

Developing IEPs in Minnesota

A Fact Sheet from the Minnesota Disability Law Center

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INTRODUCTION

An individual education plan (IEP) shows how a district plans to provide a free appropriate public education (FAPE) to a student.¹ The IEP must be reasonably calculated to provide the student with a meaningful education and must address the student's needs so that the student may benefit from the district's educational program.² An important FAPE concept is that the IEP must be sufficiently individualized to allow the particular student to progress – simply placing the student in a regular education environment without consideration of individual needs or supports is insufficient. Similarly, districts must consider adaptations and supports that would allow the student to be placed in a regular education environment before placing the student in a segregated class or setting.

Additionally, the duty to offer FAPE does not mean the district must provide the highest or maximum level of services. Instead, FAPE is a minimum standard and only directs the district to offer an appropriate education. Appropriateness is not specifically defined by federal or state law. Courts and administrative agencies determine whether a district has provided FAPE on a case-by-case basis and will look to many factors including whether the student is getting passing grades, advancing from grade to grade, and making progress on the IEP goals to determine FAPE.

This factsheet includes: 1. four primary considerations for developing IEPs; 2. required IEP content areas; and 3. consent and accessibility requirements.

Note For Parentally Placed Private or Home Schooled Students:

IEPs also must be proposed to home-schooled and private school students with disabilities who reside in the district. Parents are not required to accept the district's offer of IEP services.

PRIMARY CONSIDERATIONS

Prior to actually filling in the IEP, there are a number of important factors and requirements to meet: basing the IEP on the evaluation; keeping progress in mind; using draft IEPs, team requirements and membership; new changes in IDEIA 2004 on excusing members; and parent participation and notice.

Evaluation

The IEP must be premised on student needs, which are identified by and documented in evaluations, and should take into account the student's needs, strengths and present levels of performance. Districts typically use standardized forms in creating IEPs.

Progress

The IEP is a plan of services concerning the student's social, academic, functional, and behavioral needs and how the district proposes to assist the student to advance in or maintain these areas. Accordingly, it is important to think about how the evaluation and IEP can be used to:

1. identify a baseline of the student's status;
2. demonstrate how much and whether the student is progressing or maintaining skills;
3. have clear standards for determining how progress will be measured, reported on, discussed, and explained; and
4. document service delivery.

Draft IEPs

Draft IEPs are permitted if they are simply drafts for discussion and they should be labeled as such. A draft cannot represent the district's only or last offer. Parents must give written consent before the initial IEP is agreed upon and implemented.³

Team Requirements and Membership and Changes in 2004

The development of the IEP is an IEP team responsibility and it includes notice to the parents and having all required members at a meeting,⁴ unless they are excused.⁵

The IEP team must include:

- Parents (or surrogate parents)
- at least one regular education teacher (if the student is or may be in the regular education environment),
- at least one special education teacher (or, where appropriate, one special education provider of the student),
- an administrative representative/designee (who is qualified to provide or supervise instruction for the student, is knowledgeable of the general curriculum, is knowledgeable about the resource availability of the district, and in Minnesota, the district representative must also have the ability to commit resources on behalf of the district),
- an individual who can interpret the evaluation,
- other individuals, at the discretion of the district or parent who have knowledge or expertise regarding the child, and
- when appropriate, the student.⁶

District staff may serve multiple roles on the IEP team. This means that one district staff person can be, for example, a regular education teacher, an administrative representative, and an individual who can interpret evaluation results. It is important, however, to make sure someone is identified to fulfill each and every role at the IEP meeting.

There may also be representatives from different agencies at an IEP meeting. For example, if a child is between the ages of 0-3 and is receiving some services from a non-school district organization, a representative from that organization could be present to coordinate the provision of services.⁷ Also, if a child is 14 or older, a representative from a community organization might be at the meeting to coordinate transition services.⁸

Note on Early Childhood/IFSP Team Members

The membership for an IFSP team (for young children eligible for early childhood special education) is somewhat different than those on an IEP team. An IFSP team includes:⁹

- a parent or parents of the child;
- other family members, as requested by the parent, if feasible to do so;
- an advocate or person outside of the family, if the parent requests that the person participate;
- the service coordinator who has been working with the family since the initial referral, or who has been designated by the school to be responsible for implementation of the IFSP;
- a person or persons involved in conducting evaluations and assessments; and
- as appropriate, persons who will be providing services to the child or family.

