

IEP STRATEGY – UNDERSTANDING THE PROCESS SO YOU CAN GET WHAT YOU NEED



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DISCLAIMER

The information in this guide, in whole or in part, is not legal advice nor is it intended to be taken as such. Please consult an attorney if you are seeking such advice. If you need a referral to an attorney, please contact Area Board 10 for a listing of special education attorneys in Los Angeles County.

WHAT THIS BOOKLET IS AND WHAT IT IS NOT

This booklet is a strategy guide, to give you the information you need so you can better understand and use the individual education program (IEP) process to get the services your child needs. You should read the entire guide because if you only read one section, it may not make sense.

This booklet is not intended to inform you of all of the legal requirements involved in developing the IEP. Materials from many other sources already exist to do this, and some are listed in the ONLINE RESOURCES section at the end of this booklet.

A FEW THINGS TO KEEP IN MIND ABOUT IEP MEETINGS

First of all, no one knows your child better than you. Others may know how your child performs in different settings or with different types of people, but ultimately, no one knows your child like you.

Second, you must understand that ultimately, the IEP is a deficit driven process; it's about designing a program that will address the things your child cannot do. Every parent loves bragging about their child – it's human nature. But talking about all the things that makes your child wonderful and brilliant will not help you get services. Talking realistically about the things your child cannot do will help identify your child's needs and create the IEP necessary to meet those needs. The IEP meeting is the time to let it all hang out and not put a positive spin on everything about your child.

Lastly, you want the best possible education for your child. (After all, you're reading this booklet!) However, the schools are not required to provide the best possible education for students.^{1, 2} They are required to make sure your child makes at least some progress, not make your child all he or she can be. There are many families who believe the schools must provide the best possible education, and this misunderstanding has sometimes caused problems between the family and the school.

HAVE YOU EVER BEEN IN THIS SITUATION?

You walk into the IEP meeting and you have a list of services that you are going to make sure is included in it. You're not going to take "no" for an answer, you're not going to allow yourself to be distracted by confusing explanations, and you're going to be more assertive than last meeting. Maybe you wrote the list down, maybe you knew it so well you didn't have to...it was burned into your brain.

You sat there patiently when everyone went over their evaluations and you nodded your head politely. You smiled at people when they spoke, knowing that you were going to get what you wanted in this meeting. You didn't need to ask for anything during this discussion, so you remained quiet, knowing your opportunity was going to come soon.

¹ *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 1982

² For more information about an appropriate education, go to <http://www.wrightslaw.com/info/fape.notbest.htm>.

Then the team talked about your child's present levels of performance (PLOPs). You sat quietly again, although you did speak up every now and then when it sounded like something was a little off. You decided not to make a big deal about it, because you were waiting for your chance to ask for the services you were looking for.

Everyone talked about the goals – and again, you didn't need to talk about them. After all, they didn't have much to do with anything and you were still waiting for your chance to go over your list and get those services your child needed.

Finally, after reviewing some more stuff just for the sake of the paperwork (there's always paperwork!), the team talked about the services they were recommending. Aha! Now it's the time to jump in and get what your child needs! You listened patiently to what the team recommended, but then when they suggested one hour, you asked for two. When they recommended no services for a particular area, you asked for them. You felt nervous, talking to so many people, and they were all staring at you. But you felt strong, you had a plan! You assertively made your requests and leaned back to hear the response.

One or two people on the team answered in a way that made no sense at all. They were still polite, but they spoke gobbledygook and didn't seem to listen to anything you said. It was like they were speaking

another language. You asked some questions to understand what was said, but you just got more confused. They answered, still sounding polite, but now you were wondering if they were being mean, trying “to kill you with kindness”. You decided to keep your cool and stick to the plan.

Somehow, you walked out of the IEP meeting scratching your head, wondering how you got nothing on your list and was never once told “no”. Somehow, even though you had your list, even though you were ready for battle, you didn’t get anything on your list.

How did this happen?

THE FOUR STEPS TO THE IEP PROCESS

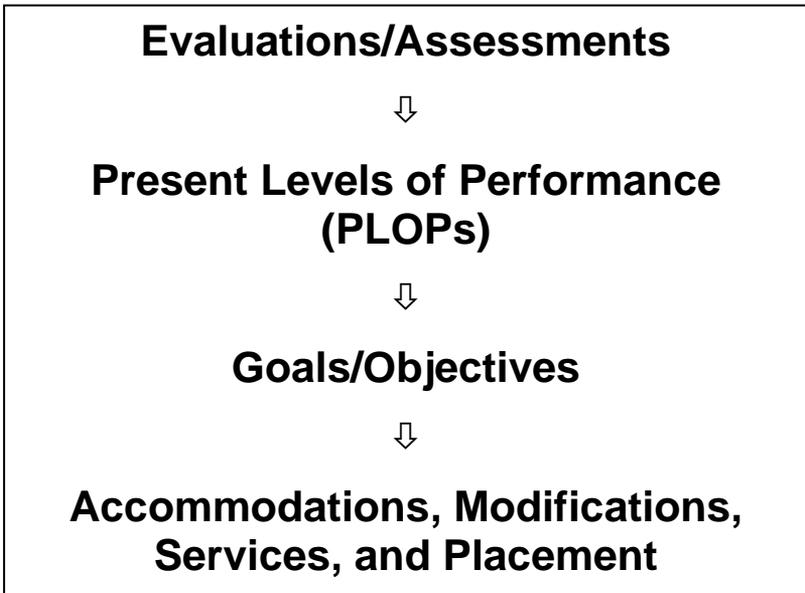
There are four steps to the IEP process:

- assessments;
- present levels of performance;
- goals/objectives; and,
- accommodations, modifications, services, and placement.

