

The Role of the LEA Representative and Other IDEA Issues

The IDEA

Q: What is the IDEA not intended to be?

A: As one federal judge said, “the IDEA is not a panacea for all of life’s ills.”

LEA Representative

Q: What is an LEA (local educational agency) Representative?

A: An LEA Representative is a required member of a student's IEP team.

Q: Who says?

A: The law.

LEA Representative

Q: What are the requirements for an LEA Representative?

A: A representative of the public agency who—

- (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
- (ii) Is knowledgeable about the general education curriculum; and
- (iii) Is knowledgeable about the availability of resources of the public agency.

LEA Representative

Q: Who can be an LEA Representative?

A: Anyone who meets the requirements. It's not a matter of what a person's title or position is. "What's in a name? That which we call a rose by any other name would smell as sweet."

Q: Can the LEA Representative also fill the role of another required IEP team member?

A: Yes.

LEA Representative

Q: Has the role been described in other ways?

A: Yes. OSEP has said it is important that “the agency representative have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.”

Q: So, the LEA Rep is “the Decider”?

A. Yes. If there is an issue about which there is no consensus among the IEP team, the LEA Rep should be the person to decide the issue.

LEA Representative

Q: So, IEP team decisions are not made by vote?

A: Correct.

Q: Why is that?

A: The District has the legal responsibility to provide FAPE to a student. It is the District's legal duty to determine what it believes must be included in an education program for a student to receive FAPE. As OSEP has stated, "The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE"

LEA Representative

Q: Have courts acknowledged this obligation?

A: Yes. One court stated, “the Court finds it sad, even tragic that if the District had not deferred to the parents’ wishes against its recommendation, Edwin would have been able to receive the proper help for his disability sooner by having his emotional behavioral disability addressed several years ago.”

LEA Representative

Q: What are a parent's rights with respect to IEP meetings?

A: Parents have the right to “participate” in meetings with respect to identification, evaluation, placement, or FAPE.

Q: Does a parent have a right to demand that certain things be included in an IEP or excluded from an IEP?

A: No. See above.

LEA Representative

Q: What about eligibility meetings?

A: The regulations state that “a group of qualified professionals and the parent of the child” determines whether the child is a child with a disability.”

Q: Who are the “qualified professionals”?

A: Except for specific learning disability, the IDEA does not prescribe who must be involved in the meeting. For SLD, the group must include the student’s general education teacher and at least one person qualified to conduct individual diagnostic examinations (e.g., a school psychologist).

LEA Representative

Q: What should an LEA Rep do to prepare for an IEP meeting?

A: That depends.

Q: On what?

A: Things such as the student's unique needs, any known areas of disagreement with a parent, any known concerns of the parent, whether the team is considering a change of placement to a specialized program or a program in another setting, whether lawyers are involved, ... The LEA Rep needs to know what district resources and options are available.

FAPE

Q: What is the substantive standard for FAPE?

A: The Supreme Court recently reexamined this issue in *Endrew F.* The Court stated that a school “must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Maximizing a child’s potential or providing the best possible education is not required by the IDEA. One court said that FAPE entitles a student to a Chevy, not a Cadillac.

Least Restrictive Environment (LRE)

Q: What is the legal standard for LRE?

A: “Each public agency shall ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling, or other removal of children from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2).

Least Restrictive Environment (LRE)

Q: If an IEP team believes a more/less restrictive placement is necessary for a student, must the placement that is considered the next more/less restrictive placement be tried?

A: No. However, particularly when considering moving a student to a more restrictive placement, the team should consider what services are available that might reasonably allow the student to remain in the less restrictive placement.

Least Restrictive Environment (LRE)

Q: Does every school have to offer every placement option?

A: No. As the Dep't of Education said: "Although the Act does not require that each school building in an LEA be able to provide all the special education and related services for all types and severities of disabilities, the LEA has an obligation to make available a full continuum of alternative placement options . . ." 71 Fed. Reg. 46588 (2006).

Q: If a placement option is available at more than one school or location, who decides where the student goes?

A: A student's IEP team determines a student's IEP placement. If the placement option is available at more than one school or location, the school district administratively decides where the student goes. This situation generally arises with respect to lower incident programs, specialized programs, or private school placements.

