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The Initial Considerations

When well prepared and well intentioned IEP team members come together, the process of developing the IEP can go smoothly, productively and even pleasantly. In this section we examine the process itself and all the steps necessary to complete a legally correct and educationally useful IEP.

As indicated in the first chapter, school personnel have the major responsibility for insuring the preliminary concerns are well handled—arranging the physical setting, making introductions and setting ground rules. Clearly, all team members, including the parents, should be on time for the meeting and in the best spirits possible (“we’re all in our places with bright shiny faces”).

IDEA '04 requires the team to consider certain factors: (a) the strengths of the child; (b) the concerns of the parents for enhancing the education of their child; (c) the results of the initial evaluation or most recent evaluation of the child; and (d) the academic, developmental, and functional needs of the child (20 U.S.C. §1414 (d)(3)(A)).

Considering the Child’s Strengths

Commonly and appropriately, the actual IEP development part of the meeting begins with a brief discussion of the strengths of the child and the concerns of the parents. If the parents know before the meeting that these will be discussed, they can have a list of a handful of special strengths or “positives” about the child that might not be obvious at school but could be helpful to the teachers. Parents should resist the temptation to type up a 4-page single-spaced, detailed ode to the child’s many capabilities. The impulse is totally understandable, but the true focus of the IEP must be on the child’s needs. If the parent fears that some school personnel may be seriously underestimating some of the child’s performance levels, that can be dealt with outside the IEP meeting, for example, in a parent-teacher conference or a private letter. Often there is barely time to cover the essentials in an IEP meeting, so it is important to use the available time on task. The kind of positive information about a child that can be helpful could include “She loves to care for animals” (perhaps feeding the classroom gerbil could be a great motivator for finishing arithmetic problems), “He is very appropriate with younger children and likes to

help them,” “She can glance at something and draw it almost perfectly,” or “He has just learned to tell time and is so proud he can do it.”

School personnel may also be able to note strengths or positive aspects of the child’s performance unknown to the parents. Just as the parents should focus on strengths pertinent to school, so the school personnel may concentrate on strengths that are clear in school, but may not be as apparent to the parents.

Considering Parent Concerns

Parents must also be provided an opportunity to raise their concerns about their child’s education. Some parents may be uncomfortable about social rejection of their child by peers. Others wonder about the expectations that are and ought to be held for the child. Some special education euphemisms may lead to such confusion. For example, the term “developmental delay” naturally leads one to ask, “When will she begin catching up instead of falling further behind?” When parents bring up these genuine issues, it is crucial that the team truly listen and respond with respect. Sometimes an expressed parent concern makes it apparent to the school personnel that parent counseling or parenting skills training is needed. Too often school personnel forget some of the specific, enumerated related services that must be offered when needed to assist the child to benefit from her education program. One of these mandated services is training for parents if it is needed. It may also be that parents need honest and candid counseling to understand the implications of their child’s disability.

A possible abuse to be avoided in this initial discussion is making parents feel that the team grudgingly provided a required minute or two for their “concerns,” followed by a checkmark on a form, and were relieved to move on quickly to other matters. To speak from the heart and not be truly heard is painful for anyone. It may be especially difficult for parents to talk about serious concerns if a large number of school personnel, some completely unknown to the parents, are present. This is one of many reasons the number of IEP meeting participants should be carefully limited except under extraordinary circumstances.

As parents express their legitimate concerns for improving the child’s educational experience, they need to recognize that no one, not even the best qualified educators in all the world, can create time. If parents ask for extra time for all assignments and on all tests, plus daily tutoring in reading and daily speech therapy, the team

Student _____		Actual Performance Level and Date Assessed
Present Level of Performance:	1 st Grading Period Progress Marker #1:	
Annual Goal : (Progress Marker #4):		Date:
Service: (Special education, Related Services, Supplementary Aids and Services, Assistive Technology, Modifications/ Accommodations, and Support for Personnel)	2 nd Grading Period Progress Marker #2:	
		Date:
How Progress toward Annual Goal will be reported to parents:	3 rd Grading Period Progress Marker #3:	
		Date:

Fig. 2.1 Sample Partial IEP Format

<p>Unique Education Needs, Characteristics, and Present Levels of Performance</p> <p><i>Danny is a fourth grader with L.D.</i></p>	<p>Special Education, Related Services, Supplemental Aids & Services, Assistive Technology, Program Modifications, Support for Personnel</p>	<p>Measurable Annual Goals & Progress Markers</p> <ul style="list-style-type: none"> • to enable students to participate in the general curriculum • to meet other needs resulting from the disability
<p><i>1. Danny reads aloud very well, but he does not comprehend much of the stories.</i></p> <p><i>PLOP—Answers 0% of oral comprehension questions correctly during reading group (5-8 opportunities) and answers 50% of comprehension questions correctly in the workbook (10-15 opportunities)</i></p>	<p><i>1. Danny will be instructed from a highly structured, direct instructional reading program in a small group setting for 60 minutes daily.</i></p>	<p><i>1. Goal—By March 1st, Danny will answer 100% of oral comprehension questions correctly during reading group (5-8) and answer 95% of comprehension questions correctly in the workbook (10-15).</i></p> <p><i>P.M. 1—By November 30th, answer 25% of oral comprehension questions and 70% of comprehension questions correctly.</i></p> <p><i>P.M. 2—By December 30th, answer 50% of oral comprehension questions and 80% of comprehension questions correctly.</i></p> <p><i>P.M. 3—By January 30th, answer 75% of oral comprehension questions and 90% of comprehension questions correctly.</i></p>
<p><i>2. Danny spells very poorly.</i></p> <p><i>PLOP—Spells 3/20 words correctly on a probe with comparable words randomly selected from Spelling Mastery B.</i></p>	<p><i>2. Danny will be taught from Spelling Mastery B in a small group setting for 25 minutes, 5 times a week.</i></p>	<p><i>2. Goal—By June 10th, Danny will be able to spell 20/20 words correctly on a probe with comparable words randomly selected from Spelling Mastery B.</i></p> <p><i>P.M. 1—By January 10th, Danny will spell 7/20 words correctly.</i></p> <p><i>P.M. 2—By March 10th, Danny will spell 12/20 words correctly.</i></p> <p><i>P.M. 3—By May 10th, Danny will spell 17/20 words correctly.</i></p>

