

The Top things Lawyers should know about IEP's.

Micki Moran, J.D.
The Child and Family Law Center



Back to School: Webinar

- Welcome to the Webinar. The presenters for this evenings Webinar are Dr. Marrea Winnega, a nationally recognized autism expert, educator and BCBA. Micki Moran J.D. is an attorney who represents parents and children with special education issues in a variety of settings.
- The advice in this Webinar is not intended as legal advice for your situation. You are advised to consult an attorney if you need specific legal representation.

A few Guidelines

- We will be taking questions throughout the one hour and 15 minute presentation. It is very difficult to answer each question or to provide in depth answers to detailed situations. Your patience is appreciated.
- Should your question not be answered you may e-mail us at mickim@lawforchild.com following the webinar and we will do our best to respond.

Parents are experts

- Recognition of this issue has come slowly for school personnel.
- Partnering and building a team are critical first steps in developing a successful school program.
- The internet has made information accessible for schools and parents.
- Teachers are experts in subject areas such as math or science. They are not necessarily experts in your child's issues.

Prioritize

- Divide responsibilities (outside therapies, school based interventions).
- Determine what the school must do. Social Skills can and should be taught in a variety of settings. This area requires a partnership between home and school.
- What can only be accomplished at school.
- What are the priorities for this year.

Evaluations

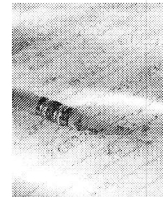
- Accurately identify the problem or disability. If you don't fully understand all the issues you can't develop a good IEP or life plan. The student should be tested in all areas of concern.(e.g. OT, Speech and Language, Educational Achievement, Intelligence, Social emotional).
- A comprehensive evaluation is a good investment for parents and schools.

Outside evaluations

IEPS are no time for surprises.

- Pick an evaluator who has experience.
- Comprehensive
- Neither schools nor parents are served by using a “ hired gun.”
- Domain meeting.
- Evaluation should take place over more than one session.
- Results should be shared in advance of an IEP meeting.

Information is the key to making good decisions



Parents are experts

- Recognition of this has come slowly for school personnel and others.
- The internet has provided instant information to parents.
- Partnering is the key to building a successful program that works for everyone.
- Parents can and should ask for the research base underlying program choice.

Knowledge is power



Case study

- In Illinois school district has 60 school days to do an evaluation. This feels like a long time. However, schools often are testing/evaluating many children.
- You can ask the school to expedite the evaluation.
- This is a long time in the life of a child.
- Expedite the process when possible.
- Evaluations are conducted every three years.
- May be necessary to do evaluations more frequently if student's performance warrants.

Evaluations

- IEP team is required to “ duly consider” the evaluations. Not required to accept the findings and recommendations in private evaluations.
- When conducting an evaluation, the school shall use a variety of assessment tools to gather relevant functional information, developmental and academic information. This includes information provided by parents.

Evaluations

- IEP team is required to “duly consider” the evaluations. Not required to accept the findings and recommendations in private evaluations.
- When conducting an evaluation, the school shall use a variety of assessment tools to gather relevant functional information, developmental and academic information. This includes information provided by parents.

IEP Team Members

- The parents
- Not less than one regular education teacher
- An individual who can interpret and understand the instructional implications of evaluations.
- A representative of the district who is knowledgeable about the curriculum and services available.

IEP team members (cont.)

- Illinois now requires that a “person knowledgeable about positive behavior strategies” be part of a child’s IEP team, when the child’s behavior impedes his or the learning of others.
- By agreement, parents can waive or agree to excuse some of the participants.

DATA, DATA, DATA

- Present Level of Performance (where are we starting).
- Comparison with same age peers.
- Who is responsible for taking the data?
- How often?
- What are we measuring? If you can’t answer the question then the IEP goal is not drafted correctly.
- Where do we want to end up?
- What assessments will be done to see where we are?

Examples of measurable goals

- **Present Level of Performance:** Dan wants to be employed following graduation in the construction industry.
 - Dan has never held a job and needs to learn job prerequisites skills such as interviewing techniques, filling out a job application and appropriate social skills.
 - Typical peers have usually held at least one part-time job by age 19.
- **Goal:** Implementer: Classroom teacher, employment specialist.
- Dan will practice interviewing, filling out an application and appropriate social skills in a classroom setting to prepare him for part-time employment and do these readiness tasks correctly in 4/5 trials.

The IEP

- Are not limited to one time per year.
- For complex children it is often helpful to have smaller frequent team meetings with a few core staff members and the parent.
- Develop an agenda prior to the IEP. [good idea for both parents and school personnel]/ Distribute and agree upon the agenda in advance of the IEP.

REMAIN CALM



Avoid Marathon IEP meetings

- Two meetings are better than one long meeting where people become short on attention and patience.
- Goals should not be an afterthought.
- Agree in advance on how much time will be needed.
- Smaller, collaborative meetings work better.



