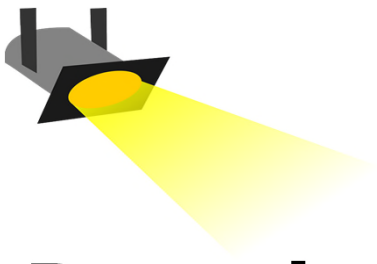




Spotlight On Practice

Avoiding Common IEP Mistakes





What We'll Focus On. . . .

Procedural Errors

- Failing to Provide Parent Participation
- Failing to Conduct Complete Assessment
- Failing to Write Appropriate Measurable Goals
- Failing to Include Required Staff at IEP Meeting

Substantive Errors

- Failing to Ensure Full Implementation of IEP
- Failing to Adequately Address Behavior Issues
- Failing to Offer/Provide Appropriate ESY Services
- Failing to Adequately Address Postsecondary Transition



IEP Procedural Errors



Remember . . .

- Procedural errors do not automatically require finding that FAPE was denied
- Procedural violation results in denial of FAPE only if it:
 - Impedes student's right to FAPE
 - Significantly impedes parent's opportunity to participate in decision-making process; or
 - Causes deprivation of educational benefits

(W.G. v. Board of Trustees of Target Range School Dist. No. 23 (9th Cir. 1992) 960 F.2d 1479; 20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2))



Procedural Error #1: Failing to Provide Parents Full Opportunity to Participate in IEP Process



Parent Participation – Legal Overview

- Law requires participation at meetings as well as “meaningful discussion”
- No “take it or leave it” approach
- Preparatory meetings are okay
- Draft IEPs permissible (but officially discouraged by USDOE)

(34 C.F.R. § 300.327, 34 C.F.R. § 300.501; 71 Fed. Reg. 46678 (Aug. 14, 2006); J.G. v. Douglas County School Dist. (9th Cir. 2008) 552 F.3d 786)



Predetermination Errors – Examples

Reed Union School Dist. (OAH 2009)

- Team decided to recommend SDC prior to IEP meeting
- Unwilling to reconsider when Parent objected

San Francisco Unified School Dist. (OAH 2011)

- Preschool representative attended meeting
- Parents told to hold their questions



Avoiding Predetermination Mistakes

- Stress that no decisions will be made during preparatory meetings
- Emphasize to parents that all options are open for discussion
- Give parents sufficient information about all possible placements
- Ensure there is enough time for questions



Avoiding Predetermination Mistakes

- Consider/document all information that parents bring to meeting
- If parents ask to visit proposed placement, follow district's visitation policy
- Maintain professional decorum
- Ensure team follows up on any commitments and unanswered questions



Procedural Error #2:

Failing to Conduct Complete and Comprehensive Assessment



Assessments – Legal Overview

- Numerous IDEA and state requirements for comprehensive eligibility assessments
- Must assess all areas of suspected disability
- No single measure or assessment can be sole criterion for determining eligibility
- Review existing data, including information from parent and classroom observations

(34 C.F.R. § 300.304(b)(1); Ed. Code, § 56320)



Assessment Errors – Examples

Capistrano Unified School Dist. (OAH 2013)

- District conducted assessment at RTC when classes were not in session
- Classroom observation would have resulted in different placement recommendation

Timothy O. v. Paso Robles USD (9th Cir. 2016)

- District improperly relied on informal 30-40 minute observation to determine Student did not have autism



Avoiding Assessment Mistakes

- Student must be assessed regardless of subjective views about likely outcome
- Observation in multiple settings can yield valuable assessment information
- Plan ahead to ensure student will be comfortable enough to complete testing
- Ensure students provide input about their needs when they are capable of doing so



Avoiding Assessment Mistakes

- Seek parents' input from beginning of assessment process
- Consider all independent assessments presented by parents
- Do not rely solely on assessments conducted by other districts or independent assessors
- Good assessment information is foundation for “connect the dots” approach



Procedural Error #3:

Failing to Write Appropriate and Measurable Goals



Goals – Legal Overview

- Must be measurable, designed to meet educational needs and enable involvement/progress in gen ed curriculum
- Describe what student can reasonably be expected to accomplish within 12 months
- Amount and type of goals depends on student's identified needs