Each step in the process leads to the next.

Assessments are done in order to tell us the student’s present levels of performance (PLOPs). The PLOPs identify a student’s needs. The student’s needs tell us what goals need to be developed. Once we know the goals, we can then figure out the accommodations, modifications, and services needed to implement those goals. At that

point, we can identify the appropriate placement where the accommodations, modifications, and services can be provided.



Now that you know the structure of the IEP meeting, can you see how many families may not be successful in getting the services their child needed? If you believe a need exists, but it isn't identified in the assessments or PLOPs, no goal will be made for it. Without a goal, there will be no service. If your child's needs are not identified earlier in the process, there will be no justification, or evidence, for your requests later in the process.

WHAT WENT WRONG? HOW MANY FAMILIES APPROACH THIS PROCESS

Many families approach the IEP meeting without understanding the importance of each step in the

process. They frequently sit quietly during the discussion about assessments, PLOPs, and goals. However, families join the conversation when the IEP team starts talking about the services and supports and they make their requests at this time. But it's too late, there's no basis for the request! The IEP team is likely to say "no" to that request – after all, how can they say "yes" to a request when there's no foundation for the request?

Many advocates have found that **families frequently have already worked through the previous steps of the IEP before coming to the meeting.** Remember, no one knows your child as well as you. In caring for and living with your child, you assess all the time. Because you knew all of this, you already figured out your child's PLOPs...after all, you are highly aware of what your child has learned and you know what things your child needs to improve. Because the school doesn't know your child, they must follow this four step process.

Knowing how the IEP process works, you now know that it is important for you to participate in all stages of the meeting. You know how each step will lead to the IEP your child needs. The upcoming sections will take a closer look at each of these steps and how to tailor your strategy at each step to get the services your child needs.

WHY ASSESS?

Assessments are performed to learn things about your child. Typically, assessments are performed for three different reasons:

- initially, to be found eligible for special education and related services;³
- during and after eligibility is established, assessments must be performed **to identify the needs of your child in the educational environment**;⁴ and,
- as needed, to identify any additional suspected area(s) of disability.⁵

Assessing your child's needs is a critical first step. Why? Remember, the four steps to the IEP process – it all starts with assessments. If an assessment doesn't identify a need, there will be no goal for that need. If there is no goal, there will be no service.

Therefore, if your child is falling behind in an area (such as gross motor skills or mathematics) – whether they are receiving services in that area or not – you need to have that area assessed. What is more, if your child is not receiving a service, such as speech, and your child needs it, you should ask for an assessment.

³ 20 United States Code (U.S.C.) §1414(a)(1)

⁴ 20 U.S.C. §1414(b)(3)(C)

⁵ 20 U.S.C. §1414(b)(3)(B)

HOW DO ASSESSMENTS FIT IN THE IEP PROCESS?

Assessments tell us the present levels of performance (PLOPs), the next step in the IEP process. They tell us how the student has performed on various tests, identifying the student's strengths, weaknesses, and educational needs. This is all used to help the IEP team to identify the PLOPs. Once those needs are identified in the PLOPs, goals must be developed to measure progress in addressing those needs. The goals then drive the services, accommodations, and modifications, because these must be provided to implement the goals. At that point, we can identify the appropriate placement where the accommodations, modifications, and services can be provided. (Is this starting to sound familiar?) 😊

GETTING A COPY OF YOUR CHILD'S ASSESSMENTS

You should review the assessments before the IEP is held because:

- you need time to digest the information in the assessment;
- you need to figure out if the assessments fairly describe your child; and,
- you will be as well prepared as other team members and so you will be able to participate on an equal basis with the team.

To do all of this, you need to be able to read and understand assessments.⁶ There are some

⁶ For more information on how to understand assessments, go to http://www.wrightslaw.com/advoc/articles/tests_measurements.html.

resources listed in the back of this guide that can help you to learn how to understand them. Also, you may want to review them with a professional, an advocate, or an attorney.

ASKING FOR ASSESSMENTS

Schools need to reassess students at least every three years by law, unless you and the school agree that it is not necessary.⁷ However, if you or your child's teacher requests it, schools must perform reassessments annually. They don't have to be done more often than this, unless both you and the school are in agreement they should.^{8, 9}

If you ask for an assessment to be done, make that request in writing. And like any request you make of the school, we recommend you have a way to confirm that the school received it, such as certified mail or a fax with a confirmation page that has a reduced copy of what was sent (without using a cover page). Burn this into your brain: **“If it isn't in writing, it never happened.”**

You should identify what area you'd like the assessment to evaluate. It should be based on what areas you believe your child is lagging behind in and may need extra help. Examples include intelligence, expressive verbal language, fine motor

⁷ 20 U.S.C. §1414(a)(2)(B)(ii)

⁸ 20 U.S.C. §1414(a)(2)(A)(ii)

⁹ 20 U.S.C. §1414(a)(2)(B)(i)

coordination, and written language skills.¹⁰ The school gets to choose who will conduct the assessment and what tests will be used. Why? They are the experts. Unless you are professionally qualified to know which test must be used, that decision is up to the school.

Even if all of the deadlines are met, as many as 75 days can go by from when you requested the assessment to when it gets reviewed at an IEP meeting. Therefore, requesting assessments is a part of your strategy – and you now know you must plan ahead because at least two months will go by until you have the information you need.

