

Special Education Legal Updates: State Perspective

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Office of Federal Programs

The Georgia Department of Education, Office of Federal Programs provides technical assistance, program monitoring, and resources to local educational agencies (LEAs) implementing federal Every Student Succeeds Act (ESSA) grants and Individuals with Disabilities Education Act (IDEA) grants. Additionally, this office provides the necessary infrastructure to support local school districts in their efforts to provide special education-related services for students with disabilities and services and supports for English learners.

Greetings!

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It's all about the kids...



Acronyms

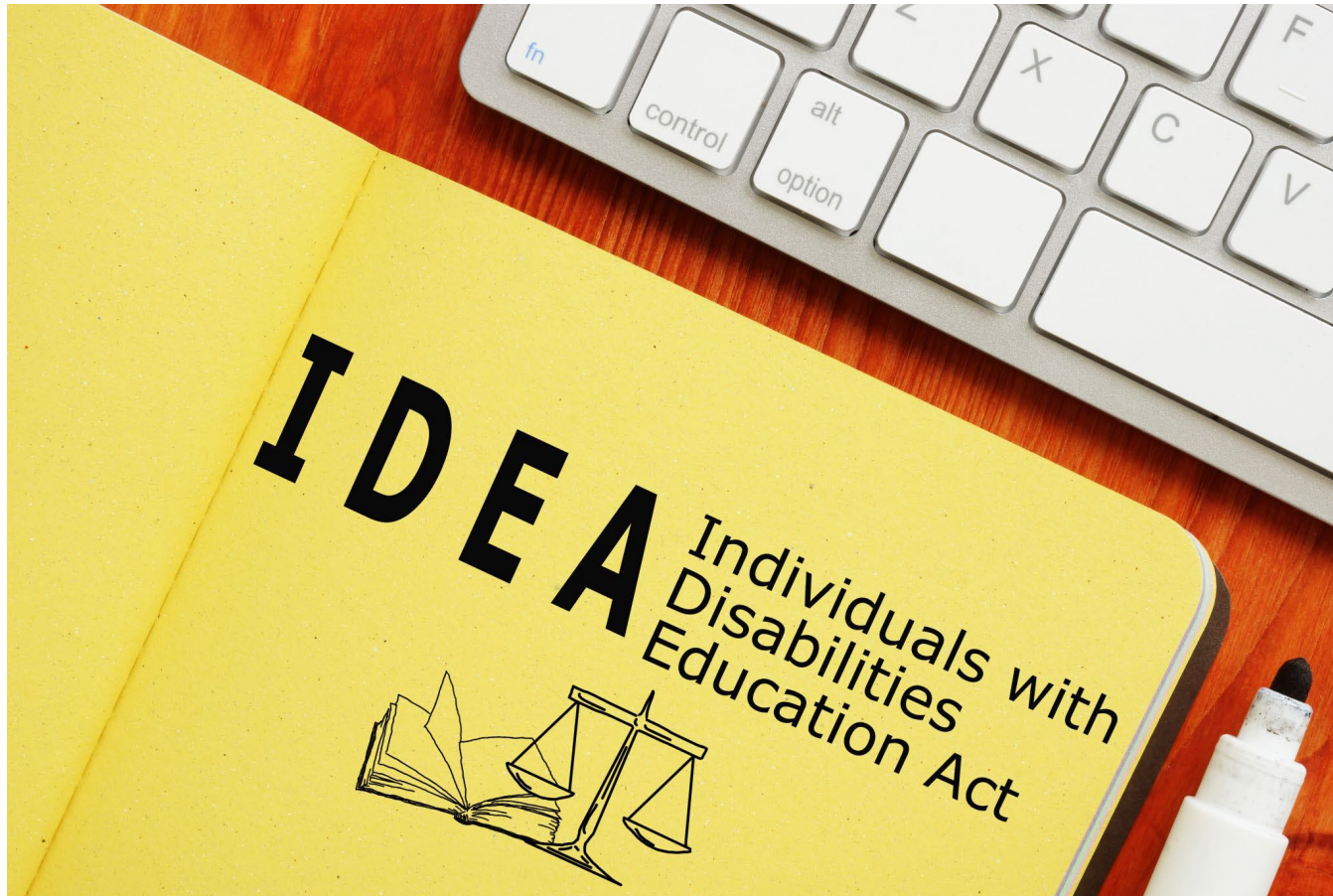
- IDEA – Individuals with Disabilities Education Act
- FAPE – Free appropriate public education
- SEA – State educational agency
- DPH – Due process hearing
- AU – Autism Spectrum Disorder
- SLP – Speech Language Pathologist
- OHI – Other Health Impairment
- SLD – Specific Learning Disability
- LRE – Least restrictive environment
- IEP – Individualized education program
- ALJ – administrative law judge

