error: Writing annual goals that are not measurable. Although these components have been required in all students' IEPs since 1975, an important change was made to these requirements when the IDEA was reauthorized and amended in 2004. In this reauthorization, called the Individuals with Disabilities Education Improvement Act, Congress changed the requirement from developing "annual goals" to developing "measurable annual goals." Additionally, IEPs were required to include a separate statement describing how the team would measure a student's progress toward his or her goals. Because these goals form the basis of a student's program, it is also important that they be ambitious.

Clearly, students' measurable goals must be measurable and then actually be measured. The importance of developing truly measurable goals was clearly and forcefully announced in a decision by a due process hearing officer in New Mexico. In ruling that a school district IEP failed to confer FAPE, the hearing officer noted that the:

Student's annual goals in each IEP simply do not contain objective criteria which permit measurement of the student's progress. . . . A goal of 'increasing' reading comprehension skills or 'improving decoding skills' is not a measurable goal . . . Even if [present levels of performance] were clearly stated, an open-ended statement that Student will 'improve' does not meet the requirement . . . for a 'measurable' goal (p. 148).

Research to Practice Guide #3 addresses how IEP teams can ensure that they develop goals that are measurable. As previously mentioned, in addition to developing measurable goals the team has to include information in the IEP on how they will measure the annual goals, and of course, they have to actually measure student progress toward the annual goals.

Error: Failing to measure student progress. Measuring a student's progress toward his or her annual goals is essential because without frequent and frequent monitoring of student progress it will be impossible to determine if the student's program is working. If the goals and objectives of the IEP cannot be measured or evaluated, the IEP will not appropriately address the student's needs, which

may result in the denial of FAPE. It is also important that IEP teams collect meaningful data. For example, a court ruled that an IEP that only collected anecdotal information on a student's progress failed to confer FAPE because the school district could not prove that the student had made any progress. According to the court the school had only collected anecdotal information, based on teacher observation, which was not legitimate data. The court wrote that

although subjective teacher observation provides valuable information, teacher observation is not an adequate method of monitoring student progress... Without supporting data, teacher observation is opinion which cannot be verified" (*Board of Education Central School District*, p. 148).

Clearly subjective data, such as teacher observation and other subjective measures does not constitute appropriate data for progress monitoring. An IEP team must develop systematic procedures that will be used to systematically and frequently collect data on students' progress toward their goals. The most appropriate progress monitoring systems are those in which objective numerical data are collected, graphed, analyzed, and used to make instructional decisions. Two examples of such systems are curriculum-based measurement and observations using direct and quantifiable observation systems such as those used in applied behavior analysis.

After the IEP teams decide on the data collection system that will be used, students' special education teachers have to collect and analyze the data and based their instructional decisions upon the data. As aptly state by a state level hearing officer in New York "Periodic review of progress on the goals and objectives provides the disabled student's teacher with supportive data needed to make a determination of the success of the intervention (*Escambia Public School System*, p. 248)." Additionally, the IEP team has to determine how a student's progress will be communicated to his or her parents. This decision must be made during the IEP meeting.

Error: Not providing an IEP that confers meaningful educational benefit. Student's special education programs must confer meaningful educational benefit in order for students to receive an appropriate education. The IEP is the blueprint of a student's education (i.e., FAPE). To ensure that an IEP does confer FAPE, four conditions are necessary. First, a relevant assessment must be conducted that identifies all of a student's academic and functional needs. Second measurable annual goals must be developed, based on the assessment information, to address a student's academic and functional needs. Third, the IEP team must determine what special education services, related services, supplementary services, and /or program modifications that address all of a student's unique educational needs, will be provided to the student. Moreover, these services must be based on peer-reviewed research to the extent practicable. Fourth, the IEP must collect meaningful data on a student's progress toward achieving his or her goals and then report their progress to the student's parents.

If the IEP team aligns the assessment, goals, services, and progress monitoring system and can show that the student actually made progress under the special education program, the courts will require no more of a school district.

Guides to Developing IEPs

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