

Compliance Corner

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The IEP: Both a Product and a Process- Tips for Making It a Success! (Part 3 of 3-Following the IEP)

You worked hard to prepare for a student's Individualized Education Program (IEP) meeting. You ensured the required participants and other pertinent people were invited and participated. You made sure the IEP was scheduled at a mutually agreed on time with the parent(s). You also ensured it would be conducted in a venue that would provide confidentiality on behalf of the student.

When conducting the IEP, you employed many skills and techniques that resulted in the development of an IEP that addressed the unique needs of the student. You ensured everyone had a voice to be able to express their own viewpoints. You addressed the concerns of everyone around the table. You asked poignant questions that allowed others to discuss what the student required in order to have his/her needs addressed.

So, you've completed the IEP. Now what? So much is still left to do. It might feel as though the hard work is done. However, some might say the hardest part is yet to come. You now must implement the IEP while ensuring the student is consistently receiving a Free Appropriate Public Education (FAPE). However, there are some challenges that may make this extremely difficult.

People:

Now that the meeting has concluded, a copy of the IEP needs to be provided to the parent(s). Is the equipment in working order and easily accessible to be able to provide a copy in an expedient manner? Or, do you have to retrieve it from another location while asking the parent(s) to wait? Ensuring a copy can be accessible shortly after the meeting will assist in moving along the process and prevent a delay of any meeting(s) that are scheduled to follow. The Individuals with Disabilities Education Act (IDEA) [34 CFR §300.322 \(f\)](#) emphasizes the requirement to provide a copy to the parent(s). In doing so, it assists in including parents in the IEP process and provides a copy of the decisions that have been made about the instructional programming for their child.

In addition to a copy of their child's IEP, the parent(s) may need to be offered a copy of their parent's and child's rights in special education known in New Mexico as the SPECIAL EDUCATION PROCEDURAL SAFEGUARDS FOR STUDENTS WITH DISABILITIES AND THEIR FAMILIES REQUIRED UNDER IDEA PART B. (See link: [Eng-Procedural-Safeguards-12-23-2020.pdf \(state.nm.us\)](#)).

These parent's and child's rights have specific requirements for when they must be provided to the parent but are sometimes provided more often than required. There's no harm in this. By doing so, it is extremely likely schools are in compliance with the requirements for ensuring parents are offered a copy of their rights. In terms of when the procedural safeguards must be provided, the Individuals with Disabilities Education Act (IDEA) states the following:

34 CFR §300.504

(a) General. Procedural safeguards notice: *A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—*

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;

(3) In accordance with the discipline procedures in § 300.530(h); and

(4) Upon request by a parent.

It is important to be available for parents following the IEP. This might be necessary immediately following the meeting or at some time thereafter. Parents may have questions about their child's services or any aspect of the IEP. They may want to know about the days and times their child is expected to receive their related services, what opportunities exist for them to meet their child's provider(s) or how to gain an understanding of their rights. It is crucial someone is available to provide answers to the parents. Being familiar with the procedural safeguards and the child's IEP will assist in being able to answer the parent's questions.

Process:

Not only are parents to receive a copy of the IEP, but personnel should have access to it as well. Those who have a hand in its implementation should be familiar with the decisions made by the IEP Team to ensure they are aware of their responsibilities. This might occur with a paper copy of the IEP being provided or through electronic access to the document. IDEA states the following:

34 CFR §300.323

(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that—

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in [paragraph \(d\)\(1\)](#) of this section is informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

Some schools require service providers to sign a document indicating their acknowledgment regarding their responsibilities in implementing the IEP. These responsibilities might include accommodations and/or modifications necessary in the general education setting, the implementation of a Behavioral Intervention Plan (BIP), a School Health Plan, etc.

There may be proposals generated in the IEP that require certain personnel to pursue. This might be a request for a social work assessment, the need to review/revise a student's BIP, a request for an early reevaluation, etc. Failing to follow up on these proposals could result in the denial of a student receiving a free appropriate public education.

Most importantly is the implementation of the IEP. Case managers need to ensure that services are accessible and able to be provided in a timely manner.

34 CFR §300.323

(c) Initial IEPs; provision of services. Each public agency must ensure that—

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Problem:

There's no denying it. Having a full complement of staff available to serve students in special education is a challenge. School districts across the country have been grappling with staff shortages for years, especially exacerbated by the Covid pandemic. Yet, services for students must still be provided. How is that accomplished when there aren't enough staff members? Many states are employing alternative licensure pathways to address this shortage. Yet, the challenges still exist.

In May 2023, the Office of Special Education and Rehabilitative Services (OSERS) under the United States Department of Education provided data indicating the challenges school districts face in recruiting and maintaining staff members in the field of special education. According to Meghan Whittaker, OSERS Special Assistant,

“Today, more than 60% of students with disabilities spend at least 80% of their day in general classes. This wouldn’t be possible without special educators who help to customize curriculum that is accessible to all and ensure the individual needs of students with disabilities are met.

Special educators serve a critical role in our nation’s public school, yet 45% of schools reported vacancies in special education roles, and 78% reported difficulty in hiring special education staff. Special education teacher shortages have been a longstanding challenge in most states and have only worsened since the start of the COVID-19 pandemic”.

Conclusion:

A student’s IEP is more than just the finished document. While it is mandatory to develop an IEP that will address the unique needs of the student, how you get there is also important. It involves a wide range of responsibilities that include preparing for the meeting, conducting the meeting and following through with the provisions of the IEP after the meeting. Any one of these processes can seem difficult. All three of these processes can seem overwhelming. Yet, all are essential to ensure the student receives appropriate services and supports because of our mandate of developing an IEP that is reasonably calculated in order for the student to receive a free appropriate public education.

The information included herein is not intended to provide legal advice. Should you need legal advice or guidance on any issue involving special education, please contact the appropriate person for your district.