Related Services

Q: What is the standard for determining whether a child should receive a related service?

A: A related service must be provided if the child cannot benefit from special education services without the service. In the words of the regulations they are services “required to assist a child with a disability to benefit from special education.” The standard is not simply whether the service would or might be beneficial to the student.

Special Education

Q: What is “special education?”

A: “Special education” means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.”

Child Find

Q: What is “child find”?

A: “Child find” refers to an affirmative obligation that is imposed by federal law on states – and, in turn, imposed on school districts by state law – to identify, locate and evaluate all children with disabilities.

Child Find

Q : If the school district suspects that a child may have an other health impairment, say due to an attention deficit disorder, but does not have any documentation of a medical condition, can a school district refuse to find the child eligible because the parent failed to provide the medical information?

A : No. If a school district suspects a student may be a child with a disability as defined by the IDEA, it must evaluate the student. The evaluation must be at no cost to the parent.

Child Find

Q: Can a child have an IEP if they do not need special education?

A: No. The IDEA's definition of a child with a disability requires that a child both have one of the IDEA's disabilities and, as a result, need special education. Needing only a related service is not sufficient to be eligible under the IDEA.

Parent Referrals for Evaluation

Q: What must a parent do to request an evaluation under the IDEA?

A: Ask for it. The request can be verbal or in writing. There are no magic words that must be used. If you aren't sure what the parent is requesting, ask for clarification. If a verbal request is made, document the request.

Parent Referrals for Evaluation

Q: What must the District do in response to a parent request for an evaluation?

A: After a parent referral, the agency must determine, in a timely manner but **not more than 30 calendar days** from the date of the request, if there is a reason to suspect a disability or a need for evaluation. Delays beyond this time may be permitted for just cause (school breaks for summer or holidays, student illness, etc.) and documented in the student's record. If there is no reason to suspect a disability, or a need for evaluation, the agency provides the parents with a Notice of Action refusing the requested evaluation.

Parent Referrals for Evaluation

Q: Can the District delay responding to a parent’s request for an evaluation because it is in the process of trying interventions, or plans to start that process?

A: No, no, and no. “The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, . . . to a child suspected of having a disability.” “It would be inconsistent with the evaluation provisions . . . for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.”

The IEP Team

Q: Who are required members of a student's IEP team?

A:

- the parents of the child;
- not less than one regular education teacher of the child (if the child is or may be participating in the regular education environment);
- not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child;

The IEP Team

- a representative of the public agency who
 - is qualified to provide or supervise the provisions of specially designed instruction to meet the unique needs of children with disabilities,
 - is knowledgeable about the general education curriculum, and
 - is knowledgeable about the availability of resources of the public agency and able to commit the resources of the agency;

The IEP Team

- an individual who can interpret the instructional implications of evaluation results, who may be the teacher or the representative of the district;
- at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and,
- whenever appropriate, the child with a disability.

The IEP Team

Q: What should you do if a parent says they are bringing their attorney to an IEP meeting?

A: Let your process coordinator know and ask the parent the name of the attorney.

The IEP Team

Q: What if the parent brings their attorney to an IEP meeting, but the school did not know ahead of time?

A: Contact your process coordinator. You don't have to meet if you don't want to. Just because a meeting has been scheduled doesn't mean it has to be held.

The IEP Team

Q: Do all IEP team members have to attend the whole IEP team meeting?

A: No. But some members must be excused by agreement of the District and parent.

IEP Team Attendance – (Excusals)

Q: How does that work?

A: A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. (Cont.)

IEP Team Attendance – (Excusals)

A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent, in writing, and the local educational agency consent to the excusal, and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

IEP Team Attendance – (Excusals)

Q: To whom do the excusal provisions apply?

A: The provisions apply to the required IEP team members. So, it is not necessary to have an excusal if a related service provider cannot or does not attend an IEP meeting.

IEP Team Attendance – (Excusals)

Q: Is excusal of the general education teacher from attending any part of an IEP meeting appropriate?

A: Very rarely. Input from teachers is general very important.

Components of an IEP

Q: What is the purpose of the PLAAFP (present level of academic achievement and functional performance)?

