

EFFICIENT AND LEGAL IEP MEETINGS

By

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- I. Review of When an IEP Meeting is Necessary
 - A. Reasons to hold an IEP meeting: initial determination of eligibility, annual IEP development, start of school year, change in student's identification or educational needs, lack of progress or parents or school district request an IEP meeting. 20 U.S.C. § 1414(d)(2)(A); 34 CFR 300.324(b)(1); 34 CFR 300.323(c)(1).
 - B. If the progress reports required by the IDEA consistently indicate the child will not master goals by year end, an IEP meeting should be held prior to the end of the year to discuss the situation.
 - C. How soon after receiving a request for an IEP meeting should the meeting be held?
 - 1. IEP meetings should be held within a reasonable time after receipt of the request.
 - 2. Generally, two to three weeks would be considered a reasonable response time.
 - 3. It is not permissible to wait to hold an IEP meeting until the start of the next school year if the request for the meeting is made at the end of the preceding school year. The parent may agree to a delay in appropriate cases.
 - D. Summer IEP meetings
 - 1. IEP meetings must be held over the summer months if needed.
 - 2. Timelines must be met even during summer months.
- II. Required Participants in IEP Meetings
 - A. Statutory and Regulatory Provisions

B. 20 U.S.C. § 1414(d)(1)(B).

(B) Individualized education program team. The term “individualized education program team” or “IEP Team” means a group of individuals composed of –

(i) the parents of a child with a disability;

(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;

(iv) a representative of the local educational 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 local educational agency;

(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

(vi) 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

(vii) whenever appropriate, the child with a disability.

See also, 34 CFR 300.321.

C. The school district determines which individuals will fill the roles for the district’s IEP participants.

III. Case Law

A. Parent Participation

1. The failure to include parents in the IEP process can result in a denial of FAPE and tuition reimbursement. Even though parents had participated in two earlier IEP meetings, the failure to accommodate the parents’ schedule for the third IEP meeting and to include the parents in the meeting resulted in a denial of FAPE and an obligation to pay tuition at the private school. It did not matter that two of the IEP team members would be unavailable to meet in the summer. The IEP team meeting can proceed without the parents only if it can be established through

documentation that the parents refused to attend. *Shapiro, by and through her parents and natural guardians, Shapiro and Shapiro v. Paradise Valley Unified Sch. Dist.*, No. 69, 317 F.3d 1072, (9th Cir. 2003).

2. The failure of the school district to include the student's guardian in the IEP meeting did not deny FAPE because the guardian was involved in discussing the student's behavioral needs on a daily basis. *N.B. v. Demopolis City Bd. of Educ.*, 60 IDELR 66 (S.D. Ala. 2012).
3. Parents were given an opportunity to participate in the IEP meeting when there were efforts by the school district to schedule four meetings. The parents or their attorney cancelled two meetings, walked out of one meeting after a dispute over the agenda and decided not to attend another meeting. The school district could not be found liable for a procedural violation where the parents "truncated" their own right to participate. *See K.E., by and through her parents, K.E., and T.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011).
4. Failing to schedule the IEP at a mutually agreed upon location may not have affected the appropriateness of the IEP, because the parents were offered the opportunity to participate in person or by phone and did participate in four IEP meetings. *Lathrop R-II Sch. Dist. v. Gray, by and on behalf of his son, D.G.*, 611 F.3d 419 (8th Cir. 2010).
5. Remember to invite both parents.

B. Teacher Participation

1. Under the earlier version of the IDEA, pre-2004, the statute required the participation in the IEP meeting of "the" teacher and not "a" teacher. Now the language is "not less than one ...teacher of the child..." Therefore, in the past, the present teacher of the child had to be at the IEP meeting. *See Shapiro*, 317 F.3d 1072. In the *Shapiro* case, the "teacher" was the private school teacher as the student was being served in a private school.
2. Later the Ninth Circuit reversed this decision and held that the special education teacher does not have to be the current teacher of the child and can be a teacher who taught the student previously. The statutory language had been changed to "at least one regular education teacher of such child" and this language was interpreted to grant more discretion in inviting a past or present teacher. *See R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932 (9th Cir. 2007). In this case, a preschool student was born to a drug-addicted mother and a father who later molested her. Her parents were incarcerated when R.B. was very young and she was adopted by a teacher. Her behaviors were significant and she was expelled from three preschool programs. The behaviors continued throughout her elementary school years. Ultimately, the adoptive parent placed the

student in Intermountain, a private residential treatment facility. The school district held an IEP meeting but did not invite any participants from the private program. The teacher was a school district employee who had taught R.B. six years earlier in kindergarten. The procedural violation had to result in a loss of educational opportunity.

