

IEP Process of IDEIA 2004 and Common Procedural Errors

Create an Effective IEP While Complying with the Procedural Requirements

Paperwork Reduction Caution

- No other section of the law is to be construed to require that additional information be included in the IEP
- If the information is on the IEP in one place, it does not have to be repeated in another section

The IEP Team: 20 USC 1414(d)(1)(B)

Who is on the Team

- Parent
- Not less than one regular education teacher if the child is or may be participating in the regular education environment
- Not less than one special education teacher or where appropriate, not less than one special education provider
- A district special education supervisor or provider who is knowledgeable about the general education curriculum and the availability of resources
- An individual who can interpret the evaluation results
- Other individuals who have knowledge or special expertise about the student
- Student, as appropriate
- Part C service coordinator or representative invited to the initial meetings at parent request
- Building principal for eligibility meetings pursuant to state regulations

IEP Team Attendance

- Parent and district may agree that the IEP Team member need **not attend** meeting because *area of interest is not being discussed or modified*
- Parent and district may agree that the IEP Team member **is excused** from attending even *if area of interest is to be modified or discussed* if a written report is submitted prior to the meeting
- Parent's agreement to non-attendance as consent to excusal must be in writing
- Parent and district may agree to use alternative means of participating in meetings, such as video conferences and conference calls

Role of Regular Education Teacher in Attending IEP Meeting: 20 USC 1414(d)(3)(C)

- Participate in developing the IEP, including the determination of positive behavioral interventions and supports and other strategies

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- Participate in determining supplementary aids and services, program modifications and support for school personnel

IEP for Children Age 3-5: 20 USC 1414(d)(2)(B)

- Team must consider IFSP and it may serve as the IEP if it is consistent with the state policy and agreed to by the agency and the parents.

IEP Team Considerations

- Strengths of the child
- Concerns of the parents for enhancing the child's education
- Results of the evaluations
- *Academic, developmental and functional needs of the child*
- *Use of positive behavioral interventions and supports and other strategies*
- Language needs of second language learners as they relate to the IEP
- Need for Braille instruction
- Communication needs of the student
- Need for assistive technology devices and services

Amending IEPs: 20 USC 1414(d)(3)(D)

- IEP must be in effect at start of school year
- After annual IEP meeting has been held for the school year, the parent and the district may agree to make changes to the IEP by way of addendum document to amend or modify the IEP without an IEP meeting
- Changes to the IEP can be made by the entire IEP team or by amending the IEP rather than redrafting the entire document
- Consolidating reevaluation meetings with other IEP meetings is encouraged
- Parents are provided with a revised copy of the IEP with amendments upon request

IEPs Generally

- Must be:
 - Reviewed at least annually
 - Revised as appropriate to address lack of expected progress towards goals and in the general education curriculum
 - Revised to address reevaluations, information provided by the parents, the child's anticipated needs or other matters, as appropriate

IEPs for Transfer Students: 20 USC 1414(d)(2)(C)

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Students who transfer district within the state to a new school within the same academic year	→ receive <i>comparable</i> services developed in consultation with parents, until the new district adopts the previous IEP <i>or</i> develops, adopts and implements a new IEP
Students who transfer to a new school in a different state within the same academic year	→ receive comparable services, developed in consultation with the parents, until the new district conducts an evaluation, if it decides an evaluation is necessary, and develops a new IEP, if appropriate

- The new district shall promptly obtain the student's education records including special education records
- The previous school district shall promptly respond to record requests from the new district

Most Common Procedural Errors:

#1 Sufficient Notice of IEP Meeting

- Failing to provide the parents
 - 1) the purpose, time, and location of the meeting;
 - (2) who will be in attendance; and
 - (3) information concerning the parent's right to bring other individuals who have knowledge or special expertise regarding the child.
- The IDEA only requires the notice to include the positions of those who will attend. For a child beginning at the age of 16 (or younger, if appropriate), the notice must indicate that the purpose of the meeting is the consideration of the child's needed transition services and that the student is invited to attend. In addition, the notice must identify an other agency that will be invited to send a representative
- Note: This error may increase or decrease with the reauthorization of IDEIA 2004 due to the allowance for prior non-attendance and/or prior excusal of IEP team members:
 - (Parent and district may agree that the IEP Team member need not attend meeting because *area of interest is not being discussed or modified*)
 - (Parent and district may agree that the IEP Team member is excused from attending even *if area of interest is to be modified or discussed* if a written report is submitted prior to the meeting)

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- (Parent and district may agree to use alternative means of participating in meetings, such as video conferences and conference calls)

#2 Providing Parents Their Procedural Safeguards

- Failing to provide the parents a copy of the notice that fully explains the parents' procedural safeguards under the IDEA.
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- These procedural protections must be given to parents in their native language, at a minimum:
 - (1) upon initial referral for evaluation;
 - (2) upon each notification of an IEP meeting;
 - (3) upon reevaluation of the child; and
 - (4) upon receipt of a request for due process hearing.