A: The fundamental purpose of the PLAAFP is to identify the educational needs of the child. It should include how the child's disability affects the child's involvement and progress in the general education curriculum. There should be a connection between the PLAAFP and the other parts of the IEP.

Components of an IEP

Q: Is it important to proofread an IEP carefully?

A: The following is from an actual IEP:

From the how the disability affects student section: “She is a loner and does not interact with peers.”

From the strengths of the child section: “[She] enjoys helping classmates and passing out papers. She . . . generally gets along well with others.”

Components of an IEP

Q: Should the PLAAFP rely on adjectives to describe a student?

A: No. Statements such as “the student exhibits extreme behavior” are not informative. The description should include factual statements that give details about such things as the nature of the behavior, how often it occurs, and where it occurs. Similarly, simply stating that a student has “made progress” does not provide sufficient information.

Components of An IEP

Q: Must the District include every concern a parent has in the concerns of the parent section on the IEP form? Must it include complaints a parent has about school personnel?

A: No. The IDEA requires that the IEP team consider “the concerns of the parents for enhancing the education of their child.” Personnel issues are not for the IEP team to address.

Components of An IEP

Q: What are important things to remember about IEP goals?

A: Goals must be stated in behavioral terms:

- Behaviors are things the student can do.
(Think of it as skills the student is to learn.)
- They are actions.
- They are observable.
- They are measurable.

Components of An IEP

Q: How do we know what to write goals for?

A: The IDEA requires that the IEP include “academic and functional goals designed to meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum.”

Components of An IEP

Q: A student has been found to be eligible for an IEP based on an other health impairment (OHI). (She has ADHD-Combined Type.) Her full scale IQ is 87. Achievement scores for math and reading are all in the low 90s to low 80s. Should her IEP include goals for math and reading?

A: Probably not, in most instances. An important question to consider - is the student learning at about the rate we would expect given the student's cognitive abilities and other factors?

Components of An IEP

Q: If an IEP team determines that a student's behavior impedes the student's learning or that of others, must the IEP include a behavior intervention plan (BIP)?

A: Not according to the IDEA. The behaviors may be addressed through other means, such as services, IEP goals, or accommodations or modifications.

Components of An IEP

Q: If an IEP team determines that a student's behavior impedes the student's learning or that of others, should the IEP indicate whether the IEP team believes the behavior is related to the student's disability or not?

A: Yes. Distinguishing the reasons for a student's behavior may be very important in the event a manifestation determination must be conducted for the student at some time in the future.

Components of An IEP

Q: How do we determine the amount of special education a student receives?

A: Consider what services are necessary for the student to make progress on each IEP goal.

Accommodations and Modifications

Q: How do we decide whether a particular accommodation or modification is necessary?

A: An accommodation or modification should be included if it is required for a student to make progress. If an accommodation or modification is included in the IEP, make sure you know what is to be done. Then make sure that those persons responsible for providing the accommodation or modification understand their responsibility.

Successful IEP Meetings

Q: What is the most important thing to do to ensure a successful IEP meeting?

A: Be prepared. You are the experts and parents should feel like you are. The IEP meeting should not be the first time you have thought about possible IEP goals. Be ready to give reasons for your proposals. Have data ready.

Successful IEP Meetings

Q: Can school IEP team members meet before an IEP meeting to discuss proposals for an IEP?

A. Yes. “[S]chool officials must come to the IEP table with an open mind. . . . But this does not mean they should come to the IEP table with a blank mind.”
Decisions about IEP content or placement cannot be made at the premeeting.

Implementing IEPs

Q: Must IEPs be implemented as written?

A: Yes. Period.

Implementing IEPs

Q: Who needs to know what?

A: From the regulations:

- “Each public agency shall ensure that the child’s IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.” 34 C.F.R. § 300.342.
- B. “Each public agency shall ensure that each teacher and provider is informed of his or her specific responsibilities related to implementing the child’s IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” 34 C.F.R. § 300.

Implementing IEPs

Q: If an IEP states that special education services are to be provided in a special education setting, can they be provided in a general education setting?

A: Not unless the IEP team meets and makes the change to the IEP or the parent agrees to an amendment of the IEP.

Implementing IEPs

Q: Should data on IEP goals be kept?

A: Yes.

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