Acronyms

- ADHD – Attention Deficit Hyperactivity Disorder
- GMAS – Georgia Milestones Assessment System
- PWN – Prior Written Notice
- SST – Student Support Team
- MTSS – Multi-Tiered Systems of Support
- LEA – Local educational agency
- DSM-5 – Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition
- WISC-V - Wechsler Intelligence Scale for Children® Fifth Edition
- BEERY VMI - Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition
- KTEA-3 - Kaufman Test of Educational Achievement, Third Edition

Acronyms

- PTSD – Post-Traumatic Stress Disorder
- FBA – Functional Behavioral Assessment
- MDR – Manifestation Determination Review
- OCD – Obsessive-Compulsive Disorder
- BIP – Behavior Intervention Plan
- SWD – Student with a disability
- DPH – Due process hearing
- IEE – Independent educational evaluation



1975-2025

Purpose of IDEA

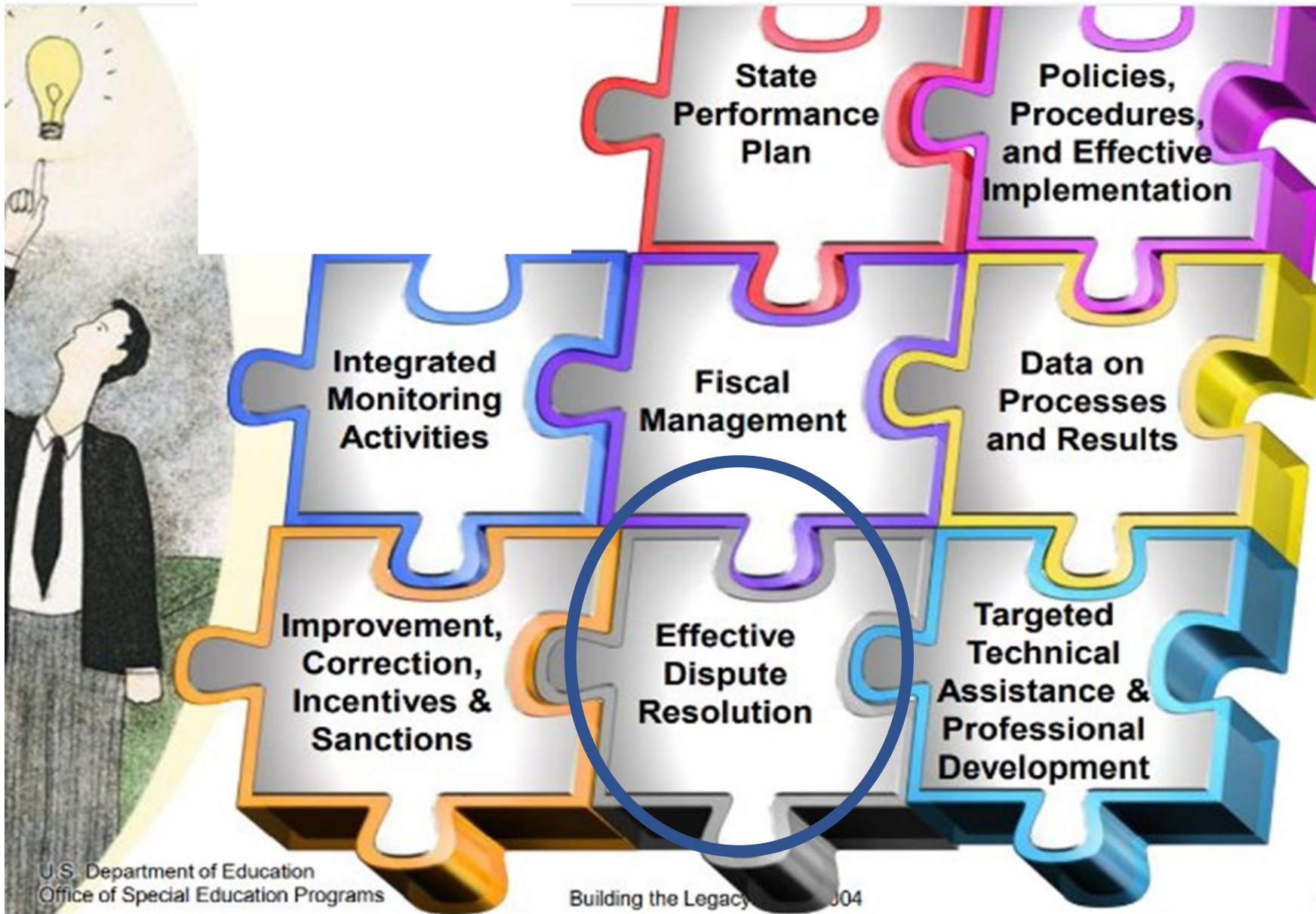
- To **ensure** that **all** children with disabilities have available to them a **free appropriate public education (FAPE)** that emphasizes special education and related services designed to meet their **unique needs** and prepare them for **further education, employment, and independent living**;
- To **ensure** that the **rights of children with disabilities and parents** of such children are **protected**;