IEP team members may be excused if the parents and school agree and the member's relevant content area is not being changed.¹⁰ If the content area is being changed, the member may be excused if that member sends a written report to the parent in advance and the parents agree in writing.¹¹ IEP team meetings can occur by conference calls or videoconferences.¹²

Parent Participation and Notice

State and federal law recognize the importance parents play in the lives and education of their children. Accordingly, there are specific legal provisions requiring parental notice, consent, and participation. *Parental notice* is the responsibility of school districts to ensure parents are aware of educational and service decisions.¹³ *Written parental consent* is required in many, but not all instances.¹⁴ Notice and consent requirements, as well as provisions to ensure parents are informed of their rights and responsibilities and of their ability to participate in the special education process are all legal guarantees concerning how, when and where parents can be involved and informed.¹⁵

Once a child is determined eligible for special education services, the district must hold a meeting to develop an IEP and to determine placement "within 30-days."¹⁶ The District must give the parent of this meeting and its intent to provide special education services. This notice, in addition to containing meeting details, must also include information about the parent's rights and procedural safeguards.¹⁷ The notice must be provided to

non-custodial parents as well. The meeting to develop the IEP often happens right after a meeting to determine the student's eligibility for services.

CREATING THE IEP

State and federal law mandate that IEPs have specific content.¹⁸ These are listed and summarized next.

Present Levels of Performance

The present levels section is a summary of a child's strengths and needs derived from the Evaluation Summary Report and subsequent progress reports. PLEPs should identify specific student strengths and needs in academics, communication, functional skills, health and physical status, motor abilities, sensory status, social and emotional areas, behavior and transition (for students 14 and up in Minnesota). IDEA emphasizes that PLEPs must include information on current academic achievement and functional performance.

Measurable Goals

IEP goals show what the student will be working on and working towards. These goals must be measurable so that progress may be determined and understood. Goals should be based on PLEPs, be the roadmap for providing FAPE and should contain information on: 1. Skills or behavior that need to change; 2. The direction of change (from present level to goal level); and 3. Evaluation criteria and procedures.

IDEA no longer includes short term objectives and benchmarks, which are typically used to show what steps students would be taking towards accomplishing the goals. These are no longer required elements in IDEA, but they may voluntarily be included. *Importantly, as of January 2006, short-term objectives/benchmarks are still required under Minnesota law.*¹⁹

Least Restrictive Environment (LRE) Statement

The LRE is a presumption that children will be educated in their regular education classroom unless their needs require a different setting. The LRE *statement* on the IEP is to ensure that the IEP team properly considered why the student was placed in the chosen educational setting.

Progress Reporting

To be able to measure progress towards a student's IEP goals and towards obtaining FAPE, it is vital for the IEP to specify how a student's progress will be measured and how and when progress will be reported to parents. Progress must be reported at least as often as it is for the child's non-disabled peers,²⁰ usually at common reporting periods. Progress refers specifically to progress made on the individual goals and objectives listed in the IEP. Meaningful progress reporting depends on solid and measurable goals as well as consistent and clear data collection and reporting.

Special Education and Related Services, supplementary aids and services, and program modifications or supports to allow the student to be involved and progress in the general curriculum

Special Education Services: These are services designed to address the unique needs resulting from the child's disability as documented in the IEP and ensure access to the general education curriculum. They include the necessary instructional adaptations to content, methodology or delivery of instruction. And, , the instruction must be based on peer-reviewed research to the extent possible.²¹

Related services: These consist of any specially designed service that enables a student to access and benefit from special education services. Related services can include, but are not limited to: transportation, counseling, psychological services, social work services, physical therapy, occupational therapy, recreational activities, and school health services (but not doctor provided medical services).

Typically, the amount and type of special education and related services those necessary to meet student needs so that the student can access FAPE. The determination of the type and amount of services are usually based on what other similar students have received in the past, but, of course, the exact amount and type of services must be tailored to the individual needs of the student. The determination of amount and type must be subject to progress reporting and review and revision to ensure their continuing appropriateness.

Direct and Indirect Services: In general, direct services are provided by a licensed teacher or related services provider to the student in the course of instruction. Indirect services, in contrast, are services that happen behind the scenes but are necessary for the student. For example, indirect services may include work by a range of district and non-district staff on progress reviews, planning, consultation, changes to the environment and/or materials, or monitoring.