Fig. 2.2 Example of a different partial IEP form completed

Distributing Copies of the IEP

School personnel sometimes want time after the IEP meeting to put finishing touches on the IEP before mailing the parents' copy to them. IDEA requires that the school give the parents a copy at no expense to them (34 C.F.R. §300.345 (f)). If the IEP development has been difficult, the discussion heated or lengthy or for any other reason, the parents may wish to obtain a copy of the rough IEP before leaving the meeting and school personnel should comply with this request. If notes were taken during the meeting, especially if they are to be incorporated into the IEP, a copy of those should also be provided to the parents at their request. Of course, a copy of the finalized IEP must also be given to the parents.

An IEP is an “education record” as defined in and protected by the Family Educational Rights and Privacy Act (FERPA). FERPA (1995) generally allows school personnel to disclose education records only with parental consent. However, there are many exceptions to this parental consent disclosure requirement. One of these exceptions allows school personnel to share education records, including IEPs, with other school personnel determined by the LEA to have “legitimate education interests” in the record(s). Rarely does a dispute arise over sharing IEPs with interested parties because it is almost always in the child’s interest that everyone involved with him or her have a copy of at least the pertinent portions of the IEP. If a parent has any concern that the IEP (or portions of it) are not reaching all who should see it, the parent can simply take responsibility for making copies and can personally hand them to the bus driver, substitute teachers, cafeteria monitors, playground supervisors, vice principal, security officers and more. Sadly, it is possible that some school personnel who have contact with children receiving special education may not be familiar with IEPs or may not know that certain provisions of an IEP (especially related to behavioral matters) apply to all school personnel, not just to teachers and related services staff. The crucial thing to remember is that parents are completely free to distribute and circulate their child’s IEP or other education records as they please. FERPA places distribution and access restrictions only on educational institutions, not on parents or children.

Another reason parents should consider making multiple copies of the IEP is that if the child moves to another school, the IEP can be immediately available to the new school personnel, should parents so desire.

The critical matter for the LEA with regard to copies of a child’s IEP is to be sure that copies are provided to (a) the parents, (b) the child’s teacher and related service

Chapter 3

Here are Jenni's data from her school's office records for the first two quarters:

Table 3.1: Jenni's Average Number of Weekly Absences and Tardies.

Quarter 1	Absences	Tardies	Total
Week 1	3	2	5
2	2	2	4
3	4	1	5
4	2	5	7
5	2	2	4
6	1	3	4
7	1	4	5
8	1	2	3
9	1	3	4
Average			$41/9 = 4.5$
Quarter 2			
Week 1	1	3	4
2	0	2	2
3	0	3	3
4	0	1	1
5	0	2	2
6	1	2	3
7	0	2	2
8	0	1	1
9	0	3	3
Average			$21/9 = 2.3$

These data show that Jenni didn't quite reach the first progress marker but was nevertheless making significant progress. By the 2nd nine weeks she was well on track to reach the annual goal. The crucial point is that objective measurement, as required by IDEA '04, is the key to insuring that effective services are delivered. The emphasis in service provision needs to shift from "what service is provided, how often" to how *effective* is the service, whatever it may be.

As mentioned earlier, many parents invest heavily in obtaining a huge variety of evaluations and in securing certain amounts of particular services. In the authors' experience, the same energy directed toward obtaining regular, objective progress assessments goes further toward insuring the effectiveness of services. If such assessments show that the child is not making adequate progress, the intervention that has not been successful *must* be changed. If an LEA were to unreasonably continue a service that data had shown to be ineffective, that could be seen as not acting in good faith,²² or having denied FAPE. Then the LEA could be liable for a private placement, compensatory education, or other remedies, perhaps even dollar damages.

Having opined that meaningful progress assessment is ultimately more important than the amount of service, it is also true that IDEA requires that all the services written on the IEP must be provided as written, or the IEP must be changed. When parents want to know whether the services are in fact being provided as written in the IEP, the most direct way is to ask. If there are admitted, significant lapses, parents should ask if there are plans to make up for the missed services.

One way for parents to monitor services more closely is to obtain the child's schedule for each day of the week and ask the child about the day. If, for example, speech therapy is scheduled for Wednesdays, from 9:30 to 10:00, many children will be able to accurately report when asked that day, whether speech therapy happened, where it was, and how many other children were there. If necessary, parents might enlist the help of another child, perhaps the child of a friend, who has the opportunity to know the comings and goings of the child of concern. It is important to remember that school schedules are subject to changes at short notice and because of unpreventable interruptions such as snow days. If parents and school personnel are reasonable and flexible, these issues can be worked out. Under ordinary circumstances, a service failure of a small percentage (e.g. 5%) of scheduled time will not be considered bad

²²IDEA does not require that a child reach every goal, but it does require the LEA to act in good faith to assist the child to reach the goals. A failure to act in good faith could, in some circumstances, be or contribute to a denial of FAPE.