Purpose of IDEA

- To assist **States, localities**, educational service agencies, and Federal agencies **to provide** for the education of all children with disabilities
- To assess, and ensure the **effectiveness** of, efforts to educate children with disabilities.
- 20 U.S.C. 1400(d)(1), (4), 34 C.F.R. § 300.1

SEA responsibility for general supervision (34 C.F.R. 300.149)

- The State Educational Agency (SEA) is responsible for **ensuring**:
 - (1) That the **requirements of IDEA Part B** are carried out; and
 - (2) That **each educational program** for children with disabilities administered within the State, including each program administered by any other State or local agency
 - (i) Is **under the general supervision** of the persons responsible for educational programs for children with disabilities in the SEA; and
 - (ii) **Meets the educational standards of the SEA**



Dispute Resolution Data



Mediation Data (as of February 27, 2025)

	FY2022	FY2023	FY2024	FY2025 YTD
Mediation Withdrawn	28 (22%)	47 (32%)	41 (26%)	8 (8%)
No Mediation Agreements	50 (38%)	57 (39%)	51 (33%)	25 (25%)
Mediation Agreements	52 (40%)	43 (29%)	65 (41%)	26 (26%)
Pending	--	--	---	41 (41%)
Total	130	147	154	100

Formal Complaint Data (as of February 27, 2025)

	FY2022	FY2023	FY2024	FY2025 YTD
Complaints Denied	32 (15%)	41 (15%)	62 (19%)	31 (15%)
Complaints Withdrawn	51 (23%)	70 (26%)	81 (25%)	37 (18%)
Complaints with Resolution Letters Issued with one or more finding of non-compliance	78 (36%)	83 (31%)	111 (35%)	46 (22%)
Complaints with Resolution Letters Issued with no findings of non-compliance	57 (26%)	74 (28%)	65 (20%)	45 (22%)
Pending	--	1 (2%)	1 (1%)	48 (23%)
Total Complaints Filed	218	269	320	207

