I. Scheduling the IEP Meeting

A. The IEP meeting should be scheduled for a date and time that is mutually agreeable to the parents and to the school division. 20 U.S.C. § 1415(b)(1).

B. Most IEP meetings are easily scheduled and the parents are cooperative regarding the selection of the date and attendance at the meeting.

C. Generally an IEP meeting can be scheduled by:
   1. proposing a single meeting date and providing notice of the meeting that contains the necessary elements for holding the IEP meeting on the selected date,
   2. providing two weeks (suggested, not required) notice of the IEP meeting, and
   3. advising the parents that the IEP meeting will be held on the scheduled date unless:
      a. they notify the school division prior to the meeting that they are unavailable and
      b. they propose alternative dates.

   4. Note: do not ask in the notice that the parents approve the date. Ask them to notify you if they disapprove of the date and recite that, if no response is made, it will be assumed the date is agreeable.

D. Uncooperative parents may require additional strategies.
   1. “Mutually agreeable” does not require that the meeting be held other than during regular school hours.
      a. Explain to the parents that, if they will not meet during the school day, the meeting will be held without them and that their refusal to meet during regular hours will be treated as a refusal to meet.
2. Parents who cannot attend during the regular school day can be accommodated by offering participation by telephone or by videoconferencing. 20 U.S.C. § 1414(f). The option of telephone participation should be offered before meeting without the parents.

3. If the parents always say no to a school division’s proposed date, consider asking for multiple available dates from the parents. Schedule the IEP meeting quickly after receiving the dates so that the parents cannot advise that they are no longer available. Send the written notice promptly confirming the selected date.

4. Advise the parents of any deadlines by which the IEP meeting must be held. Ask that they supply dates within the necessary timeframe. Do not wait until the deadline has arrived to request dates.

5. An agreed-upon meeting should be rescheduled whenever the parents subsequently become unable to attend and there is a good reason put forth by the parents for not being able to attend (e.g., family emergencies, illness). Do not be afraid to ask the parents why the date has become unacceptable.

E. Be mindful of deadlines for holding the IEP meeting. The school division should not allow itself to be placed out of compliance by the parents. Develop a tracking system.

II. Determination of Participants in the IEP Meeting

A. The minimum participants for an IEP meeting are typically:

1. The parents;
2. A regular education teacher of the child;
3. A special education teacher of the child; and

B. Sometimes related service personnel and the child are invited. Id.

C. Parents do not have the right to require all of the child’s teachers to be present.

D. Parents do not have the right to direct the school division to invite certain persons to the IEP meeting. The parents have the right to invite those individuals whom they wish to participate. 20 U.S.C. § 1414(d)(1)(B)(vi).

E. Parents do not have the right to prohibit school employees from attending the IEP meeting if the school division desires their participation.

F. School divisions cannot prohibit the parents from bringing individuals to the IEP meeting. 20 U.S.C. § 1414(d)(1)(B)(vi). Typically these invited individuals would include the parents’ attorneys, advocates or private providers.
1. Ask the parents prior to the meeting to advise you if they are bringing their attorney.

2. Exceptions to parents’ ability to invite participants: court reporters, news reporters may be prohibited from participating.

3. Key questions for the parents for their invited participants:
   a. Did you invite this individual to the IEP meeting; and
   b. Does this individual have knowledge or special expertise regarding the child.

G. Warning: list only those individuals in the IEP meeting notice who are invited by the school division. Do not list the parents’ invitees such as the parents’ attorneys or advocates.

H. At the beginning of the IEP meeting, compare the listing of participants in the IEP notice with those present at the IEP meeting and provide an amended notice if necessary.

III. Strategies for the Difficult IEP Meeting

A. Do some advance planning, but do not conduct advance decision-making.
   1. Prepare a draft of the IEP and share it with staff and with the parents prior to the meeting.
   2. Ask the parents to provide their feedback to the draft prior to the IEP meeting.
   3. Produce a revised draft based on the parents’ input.
   4. Ask the parents to supply you with any written materials or evaluations prior to the meeting.
   5. In appropriate cases, invite the parents to meet to assist one or more school staff in the preparation of a draft in order to shorten the actual IEP meeting.
   6. Be sure to stress that the draft is only a draft and that there will be no final IEP until the draft is reviewed, adjusted and accepted by the IEP team.
   7. If the parents have not read the draft in advance of the IEP meeting, consider leaving them alone for a period of time to review the draft so that they can discuss it during the meeting. The entire IEP team should not have to wait while the IEP is read.
B. Run the IEP meeting efficiently.

