

ReedSmith

DEVELOPING EFFICIENT IEPs— PROVIDING FAPE WITHOUT ENDLESS MEETINGS

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ReedSmith
Driving progress
through partnership

Scheduling the IEP Meeting

Be mindful of state or local requirements that may exceed federal laws.

- Find a date and time that is mutually agreeable.
- Meetings do not have to be held on weekends or holidays.
- Meet without the parents only if they refuse to participate.

Be mindful of any deadlines.

- Use a tracking system.
- Generally, the timeline to meet is:
 - 30 calendar days after a finding of initial eligibility,
 - prior to the start of the school year and
 - annually.

Generally, an IEP meeting can be scheduled by:

- Proposing a single meeting date.
- Providing two weeks' notice.
- Asking the parents to notify you if they disapprove of the day.
- Accommodating by offering participation by telephone, by videoconferencing or by written input.

Participants in the IEP Meeting

The parent(s).

Not less than one regular education teacher.

Not less than one special education teacher.

The LEA representative.

Sometimes, related service personnel.

The student is invited if transition services are discussed or when appropriate.

Questions to ask?

All of the child's teachers present?

Other people needed for the IEP meeting?

Other individuals invited by LEA or parents?

Prohibition on school employees attendance?

IEP planning.

- Conduct a staff meeting, if necessary, to discuss complicated issues.
- Conduct a pre-meeting with the parents.
- Use a draft IEP.
- Do some advance planning and drafting.
- Share the IEP draft with staff and with the parents.
- Ask the parents to supply any relevant written materials.
- Offer the parents the opportunity to review educational records.

- Can you make final decisions regarding IEP content prior to an IEP meeting?
- Can you ask the parents to identify any issues in advance of the IEP meeting?

- Consider whether an amendment to an IEP could be made without a meeting.
- Train staff regarding the types of IEP revisions that can be made without a meeting.
- Use this option with caution.

Routine procedures to follow in advance of the meeting.

- Printer.
- Draft IEP displayed.
- Begin on time.
- Current performance information.
- Student's file.

Issues that May Arise During the IEP Meeting

Be familiar with the procedures and stick to them.

Be confident, be courteous and be professional.

A disorganized start to a meeting can cause parents to wonder whether staff are disorganized in other areas.

Stress that the draft is only a draft.

Full consideration should be given to the parents' concerns.

Full consideration is not the same as endless debate.

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

Make sure that the proposed IEP provides FAPE.

The IEP meeting should be run as a meeting while encouraging team input.

Ensure that the general education teacher and special education teacher present at the meeting are teachers of the child.

Have relevant student files present in the meeting room.

Encourage all school staff to provide input during the meeting.

Do not get stuck on a point of disagreement.

Remember: the team includes the parents.

Designate someone to record and transfer all IEP revisions.

Consider maintaining copies of the IEP drafts.

Collect data/information on IEP and goal implementation.

Reaching Consensus at the IEP Meeting

What is consensus?

- Consensus is not determined by a majority vote or even a vote.
 - “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.

REVIEW OF CASES WHICH ADDRESS ISSUES WITH IEP CONTENT

M. N. v. Sch. Bd. of the City of Virginia Beach, 71 IDELR 170 (E.D. Va. 2018).

“Virginia Beach’s proposal for 2015-16 may have been appropriate if M. N. had not experienced trouble with an ineffective teacher in fall 2014...” and used information from this teacher to develop the proposed IEP.

Ms. M, ex rel., O.M. v. Falmouth Sch. Dept.,
847 F.3d 19, 69 IDELR 86 (1st Cir. 2017).

The court concluded that the designation of a specific methodology in the IEP was not required and that its inclusion in a PWN did not make it an IEP obligation.

Andrew F. ex rel. Joseph F. v. Douglas Co. Sch. Dist. RE-1, Case No. 15-827, 580 U.S. ____, 137 S. Ct. 988 (2017).

The judgment of appropriate progress is made individually based on the student's own circumstances and is judged on a prospective basis.

The Court held that the IEP need not offer an ideal education, an equal educational opportunity, or guarantee a specific outcome.

Andrew F. ex rel. Joseph F. v. Douglas Co. Sch. Dist. RE 1, 71 IDELR 144 (D. Col. 2018).