Due Process Hearing (DPH) Data (as of February 27, 2025)

	FY2022	FY2023	FY2024	FY2025 YTD
DPHs Withdrawn	18 (16%)	23 (19%)	22 (17%)	25 (19%)
DPHs Dismissed	81 (70%)	85 (71%)	88 (67%)	49 (38%)
DPHs Held in Favor of Parent	3 (3%)	2 (2%)	0 (0%)	1 (1%)
DPHs Held In Favor of District	12 (10%)	9 (8%)	19 (15%)	2 (1%)
Pending	1 (1%)	---	1 (1%)	53 (41%)
Total	115	119	130	127



Due Process Hearings

Due Process Hearing (DPH) Decisions

- Out of the 19 DPH decisions for FY24:
 - 6 were related to MDR
 - 2 were related to non-SWD or non-resident student
 - 2 were district filings related to parent's request for IEE
 - 3 were FAPE cases related to Placement and LRE
 - 2 were FAPE cases related to failure to provide appropriate services, supports, and/or evaluation
 - 1 was related to Child Find and failure to provide appropriate evaluation
 - 1 was related to restraint and access rights
 - 2 were related to issues barred due to a settlement agreement

2442377

- Middle school student eligible under the categories of AU and OHI (ADHD, anxiety, depression, PTSD)
- In sixth grade, the student exhibited physical and verbal aggression toward another student; district conducted an FBA to address refusal and inappropriate social interaction; function of refusal was avoidance and no function determined for other target behavior
- In sixth grade, student downloaded unauthorized software on the district-issued laptop

2442377

- In seventh grade, a district psychologist conducted a psychoeducational evaluation of the student
- In August of seventh grade, student exhibited physical aggression toward a student; district conducted MDR; one of the attendees was the district psychologist; Team determined, based on the psychoeducational evaluation and investigation of the incident, the conduct was a manifestation of the student's disability
- In November, the district initiated another FBA to address refusal, out of area, and physical aggression; function of refusal was avoidance and no function determined for other target behaviors

2442377

- At end of March in seventh grade year, student accessed pornographic images on the district-issued laptop and showed them to other students; district held MDR and determined not a manifestation of the student's disability; student's family did not agree
- In February of eighth grade year, student installed password-stealing and other unauthorized software on the district-issued laptop; district held MDR and one of the attendees was the district psychologist who had previously evaluated the student

2442377

- At MDR, family members stated that the student is “fixated” with the computer and this is directly related to the student’s AU and OHI diagnoses; also argued that student has difficulty following rules as noted in the district’s own psychological evaluation
- At MDR, district stated the student’s behavior was not impulsive because the student brought flash drives to school in order to hack the computer; determined not a manifestation and student suspended for rest of the school year

2442377

- At the DPH hearing, the district psychologist testified that the March incident was not a manifestation of the student's disability
 - While student struggles with social skills, student understands difference between right and wrong
 - Noted that kids with autism tend to be “rule followers”
- A family member, who is a licensed psychologist, testified that the incident was a manifestation of the student's disability because children with autism who have OCD are hyper focused on a specific thing, like computers, and compulsion and obsession overrides

2442377

- Parent alleged, despite the student’s history of technology related infractions, the district failed to conduct an FBA and/or implement a BIP to address this behavior
 - ALJ noted that seven disciplinary infractions involved improper use of technology; however, four were related to playing on the computer instead of working. The other three involved downloading restricted software, but they occurred once in sixth grade, once in seventh grade, and once in eighth grade
- ALJ noted concern that the district had taken “few steps” to address the student’s pattern of inappropriate and aggressive behavior

2442377

- Parent alleged the district members improperly determined the student's behavior in March was not related to his disabilities
 - ALJ noted that student's disabilities manifested themselves in work refusal, difficulty focusing, struggling with peer interactions, and impulsive, inappropriate behavioral outbursts. While student had history of not following rules, it was due to impulse issues and poor motivation, not failure to understand the rules. The incident in question required planning in advance and student had committed similar offenses and been told that those actions were wrong.
 - ALJ noted that, even though student appears to have a "fixation" with computers, the student's strong interest in computers does not necessarily mean that the student would be expected to "illegally breach his school's network."