3. The special education teacher "...should be the person who is, *or will be*, responsible for implementing the IEP." Commentary to the regulations. (Emphasis added.) 71 Fed. Reg. 46,761 (2006).
4. *See also, A.G., a minor by and through his Guardian Ad Litem, Groves, et al. v. Placentia-Yorba Linda Unified Sch. Dist.*, 320 F. App'x 519, 52 IDELR 63 (9th Cir. 2009). The general education teacher does not have to be the current teacher and can be a past teacher.
5. The failure to include a general education teacher on the IEP team can suggest a predetermination of services outside of the general education setting. *M.L. v. Federal Way Sch. Dist.*, 387 F.3d 1101 (9th Cir. 2004); *see also Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840 (6th Cir. 2004).
6. A general education teacher who did not teach ninth grade mathematics, when student was entering the ninth grade of high school, did not qualify as a general education teacher for such student. There was no harm because the individual was very knowledgeable about the ninth grade curriculum. *DiRocco ex rel. M.D. v. Bd. of Educ. of Beacon City Sch. Dist., et al.*, 60 IDELR 99 (S.D.N.Y. 2013).
7. The failure to include a special education teacher for such child was not fatal to the conclusion that the IEP provided FAPE. A certified special education teacher was present at the IEP meeting and had knowledge about special education programs that might be options for the student. The resulting IEP was appropriate. *A.H. ex rel. J.H. v. Dep't of Educ. of the City of New York*, 394 F. App'x 718, 55 IDELR 36 (2d Cir. 2010).

C. LEA Representative

1. The LEA representative must meet the three criteria and must be able to commit district resources and be able to ensure that the IEP services are delivered.
2. Guidance counselors may be utilized only if the guidance counselor meets the list of criteria. *Letter to Cormany*, 34 IDELR 9 (OSEP 2000).

D. Private School Representative

1. The private school representative must attend the IEP meeting when *the school district is proposing* a private placement or if the student was

placed through CSA. If the private representative will not attend, the school district must insure that the private school or facility's input is obtained through other methods. *See* 34 CFR 300.325(a).

2. The IEP team was not properly comprised where the special education teacher had never taught the child and was not the planned teacher. The teacher of the child from the private school should have been invited. *S.H. v. Plano Indep. Sch. Dist.*, 487 F. App'x 851, 59 IDELR 183 (5th Cir. 2012).

E. The Student

1. Invite the student when the student is a required participant, such as in cases of discussion of transition services.
2. Invite the student, when appropriate or required, even if the parents say the student will not be allowed to attend.

F. Individuals who can interpret the instructional implications of evaluation results.

G. Other Individuals.

1. This determination is made at the discretion of the parents or at the discretion of the school district.
2. It is not, however, the obligation of the school district to invite to the IEP meeting or to insure the attendance of the parents' invitees.
3. Attorneys can qualify as other individuals. *Letter to Anonymous*, 50 IDELR 259 (OSEP 2008). Attorney presence at IEP meetings is not favored. *See Maroni ex rel. Michael M. v. Pemi-Baker Reg'l Sch. Dist.*, 346 F.3d 247, 40 IDELR 1 (1st Cir. 2003).
4. Advocates may attend the IEP meeting. *Letter to Serwecki*, 44 IDELR 8 (OSEP 2005).

IV. The Role of Related Service Personnel In Attending Meetings

- A. Other individuals can include related service personnel. Related service personnel would be the most typical example of "other individuals."
- B. Notice that these individuals attend at the "discretion" of the school district or parents and are not required participants.

V. Requests for Additional School Personnel To Attend The IEP Meeting

- A. There is no obligation to obtain parental approval in advance to excuse multiple teachers from the IEP meeting as long as one general education teacher and one

special education teacher are attending. *Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 2011).

VI. Excusing Personnel from Attending All or Part of An IEP Meeting

A. 20 U.S.C. § 1414(d)(1)(C)

(C) IEP team attendance. (i) Attendance not necessary. 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 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.