The district court judge had previously denied tuition reimbursement due to an appropriate IEP.

Upon remand, the court reversed itself finding that the proposed “...IEP that was developed was a continuation of the poor progress on his educational and functional goals of his past IEPs. And, as such, the District was not successful in creating an educational program that was reasonably calculated to enable Petitioner to make progress in light of his circumstances, in order to provide him with a substantive FAPE.”

Questions and Answers on Endrew F. v. Douglas County School District R2-1,71 IDELR 68 (USDOE December 7, 2017).

“Each child with a disability must be offered an IEP that is designed to provide access to instructional strategies and curricula aligned to both challenging State academic content standards and ambitious goals, based on the unique circumstances of that child.” The IEP team must consider the student’s present achievement level and potential for growth.

J.B. ex rel. Belt v. Dist. of Columbia, 118 LRP 36661 (D. D. Col. 2018).

“Now what *Andrew F.* did not do. It did not hold that any time a child made limited, or even zero, progress, that a school system has necessarily failed to provide a FAPE and violated the IDEA.”

Here it was “going to take her a tremendous amount of time...to grow and change....”

M. L. by Leiman v. Smith, 867 F.3d 487, 70 IDELR 142 (4th Cir. 2017), cert. denied, 118 LRP 2066 (2018).

The court recited that the IEP did not require maximal progress and that each case would be determined based on individual circumstances without substitution of the court’s judgement for that of school employees.

It further held that the IDEA “does not require that school officials, let alone a reviewing administrative hearing officer, consider a student’s subsequent performance in a private school when forming an IEP.”

F.L. ex rel. R.C.L. v. The Bd. of Educ. of the Great Neck Union Free Sch. Dist., 17 IDELR 232, 735 Fed. Appx. 38 (2nd Cir. 2018).

“A professional disagreement is not an IDEA violation.”

“[An]... educational program need not include ‘grade-level advancement’ if that kind of progress is not ‘a reasonable prospect’ for the particular child.”

K.D. ex rel. Theresa and Jonathan Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248 (3rd Cir. 2018).

“When schools use their expertise to address each child’s distinct educational needs, we must give their judgments appropriate deference.”

“Given her impairments and circumstances, the District Court did not clearly err in finding that ‘this kind of fragmented progress could reasonably be expected.’”

Renee J. ex rel. C.J. v. Houston Indep. Sch. Dist., 913 F.3d 523 (5th Cir. 2019).

The court found that the parents had never asked for ABA services so there could have been no predetermination in not providing the services.

Additionally, the court held that “...this court would adopt the problematic role of education policymaker if it were to dictate which pedagogical methods a school district must consider and to what degree they must be incorporated on an individualized, case-by-case basis—an outcome the Supreme Court has specifically cautioned against.”

L.H. ex rel. G.H. and D.H. v. Hamilton Cnty. Dept. of Educ., 900 F.3d 779 (6th Cir. 2018).

The court upheld the Montessori placement and found:

1) deference to educators does not mean automatic rejection of the views of parents and their experts;

2) L.H. had been inappropriately functionally isolated from his peers while at his public school program and would have continued to be isolated in the proposed public school program and

3) the parents could have initiated stay-put to maintain L.H. in the public schools in a mainstream setting, but the teachers had all testified that program was inappropriate and that they could not provide him with the necessary support.

C.D. ex rel. M.D. and P.D. v. Natick Pub. Sch. Dist., 119 LRP 20672 (1st Cir. 2019).

In determining the LRE for a student, the IEP team must consider:

the reasonable efforts to accommodate the student in a regular classroom,

the benefits of education in a special education setting and

the effect of the placement on other children in the regular classroom.

Other IEP Issues

Try to avoid monthly or repeat IEP meetings.

Do not include accommodations and supports in excess of those required for FAPE.

Be sure to hold an IEP meeting if there is a lack of progress.

Placement and Services

Clearly define the services and explain them to the parents.

Discuss placement at the end of the meeting.

Do not designate a particular school.

Watch out for circumstances that could suggest predetermination.

Concluding the IEP Meeting

Provide the parents with a copy of the proposed IEP.

Provide prior written notice.

Figure out which IEP is the IEP which will be implemented going forward.

Give procedural safeguards.

THE END