2442377

- Parent alleged district failed to allow them to consider any evidence from the DSM-5 related to the student's autism during the MDR meeting. Specifically, the student's fixation on computers and technologies and issues with socializing and making friends.
 - ALJ noted that both traits are addressed in the GaDOE AU eligibility criteria, and the district team members did not deny that those traits were associated with autism. Rather, they did not believe the student's behavior in this instance was a result of those traits.

2442904

- In fourth grade, student's parent and aunt expressed concern about student's academic performance; student began receiving reading interventions through district's MTSS; parent expressed concern over not receiving all the data collected and believed student's progression through MTSS tiers was stalled
- At end of fourth grade, MTSS meeting held and school proposed Tier 2 and Tier 3 interventions and attendance in summer school; Parent requested special education evaluation

2442904

- District psychologist conducted psychoeducational evaluation in June and completed the evaluation report in July
 - Noted that student had been receiving reading interventions and had not made consistent progress
 - Noted that there were limited intervention data and the lack of data should be taken into account when considering need for special education support

2442904

- District psychologist administered the following assessments with the following results:
 - WISC-V (average to low average ranges, with exception of low range on the Visual Spatial Block Design subtest)
 - BEERY VMI (scored in 13th percentile which means below average visual-motor integration and fine-motor skills and this may impact written performance of school tasks)
 - KTEA-3 (low average reading, math, writing, and oral language skills)

2442904

- Eligibility meeting held in November and student determined not eligible for special education; district psychologist from the school the student was currently attending attended the eligibility meeting
- Parent disagreed with determination that student was not eligible for special education
 - Concerned with statement in eligibility report that student “demonstrated an area of need in the area of visual spatial functioning”
 - Concerned with student’s declining academic performance
 - Requested an IEE

2442904

- District psychologist who evaluated the student testified that student did not meet criteria for SLD
 - The results of the evaluation did not indicate the student had a processing deficit that would significantly impact the student's academic performance
 - While the report included recommendations to help the student improve reading, writing, math, and visual motor skills, these could be implemented outside of an IEP

2442904

- District psychologist who attended the eligibility meeting testified that student did not meet criteria for SLD
 - While student's fourth grade GMAS scores show a decline in performance and the student's grades did drop, this did not change the psychologist's opinion that the eligibility determination was correct

2442904

- Parent argued that the MTSS process was too lengthy, and the student did not receive interventions in fifth grade
 - ALJ noted no Child Find violation has occurred. Student was evaluated for special education and no evidence suggesting a “clear sign of disability.”
 - ALJ noted that both district psychologists testified that the student did not qualify for special education in SLD category.
 - ALJ acknowledged parent’s frustration with MTSS experience and school’s failure to fully provide the tiered interventions the MTSS Team agreed to, and the district psychologist recommended

2442904

- Ultimately, ALJ held the parent failed to prove by a preponderance of the evidence that the district overlooked clear signs of disability or negligently failed to initiate testing prior the parent's request for an evaluation



Formal Complaints

Formal Complaint Trends

- Number of complaints filed are increasing every year
- More complaints filed by current school staff
- More complaints filed in districts who have not historically had complaints
- More complaints filed on behalf of more than one student (systemic)

FY22 Findings of Non-Compliance in Formal Complaints (121 Findings against 28 districts)