IEP Goals

- Should be developed as draft goals if needed in advance of the IEP meeting.
- Shared prior to the meeting.
- Prioritize what must be accomplished.
- OBJECTIVE
- MEASURABLE
- DATA DRIVEN

Measurable

- The IEP must include “ measurable, annual goals, including academic and functional goals. Section 1414(d)(1)(A).
- Baseline testing and findings on subsequent administrations of the same test can demonstrate whether the child is progressing and receiving educational benefit.

Academics

- Reading must be functional. It is more than decoding. Understanding and comprehension are key components for successful academics.
- Students must be able to generalize what they learn in a classroom setting and in the real world.

Present Levels of Performance

- The IEP should include a present level of performance in each goal area. This should also include a statement that indicates what the expectation is for same age peers.

IEP

- Must include a statement identifying all of the child's needs and how the school intends to measure those needs.
- Progress on goals must be data driven.
- There needs to be agreement on how progress will be measured.
- See Memorandum regarding development of IEP's for students with autism.

Interventions and Methodology

IDEA 2004 requires that schools utilize scientifically research based interventions to the extent practicable. (34 CFR § 300.35)

Scientifically based research includes the requirement that a peer-reviewed journal published the research or that experts evaluated the intervention through rigorous, objective scientific review that approved its effectiveness.

Communication

- Single most common reason people consult our office is the perception that the school isn't listening to the parents or they aren't getting good, consistent information and communication from school personnel.
- Practice tip: Weekly e-mail.

Behavior

- If a child's behavior impedes his or her learning or that of others, the IEP team must conduct a functional behavioral analysis (FBA) and develop a behavioral plan utilizing behavioral interventions. The development of a Behavioral Intervention Plan (BIP) is required.
- Behavioral issues trump academics. Resolving significant behavior issues is a priority for the school.

Behavioral intervention

- Ongoing Process



Extended School Year

- Determined by the IEP team



Extended School Year

- There is no single reason for determining whether a child qualified for ESY.
- The answer from the school that this is all that we offer is not a legal answer. Must be individualized.
- Judicial decisions and the statute have discussed the concept of regression/recoupment as only one of the criterion for an ESY determination.

Extended School Year

- The decision regarding ESY must be determined using objective data.
- One question the IEP team asks is will recoupment take more than 9 weeks once a student returns to school during the regular school year.
- Schools must consider the severity of the child's disability in determining ESY eligibility.

ESY

- One size fits all programs have been successfully challenged by parents. Courts have determined that such a program would violate the requirement that programs for students with disabilities be individualized. (fixed number of weeks, or program types that aren't violate the IDEA).
- ESY is designed to maintain skills.
- See ISBE Memorandum (Appendix B).

Related Services

- Related services are transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.
- Related services are required to be individualized rather than determined by a disability category or the availability of staff.

Related Services (cont.)

- A one to one assistant is a related service. (e.g. transportation, assistive technology).
- Direct service is a service delivered to the student. It doesn't mean the service is 1:1.
- Changes in the amount of type of related services cannot be made without an IEP meeting. (unless by written agreement of the parent and the school).

Transition Services

- Students are eligible for services until their 22nd birthday.
- THIS IS THE POINT OF SPECIAL EDUCATION.



Transition Services

- The term transition services' means a coordinated set of activities for a child with a disability that –
- (A) Is designed to be a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including

Transition Services (cont)

- Post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (B) is based on the individual child's needs, taking into account the child's strengths, preferences and interests;

Transition Services

- (C) Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

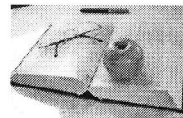
Transition Services

- Begins at age 14.5 in Illinois or sooner if the IEP deems this appropriate.
- Social skills training, self-advocacy, transportation planning may be essential components of the transition plan. IEP Goals should be written for all areas of need.
- As in every phase of the IEP development, evaluations and assessments are key to developing a plan.
- Outside vocational evaluations may be needed.

Guardianship

- Delegation of Rights is an option for some students. [See attached Appendix C].
- Family and individual case by case decision.
- Age 18

Updates on the law



Highlights

- Cases involving students with autism are all over the map.
- Failure to take and use objective measurable data can result in the district losing in a hearing.
- These cases are won or lost on expert testimony.
- Failure to generalize skills has been determined by courts to not necessarily be indicative of a denial of FAPE.
- Schools can typically choose methodology. The key is articulating the rationale for the choice for that child.

Case law

- Failure to use research based methodology has been one factor courts and hearing officer's consider in these cases.
- Parents who prevail have kept good records and have relied on solid, well-credentialed experts.
- Best is not the standard. It is benefit.
- Documented lack of progress while in the district's program is a key indicator of a denial of FAPE.

Final Thoughts

- Keep trying. It is a marathon and not a sprint.
- Keep a sense of humor.
- Remain calm.
- No one is going to do this for you.