



EDUCATION PRACTICE

ALERT

WORKING IN THE TRENCHES TO AVOID POTENTIAL IEP PITFALLS

By Timothy E. Gilsbach

One of the most basic ways—often not readily obvious—for school districts to limit risks and pitfalls in a due process hearing is to take simple steps in the Individualized Education Program (IEP) process. A summary of these simple steps follows.

An IEP varies depending on the parents and student involved. Often, the team will walk into an IEP meeting with an IEP drafted and a plan to review it. However, this document is normally just a draft and should be marked as such, especially when it will be shared with parents. Information contained in the IEP may need to be changed as a result of new information learned during the IEP meeting that renders the draft IEP inappropriate for the student. Moreover, marking it as a “draft” creates less confusion for the parents as to what is actually being offered and informs them this is a draft. Shortly after the meeting, the final IEP should be provided to the parents, with any changes agreed upon by the IEP team, along with a Notice of Recommended Educational Placement (NOREP) asking for approval.

Various issues are discussed during an IEP meeting, and if the parents later file for due process or a dispute arises over what was discussed at the meeting, it may very well be the parents’ word versus that of the school staff in attendance. One easy way to prevent this problem is to develop a form to document what happens at the meeting. The form would be filled out at the IEP meeting and lists the various concerns raised by the parents or anyone else at the IEP meeting, as well as the district’s response to each issue. It is also good practice to document items the team offers but parents refuse. However, it is important to note

the person completing the form should remember the parents may see this form later on, and in turn, write the notes in the most objective way possible.

Once the final IEP is developed, especially in a high school or middle school where a student has multiple teachers working with him or her, it is important—and in fact the Individuals with Disabilities Education Act (IDEA) requires—that those working with the student have seen the IEP. Again, should a dispute arise, documentation is critical. An easy way to do this is to have a distribution list for each IEP that list the students’ teachers and service providers and have everyone initial it to show he/she received and/or reviewed a copy.

Finally, in high school, an often missed part of the IEP process is the fact the student graduates. Under the IDEA, it is important to note this constitutes a change in placement and a NOREP should be issued. An easy way to address this issue—if it is not done already—is compile a list of students with IEPs who are graduating and issue NOREPs for those students, exiting them from special education at the time of graduation. Doing so can avoid a parent or student returning after graduation and attempting to continue to receive services from the district until the age of 21, which can be costly.

Remember: Taking some fairly simple steps during the course of the IEP process can help mitigate potential problems down the road.

For more information about this alert, please contact Timothy Gilsbach at 610.397.6511 or tgilsbach@foxrothschild.com or any member of Fox Rothschild’s [Education Practice Group](#).

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