- **Implementation of IEP (29)**
- **Development, Review and Revision of IEP (16)**
- **Evaluations and Reevaluations (12)**
- **Free, Appropriate Public Education (20)**
- Personnel Qualifications (8)
- Least Restrictive Environment (10)
- Prior Notice by Public Agency (4)
- Child Find (3)
- Procedural Safeguards Notice (2)
- Access Rights (2)
- IEP Team (1)
- Parent Participation (3)
- Confidentiality (3)
- Related Services (2)
- Discipline Procedures (1)
- Amendment of Records at Parent Request (1)
- When IEPs must be in effect (1)
- Physical Education (1)
- Equitable Services (1)
- Dispute Resolution (1)

FY23 Findings of Non-Compliance in Formal Complaints (164 Findings against 40 districts)

- **Implementation of IEP (32)**
- **Free, Appropriate Public Education (31)**
- **Development, Review and Revision of IEP (23)**
- **Evaluations and Reevaluations (21)**
- Least Restrictive Environment (10)
- Prior Notice by Public Agency (9)
- Discipline Procedures (7)
- Child Find (6)
- Parent Participation (4)
- IEP Team (4)
- Access Rights (2)
- Related Services (3)
- When IEPs must be in effect (3)
- Opportunity to examine records; parent participation in meetings (3)
- Personnel Qualifications (2)
- Confidentiality (1)
- State Monitoring (1)
- Service Plan (1)
- Independent educational evaluation (1)

FY24 YTD Findings of Non-Compliance in Formal Complaints (191 Findings against 40 districts)

- **Implementation of IEP (52)**
- **Free, Appropriate Public Education (39)**
- **Development, Review and Revision of IEP (31)**
- **Evaluations and Reevaluations (19)**
- Prior Notice by Public Agency (8)
- Least Restrictive Environment (7)
- Child Find (7)
- Discipline Procedures (5)
- Parent Participation (4)
- When IEPs must be in effect (4)
- Access Rights (3)
- Personnel Qualifications (3)
- Procedural Safeguards Notice (3)
- IEP Team (2)
- Related Services (1)
- Opportunity to examine records; parent participation in meetings (1)
- Independent educational evaluation (1)
- Parental Consent (1)

FY25 YTD Findings of Non-Compliance in Formal Complaints (81 Findings against 22 districts)

- **Implementation of IEP (19)**
- **Development, review, and revision of IEP (16)**
- **Free, Appropriate Public Education (12)**
- Prior Notice of Public Agency; Content of Notice (8)
- Personnel Qualifications (6)
- Evaluations and Reevaluations (4)
- IEP Team (3)
- Independent Educational Evaluation (1)
- Discipline Procedures (1)
- Opportunity to Examine Records; Parent Participation in Meetings (2)
- Parent Participation (2)
- Child Find (2)
- Least Restrictive Environment (2)
- Parental Consent (1)
- When IEPs must be in effect (1)
- Access Rights (1)



Implementation of IEP

Implementation of IEP (34 C.F.R. § 300.320)

- This regulation defines an IEP and details the required components of an IEP.
- “Each public agency must ensure that, **as soon as possible** following development of the IEP, special education and related services are made available to the child **in accordance with the child’s IEP.**” 34 C.F.R. § 300.323(c)(2)
- **Overarching issue: Students not receiving the special education and related services required in the IEP, especially speech-language services**

Categories of Implementation Violations

- Incorrect service model (small group or co-taught instruction in IEP but student in a different class)
- Lack of documentation that student received special education and related services required in the IEP, **especially speech services**
- Lack of documentation that parent received periodic progress on goals
- Absence of certified personnel (e.g., teacher or paraprofessional serving without qualifications/certifications required and vacancies and absences, **especially SLPs**)
- Lack of fidelity and/or consistency in provision of IEP/behavior intervention plan (BIP)/student supports (accommodations)

Implementation Violations due to Failure to Provide Speech Services as Stated in IEP

- 7 violations for Implementation due to Speech
 - 7 complaints in 6 different districts
 - 4 violations due to **staff shortages/SLP vacancy**, including 1 maternity leave

Implementation Violations due to Failure to Provide Speech Services as Stated in IEP