If you need additional information regarding the timelines when requesting assessments, please feel free to contact Developmental Disabilities Area Board 10.

INDEPENDENT EDUCATIONAL EVALUATIONS (IEEs)^{11, 12}

An independent education evaluation is just what it sounds like: it's an assessment for your child that is done by someone independent of the school district. In the same way that you have a right to a second opinion concerning your medical care, you have the right to a second opinion if you disagree with a

¹⁰ For many more examples see pages 2-38 through 2-47 of the Special Education Rights and Responsibilities Manual, available free of charge at <http://disabilityrightsca.org/pubs/504001SpecEdIndex.htm>.

¹¹ For more information on IEEs, go to <http://www.wrightslaw.com/info/test.tee.steedman.htm>.

¹² Please see APPENDIX A for an additional resource pertaining to IEEs.

special education assessment performed by the school district.¹³ **Additionally, the school district must pay for this second opinion.** You may request an IEE verbally, but be sure to follow up in writing and indicate that you disagree with the school's assessment.

The person who performs the IEE must be independent of the school. One parent told us about how the school said they would provide an IEE, and the evaluator would be a school psychologist from a different school within the same district. Does this sound independent to you? It doesn't to us and this is why "independent of the school" means someone not employed by the school district.

You can pay for your own evaluation without going through the school. If you want the results of that assessment to be reviewed by the IEP team, then the IEP team must consider it.¹⁴ What is "consider"? It means that the school staff will read it and think about if and how the information in the assessment should impact the IEP. Does it mean they must read it or hear a summary about it? Yes. Does it mean they must use information in the evaluation to develop your child's IEP? No. Does it mean they can read it, not have any questions, and then say they're ready to move on to the next issue in the IEP? Yes.

¹³ E.C. §56329(b), Code of Federal Regulations (C.F.R.) §300.502

¹⁴ E.C. §56329(c)

If a significant portion of an evaluation you paid for is used in creating your child's IEP, the school must reimburse you, so be sure to always keep your receipts! Why must they pay you back? All students who receive special education and related services are entitled to a free appropriate public education (FAPE).¹⁵ If you paid for something that was used to assist in the development of your child's IEP, then the IEP was not **free**. You may want to wait in asking for your reimbursement until **after** you receive a copy of the IEP and provide or withhold your consent.

If you paid for an evaluation and school personnel do not use it to develop the IEP, the school district does not have to pay for it. Why not? Simply put, the evaluation wasn't used to develop the IEP.

In some cases, parents do not want the school district to review an assessment for which they paid. This is okay, but then you can't ask the school district to pay for it. You may want to consider this carefully because generally speaking, the more information the team has about your child, the better they can design an IEP to meet your child's needs.

Many people ask for an IEE because they are looking for certain information. IEEs can become a part of your strategy to form the foundation you need to get the services for your child. However,

¹⁵ 20 U.S.C. §1401(9)

recognize that getting an IEE can take five to eight months – up to two and a half months to ask the school to perform an assessment, and if you subsequently disagree with it, request and obtain an IEE.

PARENT REPORTS

Families can provide their input and express their concerns in the form of a “Parent Report”. One reason for doing this is because IEP teams must consider the concerns of the parents.¹⁶ Your concerns can be expressed in the same terms as the IEP itself: assessments, present levels of performance, goals, accommodations, modifications, services, and placements. Placing these concerns in a report that the team must consider can be helpful because:

- it clearly communicates your concerns to the team;
- your report is like an outline, which lets you better listen and understand what the team says during the meeting; and,
- by listing your concerns in the same way as the structure of the IEP meeting, you will ensure you have the foundation and evidence needed to support the goals and services that you are trying to get.

¹⁶ 20 U.S.C. §1414(d)(3)(A)(ii)

PRESENT LEVELS OF PERFORMANCE (PLOPs)

The PLOPs describe your child's current academic achievement and functional performance.¹⁷ They should include your child's needs – your child's participation and progress in the general education curriculum.¹⁸ Essentially, it should inform the reader as to where your child is at, both academically and functionally. It should describe your child so if a new staff person were working with your child, they would have some idea of what your child is like.

Remember, what we said before: the PLOPs should be based upon the information revealed by assessments – the assessments help us understand the student's strengths and weaknesses. The PLOPs will then help us create the next step in the IEP process: goals and objectives.

The PLOPs should contain information concerning your child's current performance. This may include scores from educational achievement tests and diagnostic assessments. This information will be helpful a year later when you are determining if your child's skills have improved.

In developing each student's IEP, the law requires the IEP team to consider the following:

- the strengths of the student;

¹⁷ 20 U.S.C. §1414(d)(1)(A)(i)(I)

¹⁸ 20 U.S.C. §1414(d)(1)(A)(i)(I)(aa)

- the concerns of the parents for enhancing the student’s education;
- the results of the most recent evaluation or reevaluation; and,
- the student’s academic, functional, and developmental needs.¹⁹

Typically, we see all of this information in the PLOPs section of the IEP. The law doesn’t say where, how, or even if this information should be incorporated into the IEP, but it is helpful if it is included because it may suggest particular approaches and goals.

GOALS AND OBJECTIVES

The PLOPs should identify the student’s needs and help create the goals. Logically, our next step would be to find a way to measure your child’s progress over the next year, until the next IEP. Goals are the way we measure this.²⁰ Objectives act as mini-goals on the way to making progress and achieving the goal.