1. Do not wait until the time for the meeting to make copies of the draft IEP, evaluations or other information that needs to be considered. Being unprepared prior to the meeting wastes staff and parent time during the meeting.

2. Ask the parents to identify their issues regarding the draft IEP and their requests for additional areas to address in the IEP. If you do not understand the parent’s concerns, you cannot resolve them.

3. If the parents cannot identify their concerns but recite that they have concerns, tell them that they have to state their issues before the IEP team can discuss them. If they cannot recite any concerns, then move forward with the IEP development.

4. If parents state that they do not like the IEP but cannot suggest changes because they are not “experts,” advise them that the IEP appears appropriate and does not require changes (if that conclusion is in fact correct.) It is not the school division’s responsibility to continue to revise IEP language to try to satisfy unspecified parental concerns.

5. Remember that nothing goes in the IEP without the agreement of the school division.

6. Discuss only areas of disagreement. Do not discuss areas for which there is agreement and stay on topic. Issues which are not IEP issues should be put off to another time.

7. Be sure to discuss all issues otherwise a second IEP meeting will need to be held to discuss any issues that are not discussed. IDEA 2004 discourages multiple meetings. 20 U.S.C. 1414(d)(3)(F).

8. There is no minimum number of minutes required for considering the requests of parents. Brevity if acceptable.

9. Select someone from the school division who is in charge of running the IEP meeting. The IEP meeting should be run as a meeting while encouraging team input. Remember: the team includes the parents.

   a. This facilitator is responsible for:

      (i) Insuring civility,

      (ii) Keeping participants on topic,

      (iii) Keeping track of time,

      (iv) Encouraging parental participation,

      (v) Saying “no” in appropriate cases, and
Having the final word on whether the school division agrees to include a provision in the IEP.

b. If the parents or their guests become unruly, ask them to calm down. Recite that you want the parents to participate in the IEP meeting, but that their participation is contingent upon their good behavior. Also, recite that if they do not behave, they will be asked to leave and the meeting will continue without them.

c. In appropriate and extreme cases, direct the parents to leave and summon the resource officer for assistance.

d. If the parents choose to leave during the meeting, encourage them to stay and inform them that the meeting will proceed without them. If they leave, be certain to document their refusal to participate.

e. If an issue is raised which requires guidance, take a break and consult with the special education director. Do not state that you are seeking consultation. After speaking with the special education director, reconvene and make a decision without referring to the consultation.

C. Reaching consensus at the IEP meeting.

1. What is consensus?

   a. Definition – the general opinion or position of a group.

   b. Consensus is not determined by a majority vote or even a vote.

   c. "The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority ‘vote’." 34 C.F.R. Part 300, Appendix A, Question 9.

2. The LEA representative determines what will be included in the IEP if there is a dispute.

3. Be sure to consider the parents’ views as they are equal participants.

IV. Strategies for Negotiating the IEP When There is a Dispute.

A. The school division should understand what it needs to accomplish in the IEP meeting, e.g.:

   1. Completing a proposed IEP;

   2. Addressing the parents’ concerns; or
3. Reviewing and considering new evaluations.

B. Get the parents to define the problem from their perspective:
   1. Identify areas of disagreement.
   2. Ask the parents to recite precisely what they are requesting.
   3. When talks break down, ask questions such as “what would it take to get you to give consent to the IEP?” Be sure you get an answer. Without understanding what is desired, there is no way that a solution can be reached.
   4. Define in your mind how far you are willing to go to get a signed IEP.
   5. How much a school division will concede depends on whether you are in a position of strength. If the school division needs consent from the parents to move forward with an action, the school division is in a weaker position and may be willing to offer more in the way of a compromise.
   6. If the school division is satisfied with the stay-put situation, there is little, if any, reason to compromise.
   7. Ask questions such as “if we add the goal that you requested but do not increase the speech services, will you give consent to the IEP?”
   8. Do NOT include additional IEP requirements beyond those necessary for FAPE unless the addition will result in the parents’ giving consent to the IEP.
   9. Do not concede points or add services unless the school division receives something in return.
   10. Do not add services to an IEP in the situation where the student has been determined ineligible for continued services and the parent will not consent to terminate services.