#3 Failure to provide parents with Prior Written Notice

- the failure to provide written notice to parents within a reasonable time before the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child
- This error may likely increase under IDEIA 2004 due to the modification and codification of the minimum prior written notice requirements (20 USC 1415(c)(1)(A)-(F) including:
 - Description of the action proposed
 - A description of other options considered by the IEP team
 - Description of the factors relevant to the districts proposal or refusal
 - Explanation or of reasoning why the district proposes or refuses to take the action
 - A statement that the parents have procedural safeguard protection
 - Means to obtain procedural protections
 - Sources for parents to obtain assistance in understanding these provisions

#4 Properly Constituted IEP Meeting

- The most common procedural error here is the failure to have a regular-education teacher at the IEP meeting. State regulations once permitted the school counselor to serve in the capacity of the regular-education teacher, *but this is no longer the case.*
 - Not all of the child's regular-education teachers are required to attend;
 - the IDEA only requires that at least one regular-education teacher of the child attend.

- If, however, the participation of more than one regular-education teacher would be beneficial to the child's success in school (e.g. in terms of enhancing the child's participation in the general curriculum), it would be appropriate for all such teachers to attend the meeting.
- Finally, if some of the child's regular-education teachers are unable to attend the IEP meeting, the regular-education teacher who does attend should elicit beforehand, and share at the meeting, the other teachers' input.
- Note: This error may increase or decrease with the reauthorization of IDEIA 2004 due to the allowance for prior non-attendance and/or prior excusal of IEP team members:
 - (Parent and district may agree that the IEP Team member need not attend meeting because *area of interest is not being discussed or modified*)
 - (Parent and district may agree that the IEP Team member is excused from attending even *if area of interest is to be modified or discussed* if a written report is submitted prior to the meeting)
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#5 Untimely IEP Meetings

- The IDEIA specifies that an IEP review must be conducted not less than annually, it does not require that the IEP review be completed and any revisions implemented within this 12-month period. Sometimes, IEP meetings become extended due to lengthy considerations of IEP information or difficulty scheduling a mutually agreed upon time to meet for both parents and the school. Thus, if the IEP anniversary date is March 14, 2002, then the LEA complies with the IDEA if the IEP team meets on or before March 14, 2003 to review the IEP. However, finalizing an IEP after the March date would violate the annual requirement. Be sure to plan for and seek agreement for lengthy and multiple meetings, unusual calendaring issues or scheduling difficulties. In the end, the critical question will be whether there is a valid IEP in effect prior to the beginning of each school year.
- This error may increase or decrease with the allowance in the reauthorized IDEIA 2004 due to:
 - After annual IEP meeting has been held for the school year, the parent and the district may agree to make changes to the IEP by way of addendum document to amend or modify the IEP without an IEP meeting
 - Changes to the IEP can be made by the entire IEP team or by amending the IEP rather than redrafting the entire document
 - Parents are to be provided with a revised copy of the IEP with amendments upon request

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#6 Failure to Complete the IEP

- This error occurs when the IEP team cannot reach a consensus and, as a result, the school leaves the IEP incomplete or not implemented. The LEA has a legal obligation to provide the parents with prior written notice of the LEA's proposal regarding the child's educational program, and to implement the child's IEP in accordance with this proposal. Failure to do so may result in a parent's claim that the LEA failed to provide prior written notice and failed to complete and implement an IEP in the timelines required by the IDEA, and that such failures resulted in a denial of FAPE.
- Note: Remember that IEP must be in effect at start of school year and must be reviewed at least annually and be revised as appropriate to address lack of expected progress towards goals and in the general education curriculum



Now that you have completed the E-Training on the IEP Process of IDEA 2004 and Common Procedural Errors

- Complete the Post- Rubric and note progress from the initial evaluation
- Turn in a copy of your Rubric to your DOS Director