A few things about goals:

- **goals must address identified needs;**²¹
 - **if there is no goal, there is no need;**
- goals must be tailored to a year of academic and functional progress;²²

¹⁹ 20 U.S.C. §1414(d)(3)(A)

²⁰ 20 U.S.C. §1414(d)(1)(A)(i)(III)

²¹ 20 U.S.C. §1414(d)(1)(A)(i)(II)(aa) - (bb)

²² 20 U.S.C. §1414(d)(1)(A)(i)(II)

- goals should measure the student’s ability in the school environment;
 - if there is an issue at home, you can redefine it in terms of the school environment (see “That Isn’t a School-Based Skill” on page 31).

Well-written goals are **SMART**.²³

- **S** = **Specific**, targeting a specific area of academic achievement or functional performance;
- **M** = **Measurable**, so that you objectively know when the student meets the goals;
- **A** = Use **Action Words**, so that we know the level of attainment or direction of behavior (such as increase, decrease, maintain, etc.);
- **R** = **Realistic and Relevant**, so that the student’s unique needs are addressed; and,
- **T** = **Time limited**, so we know what your child will know after one year of special education and can monitor your child’s progress at regular intervals.

For example, the original goal might read: Maria will listen and follow teacher instruction 4 out of 5 times, success as determined by the classroom teacher. A SMART goal might read: Maria will follow visual directions as demonstrated by her ability to follow a 2-step direction with a maximum of one verbal

²³ “SMART IEPs”, Wrightslaw: From Emotions to Advocacy, Pam & Pete Wright, <http://www.wrightslaw.com/bks/feta2/ch12.ieps.pdf>

prompt, 4 out of 5 trials, for a period of four consecutive weeks by October 1, 2009.

If your child is not achieving his or her goals, there could be a few reasons why:

- the goals may be set too ambitiously;
- the goals are not appropriate for your child because they are generic, using canned language – meaning they’re not specifically about your child;
- the goals are not supported by adequate services or trained personnel; or,
- the goals cannot be measured because they are too subjective.

It’s important for you to know why your child is not achieving his or her goals. You need this information so you can appropriately modify the IEP that is being formulated.

ACCOMMODATIONS, MODIFICATIONS, SERVICES, AND PLACEMENT

The accommodations,²⁴ modifications,²⁵ services,²⁶ and placement²⁷ are all determined by the goals; the goals drive these parts of the IEP. You should ask yourself, what accommodations, modifications, services, and placement are necessary to implement the goals the IEP team has just

²⁴ 20 U.S.C. §1414(d)(1)(A)(i)(VI)(aa)

²⁵ 20 U.S.C. §1414(d)(1)(A)(i)(IV)

²⁶ 20 U.S.C. §1414(d)(1)(A)(i)(IV)

²⁷ 20 U.S.C. §1412(a)(5)(A), 20 U.S.C. §1414(d)(1)(A)(i)(V)

developed? The answers to this question should be included in your child's IEP.

Accommodations

Accommodations are changes in **how** students access their educational curriculum. The material taught is the same as what other students are learning, but the **way** in which it is presented may be different. Accommodations **do not** change the standards or expectations in learning the materials and content. Accommodations can be made in how your child is taught and demonstrates progress. Some examples include additional time for tests, special seating, use of a calculator, and oral testing. For more information about accommodations, please contact Developmental Disabilities Area Board 10.

Modifications

Modifications are changes in what students are expected to learn and demonstrate; these may include changes in the educational curriculum itself. The material taught is **substantially different** from what other students are learning, but the subject matter should be the same. Modifications **do** change the standards or expectations in learning the materials and content. An example is working on the same vocabulary exercises as other students, but using words at the student's grade level. Like accommodations, modifications can be made in how your child is taught and how your child demonstrates progress. For more information about

modifications, please contact Developmental Disabilities Area Board 10.

Services

Services must be provided to enable students to reach their IEP goals, make progress in the general education curriculum, and to be educated and participate with their typical peers and those with disabilities.²⁸ These services can include, but are not limited to, speech and language services, interpreting services, physical therapy, occupational therapy, transportation, nursing services, parent training and counseling, and behavior services.²⁹

Remember services are tied to goals. If the IEP team has not created a goal in the area of speech and language for example, there will be no reason to provide speech and language therapy.

Placement

Many of you think of placement in terms of one thing: what classroom your child will be attending. However, placement is partially about where instruction and services take place, who teaches your child, and what special equipment may be necessary to teach your child.³⁰ The law says that

²⁸ 20 U.S.C. §1414(d)(1)(A)(i)(IV)(aa) - (cc)

²⁹ E.C. §56363(a) - (b)

³⁰ Title 5, California Code of Regulations (C.C.R.), §3042(a) – Placement is defined in California as the combination of facilities, staff, places, or equipment to teach a special education student in accordance with their IEP in whatever setting necessary (for example, public, private, home, hospital, or residential).

your child's placement must be in the least restrictive environment.^{31, 32}

The least restrictive environment (LRE) is one of the central concepts in special education. It's so important, here is the full legal definition:

“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 not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

Was that confusing? Many people find it to be...and it's only one sentence! Put simply, **schools must ensure children with disabilities are placed in typical, general education classes, alongside nondisabled students, with or without support, as much as possible.**

The LRE is different and unique for each student. Some students can be adequately taught in general education classrooms, some in general education classrooms with supplementary aids and services,

³¹ E.C. §56342(b)

³² 20 U.S.C. §1412(a)(5)(B)(i)

and still others in placements other than general education classrooms, with or without supplementary aids and services.

