



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.



Are all of the appropriate team members present at the IEP meeting?

- If there is even a possibility of placement in general education, a regular education teacher would need to be present as part of the IEP team. We know that mom requested the IEP to discuss mainstreaming Mark into the general education setting.
- The question is whether the special education director—Mr. O'Doul can assume the dual capacity of a regular education teacher. The regular education teacher attending the child's IEP should be a teacher who **"is, or may be, responsible for implementing a portion of the IEP..."** Thus, Mr. O'Doul must be not only a regular education teacher, but also one that may actually be responsible for carrying out a portion of Mark's IEP. Even though Mr. O'Doul has assumed the role of the regular education teacher for purposes of the IEP, would he be the regular education teacher responsible for implementing certain portions of Mark's IEP? Probably not. It seems as though he assumed the role temporarily, as a result, Mark's IEP Team is likely incomplete.



Did District Discuss Parents' Rights with Mom?

- Mr. O'Doul states that this is the 4th IEP for Mark this year, because we are not specifically told, a copy of the rights may have either been provided to Mom. The law requires that these right be posted on the local educational agency website, or given to Mark's mom if she requested an evaluation, or had not received a copy with within a year of this IEP.



Did the Teacher obtain Mom's consent, *prior* to conducting Mark's assessment?

- Mom had no idea Mark would be assessed and was not given notice of what kind of assessment would be conducted.
- The SDC teacher attempted to obtain mom's consent after the assessment had already been conducted, a clear violation.



Are Parents Obligated to Consent to an Assessment Plan?

- The District appears to be pressuring Mom into signing this assessment plan (after the fact) and without informing her that she can reject it, consent to all, or consent to parts. Mom did not know the assessment had even been conducted, and is being put on the spot, by explaining: “The paperwork’s a formality Mrs. Cortez. I’d hate to tie Mrs. Robinson’s hands waiting for paperwork to start her testing. You see?”



Did Mom Receive a Copy of this Assessment Prior to the IEP Meeting?

- 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. For example, in California, a parent has the right and opportunity to examine all school records of the child and to receive copies within 5 days after such request is made, **either** orally or in writing. 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 (such as draft goals and objectives) the school district prepares for an upcoming IEP, a reasonable period of time in advance of the meeting. In this case, the report was completed before the IEP, but since mom did not know of its existence, she wouldn't have known to request a copy.



Did the District Properly Assess Mark?

- When Melissa Robinson says that she did “some data collection and some informal testing,” and this data collection only took place over the course of one school day. It is questionable whether she really comprehensively assessed Mark. 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 case, the observation was only conducted over a time period of one day. In addition, the observation was conducted by the classroom aide and not school psychologist or SDC teacher, so it is questionable whether such an aide was qualified or “competent to carry out this kind of evaluation.”



Must Mom Agree with the District's Assessment?

- If mom decides that the district assessment is inadequate, or disagrees with it, she can request an IEE and the district would either have to pay for it, or file for Due Process Hearing.



Can the Special Education Director Prevent Mark from Being Mainstreamed on the Basis of His Behavioral “Issues?”

- According to the special education director, the only concern that seems to be at issue is the effect of Mark’s behavior on his teachers and the other students. The SDC teacher claims that Mark’s behaviors are disruptive, but can be held in check in a SDC setting. On the other hand, mom feels that Mark primary issue is attention to task as opposed to disruptive behaviors. What will be determinative, is whether the “nature or severity” of Mark’s disability is such that **education in a regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily**. If an aide can help with redirection and alleviate Mark’s alleged “disruptive” behaviors, the district’s argument against mainstreaming will be less than persuasive.



Did the District Respond Timely to Mom's Request for an Aide?

- Mom requested an aide at the last 3 IEP meetings, and never got an answer. If the district refuses, they must provide written notice about their refusal. The written notice must describe what they refused to do and their alternate proposal, if any. The notice must explain their rationale and must describe each evaluation procedure, assessment, record, or report used as the basis of their refusal. The notice must also provide a description of all other options the IEP team considered and the reasons why the team rejected these options. Finally, the notice must describe any other factors that are relevant to their proposal or refusal.



Was Budget the Determining Factor for the Aide?

- The special education director cannot use budgetary concerns and administrative convenience (“I’d have to get district approval”) to deny Mark the services that he needs to benefit from his education.



Does the Special Ed Director Have the Authority to Make Decisions on Behalf of the District?

- Stephan O'Doul said, "First of all, I'd have to get the district's approval for that." The law requires the district to send a representative to Mark's IEP that is **qualified to provide, or supervise the provision of**, specially designed instruction to meet the unique needs of children with disabilities. It does not appear that Stephan O'Doul has that authority.



Is the District Considering Mom's Opinion?

- It is very important that Mrs. Cortez asks questions and participates in the development of her child's IEP. She is of the opinion that Mark's behavioral "issues" are under control, and that he should be mainstreamed in subjects where he is performing at grade level. Although the school psychologist is correct that placement is an IEP **team** decision, mom still has a right to voice her concerns and provide input.