Adaptations: The *adaptation* section of the IEP spells out the necessary *supplemental aids, services and supports* to enable children with disabilities to be educated with non-disabled children. State or federal law does not limit what adaptations can be provided. They should be developed and included on IEPs on an individual basis and can, for example consist of: seating arrangements, curriculum adaptations, modified homework, testing arrangements, large print books, modifying policies, one-to-one aides (paraprofessionals or educational assistants), etc. If paraprofessionals are needed, their specific duties must be included in the IEP.

Testing: Accommodations and Modifications to District and Statewide Assessments

Accommodations typically alter the conditions of a test or instruction, but do not change the substance of the test or instruction. Accommodations are more about access. Modifications typically change the substance of the test or instruction. A modification can change the level of required performance or the information tested.

States have a legal responsibility to test all children and report results. IEP teams determine if the student will take a standardized test and, if so, whether any accommodations or modifications are necessary. If the team determines that accommodations are necessary for the child to participate they must be designated and written in the IEP. If the team determines that a student cannot take the test, the determination must be noted and explained in the IEP, and an alternate assessment must be chosen and used. The appropriateness of the selected alternate assessment must also be documented in the IEP.

Importantly, IDEA requires IEPs to include accommodations necessary to measure academic achievement and functional performance on district-wide and state-wide tests. The idea is to ensure that students with disabilities are provided with the supports necessary for them to participate in these tests.

Examples of district-wide tests include standard achievement tests, such as the Iowa Basic Skills Test and the Stanford Achievement Tests. They are designed to show student achievement and assess effectiveness of curriculum relative to national norms.

Extended School Year (ESY)

ESY services are special education and related services that are provided to an eligible student during school breaks. ESY services differ from a student's IEP in that they are designed to help a student maintain skills over a specified period of time. ESY services are not designed to help a student make progress. The specific ESY services to be provided for each goal area are determined by the IEP team and must be provided at no cost to parents. Transportation must be provided by the school if it is necessary to provide FAPE.

There must be an annual determination of ESY by the IEP team.²² If the student is eligible for ESY, the student's IEP must include a statement concerning how the needs will be addressed during ESY programming.²³ To make the determination, the IEP team reviews data collected by the school over the year and decides if a student will be eligible for ESY services.

Data should also be collected over extended breaks such as winter and spring breaks or previous summers to determine what happens to the student's skill level before and after the break.

The student qualifies for ESY if the IEP team determines that:

1. The student will demonstrate "significant **regression**" during school breaks and the time for the student to regain lost skills ("**recoupment**") would be excessive once the school break is over; OR
2. The student would not reach their expected level of **self-sufficiency** as a result of the break in services; OR
3. ESY services are necessary to provide FAPE given the student's **unique needs**.²⁴

Projected start date, anticipated frequency, location and duration of services

This section of the IEP includes a list of specific services, when they will start, who will provide them, where they will be provided and in what amount. The services must be aligned with the IEP to ensure achievement of its goals. Appropriate services may include related services that do not have a specific academic focus.

Note about Methodologies and Service Providers

Methodologies are the techniques that the district uses to provide educational services. Some methodologies have specific names (like the Orton-Gillingham reading method) while others are combinations of different methods and do not have a specific name. Parents may want to request a specific methodology they are familiar with or with which the student has experienced success.

By law, however, districts generally may choose the service methodology and personnel to deliver and provide the services and thus do not need to include these specific choices on the IEP. The district may include these choices, but will be bound to them. So, while parents may request certain methodologies or personnel, the district is not obligated to meet these specific requests.

Transition

Transition services are designed to assist students to make a successful transition from the K-12 environment to post-secondary employment, education and living. IDEA requires the transition section to include:

“appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills ... and the transition services (including courses of study) needed to assist the child in reaching these goals.”²⁵

In Minnesota, state law requires transition planning to begin at age 14 or when the student enters ninth grade,²⁶ not age 16 as stated by IDEA.

Transfer of parental rights to the student when the student turns 18, unless a guardian or conservator has been appointed;

Students who turn 18 automatically are treated as “parents” and have decision making capacity under state law.²⁷ The IEP includes a statement indicating this. Rights will transfer unless the parent is appointed the student’s legal guardian.

