



DEVELOPING A LEGAL IEP

I. The IEP Development Process: Handling Difficult Issues

A. IDEA Evaluation Report Essentials

1. When the parent signs the assessment plan, make certain you hand them a copy of their Procedural Safeguards. If the assessment plan was sent to them by mail, include a copy of their Procedural Safeguards and document that you did so.

2. Assessments must cover all areas of known and suspected disability/deficit

- a. Academic or pre-academic
- b. Intellectual Development (IQ)
- c. Health
- d. Communication – receptive and expressive
- e. Social/Emotional/Behavioral
- f. Adaptive Behavior
- g. Motor – gross and fine
- h. Transition Assessment – if the Student is age 16
- i. Other – could be ADLS, functional skills, etc.

3. 20 U.S.C. Sec. 1415(b)(1); 34 C.F.R. Sec. 300.501; Cal. Ed. Code Sec. 56504.

School districts are required by federal and state law to provide copies of assessments and other educational reports to the family prior to the IEP meeting.



B. The IEP Meeting: What if Parents Refuse to Come?

1. IDEA §300.322(c)—Parent participation: Other methods to ensure parent participation.
2. IDEA §300.322(d)—Parent participation: Conducting an IEP meeting without a parent in attendance.

C. Third Party Participation at IEP Meetings: Outside Agencies, Invited Guests



D. Avoiding Predetermination of IEPs

Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.



E. Parent Recording of IEP Meetings: Can Schools Prohibit it?

Under the California Ed Code Section 56341.1, no, you may not prohibit a parent's right to record. If the parents record, you may record as well. However, if the parents do not record, you may not record either. The parties are required to provide 24 hour notice of their intent to record the meeting.

(g) (1) Notwithstanding Section 632 of the Penal Code, the parent or guardian or local educational agency shall have the right to audio record the proceedings of individualized education program team meetings. The parent or guardian or local educational agency shall notify the members of the individualized education program team of his, her, or its intent to audio record a meeting at least 24 hours prior to the meeting. If the local educational agency initiates the notice of intent to audio record a meeting and the parent or guardian objects or refuses to attend the meeting because it will be audio recorded, the meeting shall not be audio recorded.

(2) The Legislature hereby finds as follows:

(A) Under federal law, audio recordings made by a local educational agency are subject to the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g), and are subject to the confidentiality requirements of the regulations under Sections 300.610 to 300.626, inclusive, of Title 34 of the Code of Federal Regulations.



F. Ensuring the IEP Team has all Necessary Members

The law requires that an administrator with authority to make funding decisions be present at the IEP. Further, even if the student is or will be in a SDC placement, both a special education teacher or service provider and a general education teacher should also be present.

G. Creating Measurable IEP Goals and Progress Requirements

20 U.S.C. Sec. 1414(d)(3); 34 C.F.R. Sec. 300.324; Cal. Ed. Code Sec. 56341.1

Before drafting goals, keep in mind that the law requires that in developing an IEP, the team shall consider the following – basically found under Present Levels of Performance (PLOP):

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child;
- (iv) the academic, developmental, and functional needs of the child.



After discussing these things, Each child's IEP must contain a statement of the child's present levels of academic achievement and functional performance, including—

- (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
- (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities...

A fully developed, well-written “present levels” is the foundation upon which the rest of the IEP can be developed to specify appropriate goals, services, supports, accommodations, and placement for the child.

California Education Code 56345 (a)(2)(A) and (a)(2)(B) states that an IEP will include: A statement of measurable annual goals, including academic and functional goals, designed to do the following:

- (A) Meet the needs of the individual that result from the disability of the individual to enable the pupil to be involved in and make progress in the general education curriculum; and
- (B) Meet each of the other educational needs of the pupil that result from the disability of the individual.

IDEA §300.320(a)(2)(i)(A) and (B).



Goals and short-term objectives

[20 U.S.C. Sec. 1414(d)(1)(A)(i)(I)(cc); 34 C.F.R. Sec. 300.320(a)(2)(ii); Cal. Ed. Code Sec. 56345(a)(1)(C).]

Further, should the team determine that the Student will not participate in state testing (CST) but will instead take alternative tests, the law requires that the Student's goals must have short-term objectives so that the parents are aware of their child's progress



H. ESY (Extended School Year services)

IDEA 34 CFR Part 300, specifically Section 300.309, defines “Extended School Year Services” as follows:

(A) General.

(1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE;

(2) Extended school year services must be provided only if a child’s IEP team determines, on an individual basis, in accordance with Sections 300.340-300.350, that the services are necessary for the provision of FAPE to the child;

(3) In implementing the requirements of this section, a public agency may not –

- (i) Limit extended school year services to particular categories of disability; or,
- (ii) Unilaterally limit the type, amount or duration of those services.



California Code of Regulations (CCR), Section 3043-

Extended School Year Services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition.



This next statement is probably the most important section of this law:

The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (f):

Checking the box “NO” under ESY without discussion with the IEP team, and especially the parents, is a violation of their procedural rights that will likely result in a denial of FAPE and perhaps the filing of a hearing complaint.



Creating a Prudent Paper Trail

Once the IEP has been completed, meaning present levels of performance in all areas and new goals written in all areas of deficit, you do not want to forget to discuss accommodations for the Student. Accommodations may include such things as special seating, extra time on tests, a decrease in the amount of homework, a quiet place to complete assignments, the ability to take tests orally, graphic organizers, etc. There are a number of accommodations that can be provided depending on the needs of the student.

Transition services

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.
[§300.320(b)]