Is the District Considering the Least Restrictive Environment (LRE) for Mark?

- Mark should not be immersed in an environment that prevents him from learning and attaining an educational benefit. If he is performing at grade level in certain subjects, he should be mainstreamed to the maximum extent possible. After all, LRE favors inclusion, and a child's educational growth would be stagnated if he or she is placed in a remedial setting. **Children can receive one-to-one or small group instruction outside of regular classes if this is necessary for them to learn.**



Do We Have an Accurate Picture of Mark's Current Level of Functioning?

- According to the autism specialist, Mark was "reading simple stories to the rest of the class." What about his present levels of performance? Without an accurate measure, the IEP team would be hard pressed to develop appropriate goals for Mark.



Is Phil Little Qualified as an Autism Expert?

- Phil Little went through a “crash course” on Autism and related disorders. What kind of training did that entail? Were his licensing and certification credentials legitimate and do they qualify him as an “Autism Specialist”? On the other hand, the law appears to say that even if the specialist is not licensed or credentialed, but is “**very experienced,**” and Mark is able to derive “**some educational benefit,**” the District has met their requirements. If you experience a similar situation, research your state’s laws about credentials and licensing. If the District’s employee does not meet those state-mandated requirements, insist on someone who is qualified assessing or providing services for your child, or alternatively, request an IEE.



Is Mark's speech program individually tailored to meet his unique needs if his sessions are expanded to include the entire SDC class?

- Is the District's speech program really individualized to meet Mark's unique needs or is Ms. Portsmouth simply recommending the school district's speech program because it's convenient for the district and an efficient use of available staff? By changing Mark's services to encompass all of the students in the SDC class, it seems as though the "individualization" component has been excised.



Is the Speech Assistant Qualified to Deliver Services to Mark?

- Mark's speech therapy was not provided directly by the speech therapist, Natalie Portsmouth. It's unclear whether the "speech assistant," Andrea Thomas, is properly certified and licensed by a State-approved or State-recognized agency.



Is Group Speech the Most Effective Delivery Model for Mark?

- It does not matter that Natalie Portsmouth does not believe in individual speech therapy. If individual speech therapy is necessary to provide Mark with an educational benefit, then the District must provide the service, or find an alternative placement or provider that offers the service. The District will probably argue that group therapy will provide Mark with “some educational benefit.” However, a determination of methodology is an IEP **team** decision.
- Further, if mom believes that Mark would benefit from individual therapy, she is entitled to present this view to the IEP team, including any reports from an independent assessor.



Is the IEP Team Considering Mark's Private Speech Therapist's Recommendations?

- Natalie Portsmouth gives little, if any weight to the recommendations that Mark's private speech therapist has continually made. Remember, methodology and type of instruction must be addressed by the IEP team even if the school district does not "typically" do it that way. Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content methodology, or delivery of instruction to address his individual needs, and ensure his access to the general curriculum. If Mrs. Portsmouth believes in group speech therapy for all students, she in effect takes the "I" out of individualization. It is also important to note that placement decisions must be individually determined on the basis of each child's abilities and needs, and **not solely on factors such as availability of special education** and related services **or administrative convenience**.



Should a Shortage of Therapists Be Considered When Developing a Child's IEP?

- **Districts must provide a full continuum of alternative placements to meet a child's unique needs:** Natalie Portsmouth tells mom that there is a shortage of speech therapists, and that the district does not have enough speech therapists to provide one-to-one service to Mark. Natalie Portsmouth told mom that "Even if we wanted to, the district simply doesn't have enough speech therapists to provide one-to-one service to Mark." Assuming this is true, the District **must** provide an alternative option, if the public school system cannot provide Mark with an appropriate placement such as contracting with a private speech therapist for the service. Again, the placement must be specifically designed to meet Mark's unique needs and place him in the LRE—allowing him to interact with his non-disabled peers to maximum extent appropriate.



Is the District Responsible for Purchasing Items Recommended by the OT?

- The Occupational Therapist does not specify what exactly it is that mom needs to “purchase” for Mark in order for him to benefit from the sensory diet activities. However, if these items are necessary for him to benefit from his IEP, then it is the ***district’s*** responsibility to purchase these items, even if they are intended for use in Mark’s home.



Has the District Really Considered Mom's Input in Making Its Final Decision?

- Mom must be provided with a meaningful opportunity to participate in the education of her child. A determination of placement is a **team** decision, and it appears only two members of the team ("autism specialist" and school psychologist) made the final decision regarding Mark remaining in full-day special day class placement. Mom was input was disregarded.



Is Mom Required to Sign the IEP and is there a Time Limit?

- **Parents are not obligated to consent to the entire IEP and do not have to consent at the time of the IEP meeting:** The special education director tells mom that the district needs her signed assessment back within a week's time. He also tells her to sign Mrs. Robinson's assessment of which she had no prior knowledge. Mom does not have to sign or consent to anything. She can reject the entire IEP, consent to all, or consent to parts.