

Legally Proficient IEPs: A Guide for Principals

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The Primary Requirement of the IDEA and the crucial obligation to special educators is to provide a special education that confers a free appropriate public education (FAPE)

FAPE issues account for 85% to 90% of all special education litigation

Gerl, 2014

Free Appropriate Public Education (FAPE)

- Special education & related services that are:
 - Provided at public expense
 - Meet the standards of the SEA
 - Includes preschool, elementary, or secondary education
 - Are provided in conformity with the individualized education program (IEP)

IDEA, 20 U.S.C. § 1401 (A)(18)

Endrew F.- March 22, 2017

- The High Court rejected the “merely more than *de minimis*” standard, **vacating the decision and remanding** the case back to the 10th Circuit to apply the new standard.
- “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make **progress appropriate** in light of the child’s circumstances.” Endrew, p. 11

The *Rowley/Endrew* Test

1. In the development of an IEP, has the school agency complied with the procedures set forth in the IDEA?
2. Is the IEP developed through the IDEA's procedures reasonably calculated to enable the child to **make progress that is appropriate** in light of his or her circumstances?

Recommendation #1

Prepare educators to **avoid procedural violations** in the development of IEPs that could, in and of themselves, constitute a denial of FAPE.

Common Procedural Problems

- Fielding an incomplete IEP team
- Predetermining services & placement
- Determining placement before programming
- Failing to ensure parents meaningful involvement
- Failing to implement the IEP*

Recommendation #2

Ensure **meaningful parent involvement** by preparing special educators to facilitate parental involvement.

Endrew on the Importance of Parental Participation

- **An IEP must be drafted in compliance with a detailed set of procedures that “emphasize **collaboration among parents and educators** and require careful consideration of the child’s individual circumstances.” *Endrew*, p. 2**
- **“the nature of the IEP process ensures that parents and school representatives will **fully air their respective opinions** on the degree of progress a child’s IEP should pursue.” *Endrew*, p. 16.**

Recommendation #3

When developing the content of a student's IEP and subsequently reviewing and revising it, be sure that the present levels of performance and annual goals **are based on** evaluations and other data that are **relevant** and **current**.

“Progress appropriate in
Light of the Child’s
Circumstances”

Recommendation #4

Ensure that annual IEP goals are **challenging, appropriately ambitious, and measurable.**

Recommendation #5

Continuously monitor and measure a child's progress on annual goals (and objectives/benchmarks, if applicable) and maintain specific data to demonstrate that progress has been made.

Recommendation #6

When progress report and other data indicate that a student's annual goal will not be met, determine why, **make needed instructional changes**, and **continue to collect and report data**

TOP 10 THINGS THAT THE IEP TEAM NEEDS TO KNOW

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- 1. The Significance of Your Role**
- 2. The Importance of Parents**
- 3. The Significance of Everyone Else's Role on the IEP Team**
- 4. Vote v. Consensus**
- 5. Placement v. Location**
- 6. When to Review an IEP**
- 7. Empower Those Implementing the IEP**
- 8. Respect Everyone's Time**
- 9. Prior Written Notice is an Excellent (and Required) Tool**
- 10. Words to Use and Words to Avoid**

1. The Significance of Your Role

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- Three requirements for LEA rep:
 - Qualified to provide or supervise provision of special education services;
 - has knowledge of the general education curriculum; and
 - is knowledgeable about the availability of the school's resources.
- Primary responsibility is to commit district resources and ensure that the services written in the IEP will be provided.
- District has ultimate responsibility for FAPE.

2. The Importance of Parents

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- Parents are equal partners
- Parents play an active role in providing critical information about their child's abilities, interests, performance, and history.
- Build early relationships
 - Try face-to-face, when possible
- Make sure parents are informed
- You may attend lots of IEP team meetings in a year, but for many parents this is their one meeting all year. We need to remember that.

3. The Significance of Everyone Else's Role on the IEP Team

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- Student
 - Must be invited to attend beginning at age 14 and may be invited to attend at any age, if appropriate
- Parents (See #2)
- Special education teacher or provider
 - School determines who fills this role
- General education teacher
 - Must be a teacher who is or may be working with the child to ensure success in the general curriculum and implement portions of the IEP
- LEA representative
- Someone who can interpret instructional implications of any new evaluation or assessment results
 - E.g., a school psychologist, special education teacher, general education teacher, speech/language pathologist, or other related service provider
- Other individuals who have knowledge or special expertise about the child, including those invited by the parent
- Representatives of other agencies
- Part C representative

4. Vote v. Consensus

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- The IEP team should work toward consensus
- It is not appropriate for an IEP team to make IEP decisions based upon a majority vote
- If the IEP team cannot reach agreement the LEA representative at the meeting has the ultimate authority to make a decision and then to provide the parents with appropriate notice and request consent of the proposed action when needed

5. Placement v. Location

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- Placement does not refer to the physical location where services will be provided, rather, it refers to the type of educational environment where the services will be provided
- Placement is not determined by the name of the building, rather it is the place on the continuum of service environments
- If the IEP specifies a certain classroom or a certain school, then parent consent would be needed to make a change
- However, if the IEP refers to the type of educational environment and the LEA has multiple locations where this type of environment is offered, then the LEA may decide which location the student will attend

6. When to Review an IEP

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- Review IEPs at least annually.
 - Important to remember that the annual review requirement is focused on the meeting where the IEP is reviewed, not on the date that services are implemented under a new IEP. Realize that certain dates may raise a red flag for auditors or reviewers.
- Review more often if the student is having problems.
- Every reporting period consider an IEP team meeting for a student not making progress.
- School cannot ignore a clearly failing IEP.

7. Empower Those Implementing the IEP

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- Give your staff information and make sure they understand it
 - Give everyone responsible for implementing (or supervising the implementation of) the relevant portions of the IEP
 - Ensure that everyone responsible for implementing has a full description of their responsibilities
 - Include teachers and service providers when writing IEP goals
 - Ensure that your staff understand their responsibilities
 - Ensure that all staff responsible for implementing an IEP have access to the IEP
- Encourage and empower your staff
 - Let them know they can ask for help and who to ask
 - Check with them
 - Are there obstacles to implementation?
- What problems are they having?

8. Respect Everyone's Time

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- Allow Time
 - At the IEP team meeting
 - For another IEP team meeting
 - For one-on-one meetings
- Support your staff in dealing with challenging parents
 - Be the school point of contact, when necessary
 - Limit the length of meetings and limit additional meetings, when necessary

**9. Prior Written
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- Excellent communication tool
- Ensures parents receive written information about changes
- Prior Written Notice must be provided to parents within a reasonable amount of time before the date the school proposes to initiate or change the
 - Identification,
 - Evaluation,
 - Educational placement of their child, or
 - Provision of special education and related services (FAPE) to their child.
- Also provided when the school refuses a parent's request to initiate or change anything in the above list.

10. Words to Use and Words to Avoid

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- Words to Use
 - Tell us your concerns
 - Individual and individualized
 - Fully considered
 - Appropriate
 - Meaningful
 - Progress
 - People-first language
- Words to Avoid
 - Avoid generalizations
 - Avoid the notion that anything was decided prior to a meeting
 - Don't say no to an idea without having the appropriate people fully consider it (tell me more about how that would look)

Present Levels

1. Introductory paragraph
2. Teacher input
3. Special education teacher input
4. Related service input
5. Nurse/ attendance/ discipline input
6. State and local testing input
7. Strengths and needs---mention about how the present levels must address what is included in this section
8. Goals must be written so they are measurable
9. SDI---mention about how the present levels must address what is included in this section

Contact Information

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