



A Parent's Guide: How to Avoid IEP Traps

© 2005 Adams & Associates

Skit Written by
Timothy A. Adams, Esq.
& Lynne Arnold

The law firm of Adams & Associates presents the information as a service to parents and the community. While the information is about legal issues, it is not legal advice.



Early Intervention Services and Transitioning to the School District

- Individuals with Disabilities Education Act (“IDEA”)
 - Zero to 3 years: early intervention through state agency
 - 3 years and beyond: eligibility for special education through school district
- Special education is *specifically designed instruction, at no cost to the parent, designed to meet the unique needs of a child with disabilities.*
- Starting the IEP process: can be done by parent, professional working with child or state agency.



Assessments

- Determining the child's eligibility and an appropriate placement and program
- Parents' consent to assess the child
- Must be performed within a reasonable period of time
- IEP meeting must take place within 30 calendar days of the date the student is determined to be eligible under the IDEA



IEP Participants

- Parent is an ***equal member*** of the IEP team, and the District must take steps to ensure that one or both parents can attend the meeting
- Parent can bring whomever they wish to the IEP meeting
- These school district personnel must attend IEP:
 - A regular education teacher if the child is or may be participating in the regular education environment
 - A special education teacher
 - A district agency representative who has the authority to approve the funding for the services provided for in the IEP
 - Any person who conducted an assessment of the child, or someone who is qualified to interpret the assessment report



Structure of an IEP Meeting

- As equal members of the IEP team, the parent(s) ***must*** be given the opportunity to share concerns regarding their child's education as well as their child's strengths and weaknesses.
- Reviewing assessments
- Goals and objectives
- Clear, written offer of placement and services
- All information discussed at the meeting must be recorded on a written IEP document and presented to the student's parents



Required Components of an IEP

- According to the IDEA an IEP must contain the following:
 1. A statement of the student's present levels of educational performance;
 2. A statement of annual goals;
 3. A statement of the special education and related services, supplementary supports and program modifications the student will receive;
 4. An explanation of the extent to which the student will not participate with non-disabled students in the regular class, and nonacademic and extracurricular activities;
 5. A statement concerning a student's participation in state or district-wide assessments, including any needed modifications of the administration of the test;
 6. A beginning date for the student's placement and related services as well as the duration and frequency of the services to be provided;
 7. A statement as to how the district will notify the student's parents about the student's progress toward achieving his annual goals as outlined in the IEP;



Disagreement with the IEP

- Parent may disagree with the IEP in whole or in part
- School district must implement within a reasonable period of time all items to which parents have consented and CANNOT implement those IEP components to which parents have not consented
- Parent is not obligated to sign the IEP immediately, and may provide his consent at a later date
- If parent and school district cannot come to an agreement, both have the right (and for a school district at times an obligation) to file a Due Process Hearing.



1

Required IEP Members

- It appears that every needed member of the IEP Team is available, with the exception of a general education teacher. If there is even a ***possibility*** of placement in general education, this teacher would need to be present as part of the IEP team. Parents may bring friends, relatives, an advocate, an attorney, or other persons who have “knowledge or expertise regarding the child.” 34 C.F.R. Sec. 300.344(c)



Copies of Assessments

- Your State may have its own statute requiring school districts and other public agencies to provide copies of assessments and records to parents in advance of IEPs. Keep in mind that it is always a good idea to request that the school district provide you copies of any assessments or other documentation in advance of the meeting



District Policy Issues v. Federal and/or State Law Requirements

- 10th Amendment to the United States Constitution: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
- Even though Mike Winsor says that it is district policy to go over the reports at the IEP meeting, federal law trumps this policy and parents must be provided with the reports upon their completion.