If you know placement is an issue for your child's upcoming IEP, consider contacting the appropriate person at your school district to learn what placements are available and visit them.³³ Because the law indicates that parents are equal participants and members of the IEP process,^{34, 35} the school district should permit you to observe the considered site. After all, if you are not permitted to visit the site, can you be an equal participant and member of the IEP team when it is time to make an informed decision at the IEP meeting?

If students require a specialized placement because of their needs, then the school district needs to provide a placement that will adequately meet those needs. If they do not have one available, the district will then need to create it, send (and pay for) the student to go to another school, district, or nonpublic school. Students are placed and funded in nonpublic schools **only** when there is no other appropriate public school option.

³³ <http://www.cde.ca.gov/sp/se/qa/psssummary.asp>, first bullet point

³⁴ 20 U.S.C. §1400(c)(5)(B)

³⁵ 20 U.S.C. §1414(d)(1)(B)(i)

DRAFT IEPs³⁶

Did you ever walk into an IEP meeting and find there was an already completed IEP waiting for you? If so, you know that some districts prepare a draft of the IEP before the IEP meeting. Although the use of draft IEPs is not encouraged, it is legally allowable. However, it is important to know that the draft is just that: a draft. It is not written in stone, and can and should be changed as necessary.

If a draft IEP will be used, the school district should provide you with a copy of it before the meeting. If they do not, you may decide that you need time to think about the recommendations in it and you therefore need to immediately end the meeting so you can review it. It's important that you feel fully prepared as an equal participant of the IEP team. If you feel you are, then continue with the meeting. If you are unsure or feel you are not, then please feel comfortable politely ending the meeting.

If you suspect the school will use a draft IEP, you can request a copy of it before the IEP meeting, in the way described in "Getting a Copy of Your Child's Assessments" on page 8.

Like the "Parent Report" mentioned earlier, you can write your own draft IEP and provide copies of it to the team at least five days before the IEP meeting.

³⁶ "Can the IEP Team Prepare a "Draft IEP" Before an IEP Meeting?", Pat Howey, <http://www.wrightslaw.com/info/iep.draft.howey.htm>

This ensures you are an equal participant and that the IEP team is aware of your concerns.

BRINGING IT ALL TOGETHER USING AN EXAMPLE

Let's use an example to help you work through this process before the meeting so you are better prepared. Let's pretend that your child receives a half hour of speech therapy per week and you believe that your child needs at least one hour per week instead. You hope to get 90 minutes per week because you think your child will do best with this level of services. You know this increase is appropriate because she makes progress in other things, but speech seems particularly tough for her.

First, you need to identify what you are trying to obtain. In this example, we want to increase the amount of a service, speech therapy. Next, you must identify the evidence that supports the request of increased speech therapy.

You look at the goals in the current IEP and see only one goal pertaining to speech, an articulation goal. This goal is all about improving HOW your child makes sounds to form words. You're may be unsure how to move forward because you don't know all of the sub-areas within the subject of speech.

Going to the Special Education Rights and Responsibilities Manual,³⁷ you see at the end of Chapter 2 that speech also includes receptive verbal language, expressive verbal language, receptive nonverbal language, expressive nonverbal language, pragmatic language, vocabulary, and auditory skills.

Check the evaluations for additional information. If you can't find it, you can call the school and request a copy of that evaluation and then follow it up with a certified letter that confirms your request (see "Getting a Copy of Your Child's Assessments" on page 8). When you check the evaluation for more information, you see that it also identifies deficits in your child's use of language when she speaks (pragmatics) and her ability to understand others' gestures and facial expressions (nonverbal receptive language).

Check if there are goals for all identified areas of need. There is only the articulation goal. You now know that you need to have a goal related to pragmatics and nonverbal receptive language.

Do the research. Ask other parents, visit websites, go to your library. Learn appropriate examples of IEP speech goals pertaining to pragmatics and nonverbal receptive language. After doing this

³⁷ Available free of charge at <http://www.disabilityrightsca.org/pubs/504001SpecEdIndex.htm>; see ONLINE RESOURCES.

work, create goals that are SMART (see “Goals and Objectives” on page 16).

Go to your child’s IEP meeting. When talking about the PLOPs related to speech, discuss the difficulty your daughter has pertaining to her use of pragmatic and nonverbal receptive language. Provide a few examples in the school setting. Respectfully request your comments are included in the PLOPs. When talking about the goals related to speech, politely request goals related to your daughter’s pragmatic language and nonverbal receptive language. Inform the team you have drafted goals for their consideration. If the team wishes to write new goals instead of using yours, ensure they are SMART.

There are now **three** goals related to speech: articulation, pragmatic language, and nonverbal receptive language.

When it comes time to discuss the services, the facilitator asks the team if 30 minutes per week of speech therapy are enough given the goals. One of the school staff thinks 30 minutes per week is not enough. Two others immediately agree. Yet another suggests a 30 minute session three times per week. You join in and support this. The facilitator of the meeting indicates the three 30 minute sessions are probably too much. One or two staff softly agree. You politely ask how those three goals could be met with only two 30 minute

sessions. You receive an answer that didn't make much sense to you. You ask more questions and finally understand the person's point. You ask the other team members if they agree with this, while at the same time making direct eye contact with the staff member who suggested three 30 minutes sessions. After some discussion of the team members, the team decides to....

