

Your Child's IEP

School has started! Do you know where your child's IEP is?!?!

It's the start of a new school year and you have questions, *questions*, **QUESTIONS!**

- Is your child's IEP in place? Working? Are all services being delivered?
- Do you know his/her providers and do they know you?
- More importantly: do his/her providers know *your child*?!!
- Is your child accessing the curriculum as effectively and efficiently as their typical peers and have they done so since school began?
- Are his or her accommodations being implemented?

Unfortunately, when school starts too many parents discover they don't have answers to these questions. What's worse, parents often discover their child's IEP hasn't even been given to the teacher until October rolls around! As a result, our kids miss out on valuable educational time and access to the curriculum, sometimes losing out on upwards of 10% of the school year curriculum.

Excuses are many and varied:

"I don't know who is on my case load!"

"I haven't seen any IEPs yet!"

"I don't know who your child's case carrier is yet, so I can't have seen the IEP."

"The Passports don't come around until the third week of school!"

"Johnny has accommodations? Why? He seems so quiet and well-behaved!"

When we hear such excuses, parent can't help but think -

"There ought to be a law!"

There is! It's the "Individuals with Disabilities Education Act" (IDEA)¹ and it provides clear cut direction with regard to how a child's IEP is to be addressed at the beginning of the school year.

¹ Section 504 of the Rehabilitation Act for those on a 504 Plan also has requirements.

IDEA Statute and Regulations re: IEP Implementation at Start of School

The IDEA (at 20 U.S.C. 1414(d)(2)(A)-(C)) and its implementing regulations at (34 CFR 300.323) clearly provide that a student is to have an IEP in place **at the beginning of the academic year.** (The full text of the law and regulations are at the end of this handout). It makes sense, given that special education services are designed to ensure access to school curriculum and standards so a child can make appropriate progress.

What often happens, particularly with accommodations and modifications, is that inexperienced teachers believe accommodations and modifications are only provided at the time of assessment. But think about it: if a student isn't provided with their accommodations and/or modifications at the time of instruction, how can they access the curriculum to learn it so at test time they can demonstrate what they've learned?

Tips for Ensuring Implementation of IEP at Start of School

Here are tips and ideas (pun intended!) from parents on how to ensure that your student (and his or her teacher!) starts off the school year well and hits the ground running! (More will be discussed during tonight's meeting).

- ❖ Find out who your child's teacher is ahead of time and if possible meet with them briefly to give them a heads up about your child's learning profile.
- ❖ Write a letter to the teacher describing your child's learning challenges, helpful hints about how your child learns best or background information regarding unique issues related to their area of disability. Making sure the teacher is aware of how these interventions can benefit the entire class is a sure way of getting them implemented.
- ❖ If possible, meet with key service providers (speech, school psych, OT, inclusion specialist, etc.) at the start of the school year, especially new ones, and give them info about your child, encourage them to call with any questions and even provide your cell phone #. Let providers know you are paying attention, are engaged and willing to help.
- ❖ Volunteer to help the teacher inside and outside of class to help free them up for more student-centered tasks and activities.

- ❖ Educate yourself regarding your student's rights so you are on top of advocating for him or her and so that time doesn't pass during which your student isn't receiving services their IEP calls for.
- ❖ Review the IEP to make sure the services identified there are sufficient for your child - and for your child's teacher - to receive the proper support (including training and planning time) to ensure student success and so your child's teacher feels sufficiently supported so that they can, in turn, support your student.
- ❖ Remember: whenever and wherever a student is not being properly supported in the classroom, it also means their teacher is not being adequately or properly supported. Collaborate with your child's teacher to ensure that both he/she and your child receive all appropriate supports to ensure your student's academic and social success.

Remember that IDEA's findings and purpose specifically call for parent involvement AND a student's access to the curriculum -

IDEA at 20 U.S.C. §1400(c)(5) Findings (in part):

(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by-

(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to-

(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

Making sure your child and his or her teacher and providers are able to get off on the right foot each school year and hit the ground running is the first and probably the most productive step you can make toward their achieving educational success!