Parents' Rights

- **School district must ensure that a full explanation of procedural safeguards is provided to parents.**
- A copy of parent rights must be given to parents at each IEP meeting. Although Mike Winsor handed Mrs. Conner her "Parent's Rights," he does not offer to review those rights with her or provide further explanation. If Mrs. Conner does not understand her rights, she may not be able to give her informed consent to any program and services the school district may offer Tyler. Parents are encouraged to read their rights, ask questions if they don't understand, and when appropriate, bring a knowledgeable person (such as an attorney or advocate) to help ensure those rights are protected.



IEP Time Constraints

- The IDEA prescribes no specific length for an IEP meeting, since the amount of time required to adequately address a child's educational needs **depends on how complex** those needs are.
- As a legal requirement, the district must schedule sufficient meeting time to allow the parents to "**meaningfully participate**" in the IEP process. Of course, a session cannot continue indefinitely, and the district has the right to adjourn the meeting after a **reasonable time**, even if the parents object.
- Mike Winsor says, "I have another meeting in about an hour-and-a-half, so let's try to get this IEP wrapped up." Mrs. Conner is worried that Tyler's needs will not be adequately addressed, and the IEP team members are concerned about their next appointment. In this scenario, it would be appropriate for the District or Parent to express any time constraints at the beginning of the meeting, and then to efficiently pace the meeting as needed. The person in charge of the meeting, usually the Special Education Director or Principal, should intervene if anyone gets off course from the purpose of the meeting. Mike Winsor should have politely asked Linda Steiner to concisely offer her report findings and recommendations. If, despite these tactics, time runs out, the Team may need to schedule another IEP meeting to continue the discussion. When notice was sent to Mrs. Conner regarding the IEP meeting, if she believed that the time frame was too narrow, she could have sent a letter back to the District expressing this concern, and tried to re-schedule to accommodate the desired time frame.



2

Obligation to assess in all areas of suspected need

- When Linda Steiner says that her report consists mostly of observations of Tyler because she “didn’t have time to do any formal testing,” we question whether Linda has really comprehensively assessed Tyler. Although federal law does not require formal evaluations, any testing done must provide parents and the IEP Team an “accurate” measure of the child’s strengths and weaknesses. If we don’t get an accurate picture of the child’s present levels of performance then it is relatively impossible to develop appropriate annual goals and incremental objectives for the child. In this circumstance, it may be necessary for Mrs. Conner to obtain an independent educational evaluation (“IEE”). 34 C.F.R. Sec. 300.502.



Copies of Reports

- Carol Williams finished her report the same morning of the IEP and “really didn’t have a chance to make copies.” It is important that the school district understands that you expect them to have the reports ready, in advance of the IEP so they don’t wait until the last minute to finish them and, as in this case, end up providing the report to you the day of the IEP. It is also best to request any assessment reports be given to you in advance of the meeting. You should make this request in writing to the school district. 34 Code of Federal Regulations § 300.562.



Parent's right to participate equally in development of IEP

- It is very important that Mrs. Conner asks questions and participates in the development of her child's IEP. If a parent does not understand the testing or results, it is difficult if not impossible to understand whether the placement and services the school district has offered are appropriate. So, ask questions!



IEP should be individualized to meet each child's needs

- Is the District's speech program really individualized to meet Tyler's unique needs or is Ms. Williams simply recommending the school district's speech program because it's convenient for the district and an efficient use of available staff?



A licensed or credential therapist may not be required if the student would derive an educational benefit

- The District told Mrs. Conner that the speech services will be provided to Tyler in a group setting by a “trained speech ‘specialist.’” The District says that although she is “very good,” she is not a licensed pathologist or credentialed speech therapist. If you experience a similar situation, research your state’s laws about credentials and licensing for therapists. If the District’s employee does not meet those state-mandated requirements, then insist that the school district provide your child someone who does meet the state’s training or credentialing criteria.



3

Methodology and type of instruction must be addressed by the IEP team

- It does not matter if Bobbie Wondries believes in sensory integration or not. If the therapy is ***necessary*** to provide Tyler with an educational benefit, then the District must provide the service, or find an alternative placement or provider who is trained to provide that particular methodology. The District may argue that there are other methodologies which will effectively address Tyler's needs, so sensory integration therapy is not required.