- 2 violations due to **SLP absences, attending IEP meetings, conducting speech-language evaluations**-missing scheduled sessions
- 3 districts **attempted to provide compensatory services** once SLP was hired or could make up for missed sessions, but not able to fully compensate for all missed services

Implementation Violations

Progress on IEP Annual Goals & Objectives not reported to parents as stated in the IEP

- No evidence to show parent was provided progress reports every 9 weeks
 - Once parent requested reports in February 2024, 2 reports were provided but then no evidence report was provided in May 2024
- Progress on Speech-Language Goals not provided
 - SLP failed to report progress on speech-language goals & also missed 4 sessions with the student due to absence, attending SST meeting, and conducting a speech-language evaluation
 - Data for other goals was provided to the parent as required

Implementation of IEP - Things to consider

- Procedures for checking IEPs before start of school year (especially the transition years from elementary to middle and middle to high)
- Procedures when special education teachers and related service providers are absent and when there is a vacancy (also, missed IEP services)
- How to document services and accommodations
- Ensuring all teachers are aware of students' IEPs
- Collecting sufficient progress monitoring data
- Providing timely progress reports
- Procedures for transfer students with IEPs

Development, Review, and Revision of IEP



Development, Review, Revision of IEP (34 C.F.R. § 300.324)

- This regulation details, among other things, the factors that must be considered when developing an IEP, when an IEP can be amended without an IEP Team meeting, the annual review requirement, and when an IEP must be revised.
- 34 C.F.R. § 300.324(b)(1)(ii) says that “Each **public agency must ensure** that. . . the IEP Team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals. . . .”

Categories of Development, Review & Revision Violations

- Failure to consider parent concerns/requests
- Failure to address lack of expected progress toward IEP annual goals and objectives and in general education curriculum
- Improper data collection on IEP annual goals and objectives

Categories of Development, Review & Revision Violations

- Lack of appropriate behavioral interventions and supports when behavioral concerns are present, especially when they are escalating or when the parent or staff are requesting to meet to discuss these concerns
- Failure to reconvene when agreed upon, e.g. to consider ESY services, and one failure to hold the annual IEP review meeting
- Amending the IEP outside of an IEP Team meeting without consent or agreement from the parent

Lack of progress

- IEP Team met on December 6, 2023. Team addressed the parent's concerns about the student failing Algebra and student was placed on credit recovery. Student continued to fail, and the parent continued to express concerns throughout 2nd semester. Team failed to meet during the 2nd semester to address the student's continued lack of progress in the general education curriculum.

Lack of progress cont'd

- Student was demonstrating lack of expected progress toward annual goals and in the general education curriculum during the 1st quarter; however, IEP Team did not convene an amendment meeting until after persistent requests from the parents.
- Team agreed to implement a behavior contract for 3 weeks and reconvene at the end of the 3 weeks to review the contract. IEP Team did not meet; despite student's continued lack of progress.
- Parent requested a functional behavioral assessment (FBA) in March 2024 and school scheduled an amendment meeting and provided the parent with consent in April 2024.

Failure to address student behaviors

- Student was isolated in a cool down room for behaviors that occurred between August 2023 and November 2023.
- IEP Team did not meet until January 2024; however, continued to state that student's behaviors did not impede his learning or the learning of others.
- District stated that the school team collaborated with a behavior support teacher for recommendations; however, the IEP Team did not meet to consider these recommendations and implement positive behavior intervention and supports to address the student's behaviors.

Amending IEPs Outside of a Meeting

- Services changed when student was expelled from school; the services were changed outside of the IEP Team meeting without agreement from the parent
- Special transportation removed when the student enrolled in a new school in the district; parents were now providing the transportation, but an IEP Team meeting was required or parent agreement to amend without a meeting
- Special education instruction in a small group setting changed to co-taught instruction to match student's schedule; also, an Implementation violation because student sat in wrong class – the co-taught class for 6 weeks prior to the IEP amendment and then the amendment was done outside of an IEP Team meeting and without the parent's consent to make the amendment without a meeting

Amending IEPs Outside of a Meeting

- Student's IEP required him to be in a small group social studies class for the 2024-2025 school year.
- At the beginning of the school year the student was placed in a co-taught social studies class because small group social studies classes were only offered in the spring semester.
- In August 2024 IEP Team met to discuss the student's services and determined he remain in the co-taught social studies class; however, did not amend the IEP to reflect this.