Does it matter how this story ends? Of course it does. Depending on the student's level of need, it may result in two 30 minutes sessions per week or three 30 minute sessions per week. Either way, you have successfully advocated for increased speech therapy.

To summarize:

- identify what you are trying to accomplish (usually, this is a service, placement, or an accommodation.);
- identify existing evidence (usually, this means checking the evaluations);
 - identify needed evidence (usually, this means requesting a new evaluation or an IEE);
- document the need in the PLOPs;
 - if you've got an evaluation that describes the need, draw the team's attention to that section;
 - if not, describe the needs and highlight the deficits using examples at school;

- ensure there is a goal for each area of need; and,
- ensure there is an adequate intervention (services, accommodations, modifications, and/or placement) to achieve the goals.

OTHER ISSUES

There are some other issues that commonly arise concerning IEP meetings. They sometimes make it difficult for families to get the things they feel will meet their child's needs.

Consenting to the IEP³⁸

Most schools prefer that you consent to or deny consent to the IEP immediately after the IEP meeting. **Generally speaking, we strongly recommend that you do not sign the IEP immediately after the meeting.** Take it home to review with your spouse, take it home to ensure it includes all of the issues discussed, take it home because the meeting was long or exhausting, but take it home and closely review it. This way, you can take your time to make sure it contains everything it needs to.

We have been told by many families that the school told them their child cannot receive **any** services until the new IEP is signed. This is not accurate. The school must continue to implement the previously agreed upon IEP until you consent to the

³⁸ E.C. §56346

newest IEP. If your school tells you this, calmly reply that you do not agree with them unilaterally terminating your child's services, you still insist on taking the IEP home to review, and that you will decide to sign or not sign the IEP within a few days. Additionally, you may want to call Developmental Disabilities Area Board 10 for further assistance.

You **do** have an obligation to sign or not sign your child's IEP within a few days. What is a few days? There is no clear answer on this, but you should not take more time than absolutely necessary to return it one way or another to the district.

If you are asked to sign an attendance page, read it carefully before you do so. In almost all cases, schools do need everyone at the meeting to sign an attendance sheet. However, we have been told by some families that schools have asked the parent to sign the attendance sheet, but after reading it closely they see that it is the consent page. **Never** sign anything without reading it first, and **never** sign a blank form.

Some parents seem to believe that they must either sign the IEP or not sign the IEP. Many are surprised when they learn that they can **provide consent to parts** of the IEP and **withhold consent for parts** of the IEP.³⁹ You can consent or withhold consent to any part of the IEP: one or more of the

³⁹ E.C. §56346

PLOPs, one or more of the objectives and goals, one or more of the services, accommodations, modifications, and placement.

All you need to do is specify which parts of the IEP you agree with and which parts you disagree with. If the signature page of the IEP does not provide enough space, feel free to write “see attached” and attach a sheet of paper specifying your consent and lack of consent.

IEP Etiquette

IEP etiquette is important because the IEP meeting is a planning meeting with many participants. Meetings are easier when everyone knows what to expect and works well together. Therefore, your tone in the meeting should be polite, respectful, and professional, and you should expect to be treated the same. Others will be open to hear what you have to say, and you will also be able to maintain a positive relationship with the members of the IEP team, who may work with your child for years.

Concentrate on the Need, Not the Service

When discussing accommodations, modifications, services, and placement, keep in mind the need which you are trying to fulfill. By concentrating on the need, you can remain flexible about **how** that need gets met. Having this flexibility will enable you to be effective in getting the team’s help to problem solve the issue and avoid pitfalls that lead to personality conflicts. If suggested solutions do not

make sense to you, ask questions to clarify why they make no sense to you. However, don't be surprised if the IEP team offers a solution that you did not anticipate – it is not uncommon for this to happen.

Content Standards

Sometimes the best goal you can have is not a goal – it could be the content standards⁴⁰ for the California curriculum, developed by the California Department of Education. They describe what should be taught to students and are a good way for parents to know what students in the same grade as their children are expected to learn. The IEP goals should be written towards the content standards, although this depends on the extent to which your child is expected to graduate with a diploma versus a certificate of attendance. In the case of a diploma, you may want your child's IEP goals to be closer to, or exactly the same as the content standards. Conversely, in the case of a certificate of attendance, you may want your child's IEP goals to be tailored more to your child's needs – but the content standards may still give you some ideas for the goals you'd like to see your child achieve.

Extended School Year (ESY) & Transportation

Please contact Developmental Disabilities Area Board 10 for information pertaining to ESY and transportation.

⁴⁰ <http://www.cde.ca.gov/be/st/ss/>

COMMON STATEMENTS MADE IN IEP MEETINGS AND POSSIBLE RESPONSES

Frequently, we have heard from parents that school personnel make statements that stop them dead in their tracks; they have no idea how to respond. This section identifies some of those statements, the reasons why they may be said, and ways in which parents can respond to them. If you know a response that isn't written here, please feel free to contact Developmental Disabilities Area Board 10 so your responses could be included in future editions of this Strategy Guide.

“Why Don't You Ask Regional Center to Take Care of That? That's Something **They** Do.”

Families tell us they frequently hear this statement in IEP meetings. If you do, ensure you are making an education-based request for the service. Provide examples of the issue as they happen at the school, not at home. For additional ideas, see “That Isn't a School-Based Skill.”

“That Isn't a School-Based Skill.”