(34 C.F.R. § 300.320; Ed. Code, § 5634571; Letter to Butler (OSERS 1988) 213 IDELR 118; Student v. Bellflower Unified School Dist. (OAH 2014) Case No. 2014040078)



Goals Errors – Examples

Parlier Unified School Dist. (OAH 2016)

- Behavior goal was immeasurable because it did not define terms
- Social skills goal was immeasurable because it contained no baseline and lacked clarity

Glendora Unified School Dist. (OAH 2007)

- Single goal of passing classes with “C” grade or better was vague and did not address needs



Avoiding Goals Mistakes

- Baselines are starting point for annual goals; they should relate specifically to each goal
- Formula for drafting measurable goal:
 - By when . . . (Typically one year or later)
 - When given . . . (Name the task)
 - Student . . . (Use his/her name)
 - Will do what . . . (Target behavior or skill)
 - At what level of proficiency . . . (e.g., with 80 percent accuracy)
 - At what frequency . . . (e.g., in four out of five trials)
 - As measured by what . . . (e.g., teacher observations, data, etc.)



Avoiding Goals Mistakes

- Consider these items when drafting goals:

What skill is the goal written for?

What is student able to do at the time the goal is written (baseline)?

When is the student expected to achieve the goal?

What are the conditions for achieving the goal?

What are the mastery criteria for achieving the goal?

Who will implement the goal?

How is the goal measured?

- Remember the “stranger test”



Procedural Error #4:

Failing to Include All Required School Staff at IEP Meetings



IEP Team – Legal Overview

- IDEA and California Education Code specify required IEP team members
- Optional team members include persons with knowledge or expertise about student
- Formal written consent required to excuse team member when meeting will involve discussion of his/her area of curriculum

(34 C.F.R. § 300.321; Ed. Code, § 5634171)



IEP Team Errors – Examples

Aveson Charter School (OAH 2015)

- Psychologist who conducted assessment did not attend initial IEP meeting
- No other team member could explain report

Compton Unified School Dist. (OAH 2016)

- Gen ed teacher was needed at meeting because possibility of gen ed placement was discussed
- District did not get informed consent for excusal



Avoiding IEP Team Mistakes

- Always document who attends IEP meetings
- Determine in advance necessity of gen ed teacher's presence
- If meeting absolutely must be held without parents:
 - Document efforts to secure attendance
 - Send parents copy of IEP
 - Offer to reconvene when parents are available



Avoiding IEP Team Mistakes

- Arrange for a qualified substitute in advance if possibility exists for early departure
- Explain to parents (in writing) significance of excusing any participant
- Use caution in excusing IEP team members, especially district representative
- If excused member's presence is needed, reconvene meeting at another time



IEP Substantive Errors



Remember . . .

- Andrew F. standard
- Substantive error occurs when IEP is not reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances

(Andrew F. v. Douglas County School Dist. RE-1 (2017) 137 S. Ct. 988, 69 IDELR 174)



Substantive Error #1:

Failing to Ensure Full Implementation of IEP



IEP Implementation – Legal Overview

- Required components must be implemented as soon as possible following meeting
- All persons responsible for implementation must have access to IEP and be informed of specific responsibilities
- “Material failure” (more than minor discrepancy) in implementing IEP denies FAPE

(34 C.F.R. § 300.323(c); Ed. Code, § 56043.71; Van Duyn v. Baker School Dist. 5J (9th Cir. 2007) 502 F.3d 811)



IEP Implementation Errors – Examples

Temecula Valley Unified School Dist. (OAH 2015)

- Teacher refused to implement reading program called for by IEP
- Failure to implement was material

Castro Valley Unified School Dist. (OAH 2016)

- Teacher who coordinated implementation of Student's IEP went out on leave
- District found no adequate replacement



Avoiding IEP Implementation Mistakes

- If interruption in services occurs:
 - Make sure services are resumed as soon as possible
 - Closely monitor student during gap
 - Provide additional services if necessary to compensate for lapse
- Provide copy of IEP to all those responsible for its implementation
- Follow up periodically to make sure IEP is being faithfully implemented



Avoiding IEP Implementation Mistakes

- Hold staff meeting one to two weeks after IEP is developed to get report on what is or what is not being properly implemented
- Stay in touch with parents and be prepared to address their implementation questions
- Inform staff of potential consequences of IEP implementation failures