Development, Revision, Revision of IEP – Things to consider

- Making sure that IEP Teams consider parent information in a timely manner
- Not waiting for the parent to ask for an IEP Team meeting (the burden is on the public agency)
- Honoring parent's right to request an IEP Team meeting
- Ensuring timely annual review IEP Team meetings (start scheduling early)
- Ensuring that the school's scheduling or lack of staff do not dictate services and placement

Free Appropriate Public Education (FAPE)



Provision of FAPE (34 C.F.R. § § 300.17, 300.101)

- Free appropriate public education or FAPE means **special education and related services** that—
 - (a) Are provided at **public expense**, under public supervision and direction, and without charge;
 - (b) Meet the **standards of the SEA**, including the requirements of this part;
 - (c) Include an **appropriate preschool, elementary school, or secondary school education** in the State involved; and
 - (d) provided in conformity with an IEP that meets the requirements of § 300.320 through § 300.324:
 - Definition of IEP; IEP Team; Parent Participation; When IEPs must be in effect; and Development, Review, and Revision of IEP.

Categories of FAPE Violations

- Implementation of IEP and Development, Review, and Revision of IEP most common violation leading to a FAPE violation
- Personnel Qualifications and IEP Team also led to a FAPE violation
- Restraint – State Board Rule 160-5-1-.35

Seclusion & Restraint Violations

- Two staff members applied physical restraint to the student for two minutes. The district contacted the parent to notify of the restraint; however, it was not until two school days after the incident occurred.
- State Board Rule 160-5-1-.35 “Written parental notification when physical restraint is used to restrain their student within a reasonable time not to exceed one school day from the use of restraint...”

Prior Written Notice



Prior notice by the public agency; content of notice (34 C.F.R. § 300.503(a))

- Written notice
- Given to parents of a child with a disability
- A reasonable time before the public agency:
 - Proposes or Refuses to initiate or change:
 - the identification of the child
 - the evaluation of the child
 - the educational placement of the child
 - the provision of a free appropriate public education (FAPE) to the child
- Meets seven (7) requirements of 34 C.F.R. § 300.503(b)

PWN Violations

- IEP served as PWN with implementation date the same date as the IEP Team meeting and no documentation that the parent agreed for the changes to take place the same date as the meeting (failure to provide the parent with written notice within a reasonable time before the changes in the provision of FAPE)
- Student was placed in alternative school and a PWN provided after the change in services was implemented
- After an IEP Team meeting, a third placement option was offered but PWN did not include the rationale (and placement option was absent in IEP)

PWN Violations

- IEP Team determined another school was necessary for the student to receive FAPE so a PWN was required (and decision was made without the parent in attendance at the meeting)
- PWN provided but did not include a copy of the procedural safeguards or sources for the parent to contact to help the parent understand the provisions of Part B of the IDEA
- Following request for an initial evaluation, the district failed to ensure the parent was provided with a consent to evaluate form or a PWN of the district's refusal to conduct the evaluation

PWN – Things to consider

- Make sure that PWNs are provided within a reasonable time **before** the district implements or refuses to implement the action.
 - Be careful when the IEP serves as the PWN, and the IEP is implemented on the same day as the IEP Team meeting.
- PWNs, including when the IEP serves as the PWN, must meet all 7 requirements of IDEA's PWN requirements.



There is always light, if only
we're brave enough **to see it.**

If only we're brave enough
to be it.

—Amanda Gorman, *The Hill We Climb*

YOU MATTER





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