(ii) Excusal. 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 –

(I) the parent and the local educational agency consent to the excusal; and

(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(iii) Written agreement and consent required. A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

B. Excusing IEP Team Members

1. It is generally accepted by USDOE that in order for a *required* IEP team member to be excused from participating in the IEP meeting, there must be compliance with the excusal provision. 71 Fed. Reg. 46,669 (2006).
2. Required members do not include those invited in the discretion of the parents or the school district. *Id.*
3. It might be easier to include one general education teacher rather than to obtain advance permission to excuse the teacher from attending.
4. Excusal of an IEP team member when the individual's area of service is not being discussed requires parental *written agreement*. Excusal of a team member whose area is being modified or discussed requires *written consent*. 34 CFR 300.321(e)(2); 71 Fed. Reg. 46,673 (2006). Written consent is more burdensome and requires "the parent has been fully informed in his or her native language...and understands that the granting of consent is voluntary and may be revoked at any time."

5. The IEP team as a whole does not have to agree to the excusal and the individual who is excused does not have to agree to be excused. 71 Fed. Reg. 46,676 (2006).
6. The LEA representative may also be excused from the IEP meeting if the parents and the school district agree in writing to excuse this member. *Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 2011).
7. More than one member of the IEP team may be excused. *Id.*
8. There is no timeline set out for the excusal to be determined in advance of the IEP meeting or for the written input to be provided.
9. If an IEP team member is excused, the remaining members of the IEP team must be in a position to make IEP decisions. *Id.*
10. Be careful not to include unnecessary school personnel in the meeting. Including unnecessary individuals in the meeting complicates scheduling, among other issues.

VII. Scheduling the Meeting

- A. Obtain a meeting date.
- B. Parents should be consulted about their availability for an IEP meeting. Document the efforts to consult with the parents.
 1. The date and time of the IEP meeting must be mutually convenient for staff and parents. 34 CFR 300.322(a)(2).
 2. It is permissible to propose a date and advise the parents the IEP meeting will be held on that date unless the parents notify the school district that the date is not convenient and propose alternate dates. If this approach is used, be sure to advise the parents that the meeting will be rescheduled if not convenient for them, provide plenty of advance notice, impose a deadline for requesting an alternate date and ensure that the notice is actually provided to a correct address.
 - a. Request in the IEP notice that the parents make requests for rescheduling at least two business days in advance of the scheduled meeting time.
 3. Ask the parents to supply alternate meeting dates if they cannot meet on the proposed date.
- C. Meetings can be made more convenient for parents by allowing them to attend via a telephone conference call or videoconference if their work schedules do not

allow them to attend in person. 20 U.S.C. § 1414(f); 34 CFR 322(c). Also, ask for written input if there is no other option for participation.

D. If the parents will not meet during regular work hours, this refusal can be treated as a refusal to meet, particularly when meeting at other times is not mutually convenient for the school district. Parents should be advised of that fact and that the meeting will be scheduled and held without them if they will not make themselves available during regular work hours.

1. The U.S. Department of Education has opined that “Although [the IDEA] does not prohibit public agencies from scheduling IEP Team meetings in the evening, it does not require that they do so. Therefore, it is not unreasonable for public agencies to schedule meetings of the IEP Team only during regular school hours or regular business hours because it is likely that these times are most suitable for public agency personnel to attend these meetings. On the other hand, there may be circumstances where a parent cannot attend an IEP Team meeting that is scheduled during the day because their employment situation restricts their availability during school hours or business hours. In such a circumstance, public agencies should be flexible in scheduling IEP Team meetings to accommodate reasonable requests from parents. Where public agencies and parents cannot schedule meetings to accommodate their respective scheduling needs, public agencies must take other steps to ensure parent participation, consistent with [the IDEA]. These include individual or conference telephone calls or videoconferencing...” *Letter to Thomas*, 51 IDELR 224 (OSEP 2008).

E. Document with specificity the efforts that have been made to include the parents in the IEP meeting before proceeding to meet without them. 34 CFR 300.322(d).

F. In a recent Ninth Circuit case, the Court held that if proposing additional dates will result in a procedural violation, the district must determine which procedural violation – missing a deadline or not including the parents in the meeting – causes the least harm to the student.