This statement is generally made when the family has requested the school's assistance in teaching a “life skill” – a skill such as dressing, toileting, and chewing. In such situations, it is recommended that you discuss the issue, but from the context of the school. Some of the ways in which this may affect a student at school is safety, health, social stigma, or age appropriateness. Additionally, it may impact your child's ability to pursue employment, further

education, or independent living. These are the very purposes of special education law, the Individuals with Disabilities Education Act (IDEA).⁴¹ By showing such an impact, you can make the case that there is a need for the school to address that issue.

“Why Don’t We Reevaluate How Everything Is Going in Three Months?”

Sometimes school staff are heard saying in IEP meetings, “Well, why don’t we reevaluate how things are going in three months? We can meet again to adjust the services.” This is usually heard when a new service is introduced. However, IEPs are supposed to be consolidated⁴² with goals designed for one year.⁴³ Therefore, you might ask, “Isn’t the IEP supposed to be designed with one year in mind? Why would we build it so we need to meet again in a few months? Aren’t we introducing another meeting unnecessarily?”

“Your Child Can’t Learn This Material Because...”

Sometimes school staff have been heard telling parents that their child is not capable of learning specific or even general material because of reasons such as the child’s cognitive ability, the child has already reached his or her potential, and the child’s lack of motivation. Depending on the

⁴¹ 20 U.S.C. §1400(d)(1)(A)

⁴² 20 U.S.C. §1414(d)(3)(E)

⁴³ 20 U.S.C. §1414(d)(1)(A)(i)(II)

reason for which this is said, you may decide to respond by saying any of the following:

- “Could it be we haven’t addressed a need in my child’s IEP? Did we address them all?”
- “Maybe there aren’t enough services in place to ensure my child can learn that material.”
- “Did someone work on that particular issue with my child? Yes? Great, thank you for working so diligently with my child! May I see the data collected for that work?”

“That Service Doesn’t Need to Be in the IEP...”

Many times, school districts do not list all of the services that they provide that are part of a placement. However, this can be a problem if you move to a different district because a service you may need is not discussed in the IEP. Therefore, although the new district is obligated to provide you with equivalent services until the new IEP meeting is held,⁴⁴ they wouldn’t know those unlisted services are provided and would have no obligation to provide them. Additionally, justifying the inclusion of that service in the new IEP could be difficult. You might want to say, “What if we move? Isn’t the IEP supposed to be a portable document that our child should receive anywhere? Please give yourself credit for the service and include it in the IEP in case we move. Thank you.”

⁴⁴ 20 U.S.C. §1414(d)(2)(C)(i)(I)

“We Can’t Do That. It’s Against Our Policies, Procedures, Etc....”

Sometimes school districts want to assist students, but there are barriers in place that make it difficult or impossible, such as policies, contracts with unions, or a procedures manual. In such a case, it is appropriate for you to request a copy of whatever policy, procedure, contract, or other item is preventing the IEP team from doing what is necessary. Ask the school to please note in the IEP document that a copy of the document will be provided to you by a particular deadline. Also, ask to have the parent request and the school’s denial included in the IEP. In this way, you can consider what further actions you want to take (such as a state compliance complaint), and you have the information you may need in order to make the best decision.

“We’ll Need to Put in a Request for That – We’re Not Authorized to Make That Decision.”

For whatever reason, we have heard from many parents that they have heard this statement in IEP meetings. It seems to frequently come up when discussing placement or one to one services. In any event, the IEP team is empowered to make all decisions related to eligibility, evaluations, the present levels of performance, goals and objectives, accommodations, modifications, services, and placement.^{45, 46} Therefore, you may wish to respond

⁴⁵ 20 U.S.C. §1414(d)

⁴⁶ E.C. §56342

by saying, “I thought the IEP team was empowered to make all decisions pertaining to all of my child’s unique needs. Is this not true? I know I may not know everything about special education, but I thought I understood this part correctly.” If the team insists that they cannot make a particular decision, politely request that they indicate this in the IEP, and that they also indicate that you disagree with the lack of a decision.

“That Would Set a Bad Precedent. We Can’t Do That.”

Sometimes parents have reported that they come across this statement as a roadblock. Fortunately, there are at least two ways to respond to this in a polite, professional, and respectful manner:

- “Isn’t the purpose of this meeting to design a program that will meet my child’s unique needs?”, and;
- identify and share advantages for the school to implement your request.

A SHORT NOTE ON ASKING QUESTIONS

One of the ways you can be a strong advocate for your child is to ask questions. For example, parents have told us that sometimes in an IEP meeting a participant may make a statement about their child that they believe is untrue. Frequently, the parents may respond by saying it’s not true, getting defensive, making accusations, and so on. Obviously, it’s hard to maintain relationships if parents enter this mode.

On the other hand, a parent would need to correct substantial inaccuracies. One of the ways to do this is to ask questions.⁴⁷ When questions are asked appropriately, the team must respond. It's collaborative to ask questions, but it's adversarial to make accusations or yell.

FINAL SUMMARY

So now you have a new mantra: the assessments identify the needs, the PLOPs describe the needs, the goals are based upon the needs, and the accommodations, modifications, services and placement are based upon the goals.

When you believe your child needs a particular service, you now know how, what, and why you should speak up in all the different parts of the IEP meeting, BEFORE the discussion of services takes place.

THANK YOU

It is hoped that this booklet has helped you better understand the structure of the IEP meeting and how you may use it to appropriately to get the services that you need. If you have any additional questions, please contact Developmental Disabilities Area Board 10.