Substantive Error #2:

Failing to Adequately Address Behavior Issues



Behavior – Legal Overview

- Positive behavior interventions/supports when behavior impedes learning of student/others
- FBAs and BIPs must be used proactively if team determines they would be appropriate
- IEP teams should consider “continuum” of options in addressing student's behavior

(34 C.F.R. § 300.324; Ed. Code, § § 56520, 56521.2; Questions and Answers on Discipline Procedures (OSEP 2009) 52 IDELR 23171)



Behavior Errors – Examples

Twin Rivers Unified School Dist. (OAH 2014)

- District failed to implement behavior goal during home instruction
- Teacher not trained to provide interventions

Dehesa School Dist. (OAH 2017)

- Charter addressed Student's behavior with various punitive measures
- Testimony that positive behavior interventions would diminish effectiveness of Montessori



Avoiding Behavior Mistakes

- Prioritizing instructional approach at expense of addressing behavior is not an option
- Behavior interventions should emphasize “positive” behavioral supports and strategies
- If interventions are needed, consider interim services until assessments are completed
- Conduct FBA if behavior impedes learning and is not readily explainable



Avoiding Behavior Mistakes

- Staff training is essential to ensure effective, compliant and consistent BIP implementation
- Placement designed to address problem behavior may be insufficient by itself to provide FAPE, absent behavior goals or BIP
- Include all IEP team members in any discussion about student's behavior



Substantive Error #3:
Failing to Offer (or Provide)
Appropriate ESY Services



ESY – Legal Overview

- Law requires services be available beyond normal school year in accordance with IEP
- Team determines if student needs ESY to meet individual needs and receive FAPE
- Purpose is to prevent regression and allow for recoupment of lost skills

(34 C.F.R. § 300.106; Ed. Code, § 56345; Cal. Code Regs., tit. 5, § 3043; Letter to Anonymous (OSEP 1995) 22 IDELR 980)



ESY Errors – Examples

Fresno Unified School Dist. (OAH 2014)

- ESY services recommended for Student with ID
- But District made “blanket determination” not to offer ESY to students in adult transition program

Yucaipa-Calimesa Joint USD (OAH 2014)

- District did not offer Student Braille or orientation/mobility instruction he needed
- Why? Vision staff did not work during ESY



Avoiding ESY Mistakes

- Make sure IEP team members understand what ESY services are and what they are not
- Any decision refusing ESY services should be supported by appropriate data
- Always focus team discussions on student's unique needs, not on availability of district resources



Avoiding ESY Mistakes

- Tips to help make certain that student receives FAPE during ESY

Make sure that ESY services providers have copy of IEP

Ensure providers understand IEP goals

Ensure providers understand regression/recoupment issues

Explain data that providers should collect



Substantive Error #4: Failing to Adequately Address Postsecondary Transition



Transition – Legal Overview

- Address postsecondary transition for students who will be turning 16
- Transition plan must include:
 1. Measurable postsecondary goals based upon age-appropriate transition assessments
 2. Transition services needed to assist in reaching those goals
- Plan must be based on individual needs and take into account student's interests

(34 C.F.R. § § 300.43, 300.320; Ed. Code, § § 56043, 56345)



Transition Errors – Examples

Los Angeles Unified School Dist. (OAH 2013)

- Student's abilities "far below" what was required to complete transition goals
- District failed to implement many plan provisions

Horizon Charter School (OAH 2012)

- Transition goals were vague and immeasurable
- "Mock job" in teacher's office was unrelated to Student's interests



Avoiding Transition Mistakes

- Ensure staff and IEP team are aware of responsibilities during planning process
- Help families sort through all available agencies and options for transition services
- Communicate with parents and students regarding postsecondary expectations and discuss whether expectations are reasonable



Avoiding Transition Mistakes

- Be very specific in identifying needs for student to transition to post-secondary life
- State transition goals completely and carefully, but realistically
- Describe with detail on IEP any progress student has made toward achieving his/her goals



Take Aways . . .



- Even with best of intentions, mistakes or oversights can easily happen due to complexity of laws
- In order to better serve students, be aware of various errors that IEP teams can make, and know how to avoid them when possible



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