Assessment in all areas of suspected need

- Bobbie Wondries only assesses fine and gross motor skills, but not sensory integration skills. This is a related issue to Linda Steiner's report consisting only of observations because she "didn't have time" for formal assessments. Since Mrs. Conner has suggested sensory integration dysfunction as a deficit area, her comments and concerns should be taken seriously and not simply cast aside by Bobbie Wondries. Tyler is not limited only to the services and placement offered by the District. If in fact, therapy targeting sensory integration would be integral to Tyler's growth and development and necessary for him to benefit from his education, school district staff members like Bobbie Wondries have a duty to assess those suspected deficit areas and appropriately address his sensory needs.



4

Placement and services must be tailored to each child to meet their individual and unique needs

- Mike Winsor tells Mrs. Conner that Tyler will receive:
 1. Placement in a SDC, 4 days per week;
 2. Speech and Language Services for 20 minutes per week in a small group; and
 3. Occupational Therapy consultation 1 time per month.
- Placement must include the frequency, duration, and location of the services and modifications. Here, the location and any modifications are missing. These services must be based specifically outlined in the IEP. As it is outlined by Mike Winsor, the placement and services are not specific enough.



Child's unique needs trump availability of space, budget concerns, or administrative convenience

- Mike Winsor says that Tyler will be placed in a Special Day Class (SDC) four days a week. The class consists of 3 to 5 year olds with mixed disabilities, although there are no other children with autism. It is questionable whether the District has "conveniently" placed Tyler in a SDC or has truly determined the least restrictive placement for Tyler based on his unique needs.



Districts must provide a full continuum of alternative placements to meet a child's unique needs

- The District lied to the parents when they told them: "We aren't really allowed, by law, to provide services or programs at private schools." On the contrary, the District must provide this as an option if the public school system does not have an appropriate placement. Again, the placement must be specifically designed to meet Tyler's unique needs and place him in the LRE; allowing him to interact with his non-disabled peers.



5

IDEA requires Tyler's program to be individualized to meet his needs

- There are several overlapping issues here. First, the District's policy (an employee's opinion), whether the District currently has behavior intervention programs in place, or whether they have ever even considered such programs for a child like Tyler is of no consequence. Tyler's unique needs **must** be met with an appropriate program, and that might include an ABA program, even if Tyler does not meet the district's criteria for such a program. Even though the District may have not seen serious maladaptive behaviors in Tyler, this does not rule out a behavior intervention program for him. If the District still does not offer a placement which includes a behavioral intervention program, Mrs. Conner may want to pursue an independent educational evaluation and schedule a new IEP meeting to discuss whether an ABA program would be appropriate for Tyler.



6

District policy does not override the IDEA

- Steve Mason tells Mrs. Conner about GUSD policy regarding behavior intervention.
- Federal law trumps state law and district policy if there is a conflict. It does not matter what GUSD's policy regarding behavior intervention is. Federal law says if Tyler needs it to meet his unique needs, it must be included in his IEP.



Who is responsible for providing behavior services?

- Mrs. Conner has expressed her desires to have Tyler in an ABA program. Mike Winsor has shirked the District's responsibility to provide Tyler with the requested program. If the District's assessments do not support Mrs. Conner's opinion regarding Tyler's needs, she should request an Independent Education Evaluation (IEE) in the area of behavior. If Mrs. Conner obtains a behavioral assessment, the District must consider that assessment during an IEP. Under certain circumstances, Mrs. Conner may also be reimbursed for this IEE.



Parents are not obligated to consent to the entire IEP

- Parents can consent to any component or all components of an IEP. There is no specific timeframe outlined by Federal law. Parents are not limited to specific timeframe in which to give their consent.
- Mike Winsor said, "If you don't sign today, we can't get Tyler's program up and running and it really delays the process. It's best if you sign right now, otherwise, Tyler won't get any special education services."