C. What to do if agreement cannot be reached regarding the IEP.
   1. Make sure that the IEP is fully completed and represents a proposed IEP that the school division is prepared to defend in a due process hearing.
      a. Consider using prior written notice in place of minutes.
      b. IEP minutes are not required by the IDEA. Minutes are time-consuming and may cause problems if they contradict the contents of the IEP.
c. Prior written notice provides the school division with protection, documents any proposals or refusals and provides the basis for the action.

3. Try to convince the parents to give consent to implement the IEP while preserving their right to contest it in a due process hearing. Explain that any favorable provisions of the newly proposed IEP cannot be implemented unless the parent gives consent.

   a. Possible language for the parents: “While we do not agree with the provisions of this IEP, we grant consent for its implementation and reserve our right to challenge its contents in a due process hearing.”

4. Remember that the consent of only one parent is required for implementation. Try to convince one parent to sign.

5. Continue to implement the last agreed-upon IEP if no consent is supplied.

6. Important: Do not terminate services for a student who was already receiving special education services if the parents refuse to give consent to a subsequent IEP. Do not advise the parents that services will stop if they do not give consent.

7. A parent’s refusal to consent to a subsequent IEP for a student who has been receiving services will not affect the student’s right to continue to receive special education services.
HYPOTHETICAL SITUATION

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Opie was born on May 10, 2001, and he was diagnosed with autism, among other conditions on October 2, 2003. Opie was found to be eligible for special education and related services as a preschool special needs student. He began attending Mayberry preschool in the school district in approximately December, 2004.

Between January 10, 2005 and May 25, 2005 there were five IEP team meetings for the student. At the January 10 meeting the school district representatives placed a draft IEP on the table and asked the parents to sign it so that they could get on with the business of educating children. The parents balked and asked to discuss the proposed IEP. The LEA staff agreed to do so although their resentment was palpable. The notes of the meeting stated that the meeting was not completed because it had been scheduled for twenty minutes and according to the meeting notes, the “pesky questions” from the parents “ruined everything.” The meeting was rescheduled for January 17th.

At the January 17th meeting, the parents appeared with an “advocate” who was another parent who had lost five previous due process hearings against the school district. The advocate was disrespectful of the LEA personnel frequently demanding that they explain their education, experience and other credentials in detail. She frequently referred to the special ed director as “jackass.”

After two hours, the meeting was reconvened on January 30th. The meeting was scheduled for the whole school day. The meeting notes reflect that the student’s father and the “advocate” “engaged in delaying tactics.” The parent spent four hours asking questions concerning the meaning of the goal “manages his clothing.” The meeting was contentious and tempers flared many times. The special education teacher, weary of being questioned as to her qualifications told the parent late in the afternoon to “shut up and sit up straight.”

The meeting was rescheduled for February 12th. At this meeting the parent and the “advocate” demanded that the IEP include 30 hours of discrete trial training and a dedicated one-on-one aide and occupational therapy because the research shows that all autistic children require these services. The LEA personnel refused noting that the district already has an “eclectic” methodology program that it uses for all autistic children. The impasse was never resolved.

Another IEP team meeting was convened on May 25, 2005. At this meeting the school district personnel developed an IEP for Opie. The IEP featured the school district’s eclectic methodology in an inclusion setting. Opie also received a two hours per week of speech-language therapy as a related service. No prior written notice was issued by the school district.
Opie made progress toward 19 of his 24 IEP goals and in the general curriculum during the rest of the 2004-2005 school year. But in the first half of the next school year, he made progress toward only two of his 24 goals.

On July 5, 2005, the student’s IEP team met and the parents requested that the student be evaluated for occupational therapy. On August 3, 2005, the schools district’s occupational therapist conducted an evaluation of Opie. He was able to cut with scissors, zip and unzip a book bag and button and unbutton a large button. He was on age level with fine motor skills and adult daily living skills. The therapist concluded that occupational therapy was not recommended for Opie.

On September 15 and 16, 2005, the schools preschool special needs specialist/lead teacher made formal observations of Opie in his classroom. She found during said visits that Opie's program was appropriate and that he was making educational progress despite his lack of progress toward his IEP goals.

On September 25, 2005, the IEP team was reconvened at the parents’ request. The parents said nothing at all during the entire meeting. The advocate was not present at the meeting. The parents appeared to have been arguing loudly with each other in the hall just before the IEP team meeting. The LEA members of the team drafted an IEP that was identical to the previous school years IEP, with no changes even to present levels of performance.