Documentation necessary to support use of restrictive procedures

Some children have behavioral needs that require more significant planning and procedural protections. The interventions used to respond to these behavioral needs are called “restrictive procedures” (RP) and they may include, for example: use of seclusion rooms and manual restraints (physical holds by one or more staff).²⁸ Minnesota law requires a number of steps prior to the use of RP to ensure they do not harm the student and are appropriate to their overall needs.²⁹

To use these procedures, there must be an emergency situation (where people or property are threatened).³⁰ Other conditions for use of RP in emergency situations include: the

restrictive procedure must be the least intrusive one possible, there must not be a contradiction for use, RP may not be used for discipline, the RP must end with the threat of harm ends, IEP meetings must be held if a certain number of RP are used, and, among others, the RP must be documented and parents must be informed.³¹

“Special Factors” and Individuality

The IEP team must also consider several “special” factors, including: the strengths of the student, concerns of parents, results of evaluations, and, student performance on statewide or districtwide assessments.³² If a student is blind or visually impaired, the IEP must provide for instruction in Braille, unless it is inappropriate.³³ Additionally, the team must consider:

- strategies (including positive behavioral interventions) to address the student’s behavior if it impedes the student’s learning or that of other students;
- the language needs of LEP/ELL students;
- the communication needs, especially for students who are deaf or hard of hearing; and;
- whether the student requires any assistive technology (AT).³⁴

IDEA states that the IEP team must conduct a review of the student’s academic, developmental, and functional needs and must consider any necessary positive behavioral supports.

LAST STEPS: CONSENT AND ACCESSIBILITY

Once the IEP team agrees on the IEP contents and there is agreement about where the student will be placed for services, all that remains is consent. Initial special education services cannot begin with this consent. A form is almost always used to request written parent consent. It should be noted that while typically the IEP team determines both IEP content and placement, federal and state laws allow the placement decision to be made separately by a group of individuals, including the parents.

Finally, the agreed-upon IEP must be “accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.”³⁵

SUMMARY

The creation of appropriate IEPs is a crucial step in the special education process. The IEP should be based on the evaluation and should serve as the means to provide FAPE. It should also serve as a way to develop a baseline of the student’s progress and track the progress over the year with measure-able data and indicators.

IEP development can be divided into four steps: ensuring parental notice and IEP team membership; including required content statements; including special factors; and obtaining parent consent and providing access to the IEP. While IEPs must be developed to offer FAPE, there is also a duty to review and revise the IEP when and if the student’s needs change during the school year.

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¹ See *Board of Education v. Rowley*, 458 U.S. 176 (1982)

² *Id.*

³ 34 CFR §300.503

⁴ 34 CFR §300.503, 34 CFR §300.321, 34 CFR §300.344

⁵ 34 CFR §300.321 (e)

⁶ Minn. R. 3525.2810, subpart 1B.

⁷ 34 CFR §303.343

⁸ 34 CFR §300.321

⁹ 34 CFR §303.343

¹⁰ 614(d)(1)(C)(i)

¹¹ 614(d)(1)(C)(ii)

¹² 614(f)

¹³ 34 CFR §300.503, 34 CFR §300.504; Minn. R. 3525.3600

¹⁴ 34 CFR §300.503

¹⁵ 34 CFR §300.322; CFR §300.501, 34 CFR §300.503, 34 CFR §300.504

¹⁶ 34 CFR §300.323

¹⁷ 34 CFR §300.503, 34 CFR §300.504

¹⁸ Minn. R. 3525.2810, 34 CFR §300.320

¹⁹ Minn. R. 3525.2810

²⁰ 34 CFR §300.320

²¹ Public Law 108-446, 20 USC 1414, §614(d)(1)(A)(i)

²² Minn. R. 3525.0755, subpart 3

²³ 34 CFR 300.106; Minn. R. 3525.2810, subpart 2C.

²⁴ Minn. R. 3525.0755

²⁵ Public Law 108-446, 20 USC 1414, §614(d)(1)(A)(i)(VIII)

²⁶ Minn. R. 3525.2900

²⁷ 34 CFR §300.520

²⁸ Minn. Stat. 125A.0941

²⁹ Minn. Stat. 125A.0942

³⁰ Minn. Stat. 125A.0942, subd. 3

³¹ Minn. Stat. 125A.0942

³² 34 CFR 300.324; Minn. R. 3525.2810, subpart 2A

³³ 34 CFR 300.324; Minn. R. 3525.2810, subpart 2A.

³⁴ 34 CFR 300.324; Minn. R. 3525.2810, subpart 2B.

³⁵ 34 CFR §300.323.