1. A parent requested to reschedule an IEP meeting several times due to conflicts and illness. Concerned that it would miss the annual review deadline, the district held the IEP meeting anyway, knowing that the parent and the private school representative from the student’s current placement could not attend. School staff testified that they had “already asked ‘13 people on three separate occasions to change their schedules and cancel other commitments’ to schedule the meeting.” The IEP team, minus the parent and private school representative, proposed an annual IEP with a change in placement. The parent objected to the change in placement. The court found against the school district stating “...a meeting may *only* be conducted without a parent if ‘the public agency is *unable* to convince the parents they should attend’ ... The fact that it may

have been frustrating to schedule meetings with or difficult to work with Doug C. (as the Department repeatedly suggests) does not excuse the Department's failure to include him in [the student's] IEP meeting when he expressed a willingness to participate." The court further stated that "when confronted with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP[,]...the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE." *Doug C. ex rel. Spencer C. v. State of Hawaii Dep't of Educ.*, 61 IDELR 91 (9th Cir. 2013).

- G. The IEP meeting may be held without the parents in attendance if the parents cannot be convinced to attend. 34 CFR 300.322(d).

VIII. Providing Notice of the IEP Meeting

- A. Notification to the parents of the IEP meeting must be made early enough to ensure the parents will have an opportunity to attend. 34 CFR 300.322(a)(1).
- B. Even when the parents refuse to participate in an IEP meeting, they should be sent appropriate notice of the IEP meeting.
- C. Once a meeting date is agreed upon, the meeting notice should be sent to the parent(s) immediately.
 - 1. Regular mail, faxes or e-mail are good options. (Be mindful of confidentiality concerns.)
 - 2. Certified or registered mail usually slows down the notification process.
 - a. Although certified and registered mail is not preferred, if it is used to provide the IEP notice, allow two weeks for delivery.
 - 3. Oral communication is not preferred because there is no documentation of the scheduling of the meeting.
 - 4. Routinely ask parents for their e-mail addresses and ask them if it is acceptable to communicate with them in that form. Document if consent is given by the parents.
- D. Specific information must be provided in a meeting notice.
 - 1. Meeting notices provide parents with the basic information they need to prepare for and attend the meeting.

- a. The notice must indicate the purpose, date, time, and location of the meeting, and who will be in attendance. 34 CFR 300.322(b)(1)(i).
 - b. The notice must inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child. 34 CFR 300.322(b)(1)(ii).
 - c. The notice must inform the parent(s), in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of Part C to assist with the smooth transition of services. 34 CFR 300.321(f).
- 2. Although a meeting that occurs after a major or notable event may have a presumed topic, a proper meeting notice should always be provided.
 - a. School district did not inform parents that the IEP Team would discuss a change in placement. The Court acknowledged the district's procedural error, but found that the error was "mitigated because [the parents] knew before the meeting that [the student's] aggressive behavior and the safety of [school] staff would be issues on the agenda, and thus they were provided some level of participation in the meeting." The court also determined that the parents did actually participate in the meeting and their input was considered. *W.K. v. Harrison Sch. Dist.*, 509 F. App'x 565, 61 IDELR 123 (8th Cir. 2013)(unpublished).
- E. Meeting notices for IEP meetings should be distinct from meeting notices for other types of meetings.
 - 1. When inviting a parent to a meeting that is not an IEP meeting, do not use your district's IEP meeting notice template, or refer to the meeting as an IEP meeting. Doing so will only cause confusion about the types of decisions that can be made at the meeting.

IX. Difficulty with Scheduling

- A. The district should make all reasonable efforts to schedule the IEP meeting for a mutually agreeable date and time.
- B. The IEP meeting may be held without the parents in attendance if the parents cannot be convinced to attend. 34 CFR 300.322(d).
- C. A case from Rhode Island suggests that if, for some reason, a meeting is improperly held without parent participation due to lack of notice, the district

should immediately schedule and hold a meeting on the first mutually agreeable date and revisit the same topics.

1. Although parents were excluded from an IEP meeting due to lack of notice, the IEP team, including the parents, reconvened the next day, the parents fully participated, and no decisions at that meeting were found by the Court to have been predetermined. Additionally, the IEP team met again three months later and the court determined that no denial of FAPE had occurred as a result of the first IEP meeting. *See Hazen v. South Kingstown Sch. Dep't.*, 56 IDELR 16 (D. R.I. 2011).