⁴⁷ "Learn to Ask Questions, Get Services",
<http://www.wrightslaw.com/info/advo.parent.askqs.htm>

ONLINE RESOURCES

PARENT IDEA GUIDE – A FREE ONLINE TUTORIAL ON SPECIAL EDUCATION LAW

<http://www.parentIDEAGuide.com>

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES MANUAL

Available free of charge at

<http://disabilityrightsca.org/pubs/504001SpecEdIndex.htm>.

DEVELOPMENTAL DISABILITIES AREA BOARD 10 –

<http://www.areaboard10.org>

DISABILITY RIGHTS CALIFORNIA (FORMERLY PROTECTION & ADVOCACY INCORPORATED) –

<http://www.disabilityrightsca.org> – 800/776-5746

WRIGHTSLAW – <http://www.wrightslaw.com> – in addition to the information on the website, you may sign up for an informative, free weekly e-newsletter.

EIGHT STEPS TO BETTER IEP MEETINGS –

<http://www.wrightslaw.com/advoc/articles/iep.bollero.hearts.htm>

A “LETTER TO A STRANGER” –

http://www.wrightslaw.com/advoc/articles/Letter_to_Stranger.html

THE LAWS OF ADVERSE ASSUMPTIONS –

<http://www.wrightslaw.com/nltr/08/nl.0916.htm>

APPENDIX A – LETTER FROM OSEP REGARDING IEEs⁴⁸



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB 20 2004

Alice D. Parker, Ed.D.
Assistant Superintendent
California Department of Education
721 Capitol Mall
Sacramento, California 94244

Dear Dr. Parker:

This is a response to your letter to Larry Ringer, Associate Division Director, Monitoring and State Improvement Planning, requesting guidance from the Office of Special Education Programs (OSEP) regarding an independent educational evaluation (IEE) under 34 CFR §300.502 of the regulations implementing the Individuals with Disabilities Education Act (IDEA). Specifically, you ask whether it is permissible for a public agency to restrict a parent's choice of an IEE to only the evaluators on a list provided the parent by the public agency and whether the public agency has the ultimate authority to choose the evaluator.

The current IDEA regulations specify that the right of a parent to obtain an IEE is triggered if the parent disagrees with an evaluation initiated by a public agency. See §300.502(b)(1). The regulations also require that on request for an IEE, a public agency must provide the parent information about where an IEE may be obtained, and the agency criteria applicable for IEEs. 34 CFR §§300.502(a)(2) and (c)(1). The public agency must set criteria under which an IEE can be obtained at public expense, including the location of the evaluation and the qualifications of the examiner, which must be the same as the criteria the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE. 34 CFR §300.502(c)(1). Other than establishing these criteria, a public agency may not impose conditions or timelines related to a parent obtaining an IEE at public expense. See §300.502(c)(2).

It is not inconsistent with IDEA for a district to publish a list of the names and addresses of evaluators that meet agency criteria, including reasonable cost criteria. This can be an effective way for agencies to inform parents of how and where they may obtain an IEE. In order to ensure the parent's right to an independent evaluation, it is the parent, not the district, who has the right to choose which evaluator on the list will conduct the IEE. We recognize that it is difficult, particularly in a big district, to establish a list that includes every qualified evaluator who meets the agency's criteria. Therefore, when enforcing IEE criteria, the district must allow parents the opportunity to select an evaluator who is not on the list but who meets the criteria set by the public agency.

In addition, when enforcing IEE criteria, the district must allow parents the opportunity to demonstrate that unique circumstances justify the selection of an evaluator that does not meet agency criteria. In some instances, the only person qualified to conduct the type of

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www.ed.gov

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

⁴⁸ Available at <http://www.ed.gov/policy/speced/guid/idea/letters/2003-4/parker102703safeguard4q2003.pdf>.

evaluation needed by the child may be an evaluator who does not meet agency criteria. For example, because children must be assessed in all areas related to the suspected disability, there may be situations in which some children may need evaluations by an evaluator who does not meet agency criteria. In such situations, the public agency must ensure that the parent still has the right to the IEE at public expense and is informed about where the evaluation(s) may be obtained.

Section 300.502(b)(2) of the regulations states that “If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either (i) initiate a hearing under §300.507 to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under §300.507 that the evaluation obtained by the parent did not meet agency criteria.” Therefore, if a parent elects to obtain an IEE by an evaluator not on the public agency’s list of evaluators, the public agency may initiate a due process hearing to demonstrate that the evaluation obtained by the parent did not meet the public agency criteria applicable for IEEs or there is no justification for selecting an evaluator that does not meet agency criteria. If the public agency chooses not to initiate a due process hearing, it must ensure that the parent is reimbursed for the evaluation.

At your request, we have reviewed the guidance provided by the California Department of Education (CDE). We recommend that CDE add to the guidance after the first sentence that (1) the parent, not the district, has the right to choose which evaluator on the list will conduct the IEE; and (2) when enforcing IEE criteria, the district must allow parents the opportunity to select a qualified evaluator that meets agency criteria even if that evaluator is not on the list of potential evaluators established by the district. In addition, the district must allow parents the opportunity to demonstrate that unique circumstances justify the selection of an evaluator that does not meet agency criteria. We recommend revising the second sentence as follows: if a parent elects to obtain an IEE by an evaluator not on the public agency’s list of evaluators, and the public agency believes the evaluator does not meet agency criteria or there is no justification for selecting an evaluator that does not meet agency criteria, the district may file for due process rather than pay for the IEE.

We hope that you find this explanation helpful. If you need further assistance, please call Dale King at (202) 260-1156.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs



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