X. Things That Should Not Be Said at IEP Meetings

Things NOT to Say	Things TO Say
<p>Thank you for visiting my class/school but I do not believe that this program is right for your child and you should look elsewhere.</p>	<p>I welcome you to my classroom and am happy to answer any questions that you have about the program. My students have experienced a lot of success with the individualized instruction that I provide.</p>
<p>If the parents have been sent to observe a program as a possible placement for their child, they should be met with enthusiasm and with good information and support for the program. The parents understandably cannot be convinced to send their child to a program that is not supported by the very persons who will be delivering the services.</p>	
<p>Do you have any suggestions for me on how to work with your child as I don't have the necessary training?</p>	<p>I am using various techniques to teach your child and those techniques are appropriate based on training that I have received. If you have additional insight into your child that you would like to share, I would also be happy to have some information from you.</p>
<p>It is the teacher who is expected to be able to deliver instruction to the student and not the parents. Teachers must feel adequately trained to work with all of their students and convey their expertise and confidence to the parents. If the teacher does not feel adequately trained, the teacher should approach the administration for support.</p>	

Things NOT to Say	Things TO Say
<p>I really do not have much information about our proposed placement and it is hard for me to describe what goes on in the program or how many students are in the class.</p>	<p>I am very familiar with the proposed program and would like to describe for you how your child would be taught in that program and how your child’s individual needs will be met.</p>
<p>The parents will never be convinced about the appropriateness of a program or the ability of their child to make progress in the program if the program cannot be described in detail. Consider using detailed printed materials to describe programs and share them with the parents.</p>	
<p>I don’t have any documentation to support that the IEP was implemented but I know that I delivered the services and the accommodations.</p>	<p>Let’s examine the data collection notebook for your child so that we can see exactly how your child is progressing on each goal.</p>
<p>Teachers should have documentation of the delivery times, duration and scope of services and notes that reveal which parts of the IEP were implemented on a particular day. If there is no documentation, the school division will have difficulty in defending claims that the IEP was not implemented.</p>	
<p>You want us to provide what? I have never heard of it.</p>	<p>I am using appropriate strategies with your child and he is receiving FAPE but I am happy to investigate and consider the addition of other techniques and services that you have recommended.</p>
<p>If you are not familiar with the technique or services being requested by parents, investigate the request so that an informed response can be made. Be sure to ask the parents for any information that they may have which supports the request and ask them which needs the service is designed to address for the student.</p>	

Things NOT to Say	Things TO Say
<p>We cannot make a decision about a private school placement unless someone from central office is present.</p>	<p>The IEP team has the authority to make the placement decision but before we decide whether a private school placement is needed, we would like to obtain more information about the private program. Let's schedule a follow up IEP meeting.</p>
<p>This statement improperly suggests to parents that only central office staff can approve a private placement. Placement decisions are made by the IEP team and not by central office staff.</p>	
<p>This school division prides itself on never placing a student in a private program.</p>	<p>We place students in private schools when their needs require a private placement. It is our opinion that your child does not require a private placement and is being appropriately served in the public schools.</p>
<p>It is good to be fiscally prudent, but remember that a school division must offer a continuum of placements, including a private placement, when necessary for FAPE. Make clear that a private placement is available when necessary for the student to receive FAPE.</p>	
<p>None of our students require ESY services.</p>	<p>We make individualized determinations of the need for ESY services.</p>
<p>Obviously, this type of statement is improper because of its refusal to acknowledge individualized decision-making. Some students may require ESY services and the services must be provided when necessary for FAPE.</p>	
<p>We cannot put that goal, objective, service or accommodation in the IEP because it is not allowed by our IEP program.</p>	<p>If that item is not an option in our program and your child needs it, we will manually enter the information.</p>
<p>Whatever needs the student has that have been determined by the IEP team, must be addressed in the IEP. A lack of computer program compatibility cannot justify an inadequate IEP.</p>	

Things NOT to Say	Things TO Say
<p>Dear Special Education Director: I have just learned that the student's IEP has not been implemented for the past six months. What do I do? Frustrated Teacher.</p>	<p>I have an urgent situation that we need to discuss immediately. Can we meet?</p>
<p>This type of statement is not a good one to put in writing. It is a good statement to address orally with the administration and to discuss strategies for the provision of compensatory education services.</p>	