Section 504 of the Rehabilitation Act – FAQ’s

4. What services are available for students who qualify under Section 504?

Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

[Comment: It is reasonable to assume that the first day of school, to the extent that students without disabilities are able to receive their education, access the curriculum and the texts provided, so should it be the experience of the student with a disability who qualifies under Section 504]

38. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

[DBP Comment: Again, if the regular education teacher is providing instruction, access to the curriculum and otherwise educating his or her students, so must they do so for their students on 504 plans]

Definitions

Free and appropriate public education (FAPE): a term used in the elementary and secondary school context; refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

<http://www.ed.gov/about/offices/list/ocr/504faq.html>

(Comment: Section 504 also applies to students receiving services under IDEA).

Advocates for Special Kids – September 29, 2008 Meeting
Individuals with Disabilities Education Improvement Act of 2004 (IDEA)

Statute

20 U.S.C. 1414(d)(2)(A) Individualized Education Program – Requirement that Program Be in Effect:

In general.--At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A) [which defines what an IEP is to consist of].

Regulations

Sec. 300.323 When IEPs must be in effect:

(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in Sec. 300.320.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

- (i) Consistent with State policy; and
- (ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--

- (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
- (ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(c) Initial IEPs; provision of services. Each public agency must ensure that--

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that--
(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of--

- (i) His or her specific responsibilities related to implementing the child's IEP; and
- (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either--

- (1) Adopts the child's IEP from the previous public agency; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in Sec. 300.320 through 300.324.

(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--

- (1) Conducts an evaluation pursuant to Sec. Sec. 300.304 through 300.306 (if determined to be necessary by the new public agency); and
- (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in Sec. Sec. 300.320 through 300.324.

(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section--

- (1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and
- (2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

(Authority: 20 U.S.C. 1414(d)(2)(A)-(C))

Sec. 300.138 Equitable services provided:

(a) General. (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of Sec. 300.18.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan. (1) Each parentally-placed private school child with a disability who has been designated to receive services under Sec. 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in Sec. 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate--

(i) Meet the requirements of Sec. 300.320, or for a child ages three through five, meet the requirements of Sec. 300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with Sec. Sec. 300.321 through 300.324.

(c) Provision of equitable services. (1) The provision of services pursuant to this section and Sec. Sec. 300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A)(vi))

Regulatory Comments by U.S. Department of Education

The following are comments made by the U.S. Department of Education at the time IDEA 2004 regulations went into effect in 2006. These comments followed a comment period during which the general public provided input to the proposed regulations. These comments provide the substance of inquiries received with regard to a particular regulation and the U.S. Department of Education's response and interpretation of the meaning of the regulation. These are included as they pertain to the issue of IEPs being in place at the start of the school year.

Regulatory Comments (41 Fed Register Vol. 71, No. 156, Page 46544)

(From the summary of the major substantive changes in these final regulations from the regulations proposed in the NPRM (the rationale for each of these changes is discussed in the *Analysis of Comments and Changes* section of this preamble):

Section 300.323(d) has been revised to require public agencies to ensure that each regular teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of a child's IEP, is informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the child's IEP. These are the same requirements in current § 300.342(b)(3)(i) and (b)(3)(ii).

Re: 300.321 (41 Fed Register Vol. 71, No. 156) Page 46669

Comment: Several commenters recommended that the IEP Team include an IEP manager who would communicate with IEP members not in attendance, ensure that the IEP requirements are met, and assume responsibility for implementing the IEP.

Discussion: The Act does not require an IEP Team manager as a part of the IEP Team. While having one individual manage the provision of services under the IEP might be a good practice in particular circumstances, we decline to require IEP Team managers for all IEPs because, in many cases, it would be unnecessary. In addition, to ensure that all IEP Team members are aware of their responsibilities regarding the implementation of a child's IEP, § 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.

Changes: None.

Re: 300.323 (41 Fed Register Vol. 71, No. 156) Page 46679

When IEPs Must Be in Effect (§ 300.323)

Comment: Some commenters recommended retaining current § 300.342(b)(1)(i) to ensure that an IEP is in effect before special education services are provided to a child.

Discussion: We do not believe it is necessary to retain current § 300.342(b)(1)(i) because we believe this requirement is implicit in § 300.323(a), which requires each public agency to have an IEP in effect for each child with a disability in the public agency's jurisdiction at the beginning of each school year. *Changes:* None.

Accessibility of Child's IEP to Teachers and Others (§ 300.323(d))

Comment: Many commenters recommended retaining current § 300.342(b)(3)(i) and (b)(3)(ii), which require teachers and providers to be informed of their specific responsibilities for implementing an IEP, and the specific accommodations, modifications, and supports that must be provided to the child in accordance with the child's IEP. Several commenters stated that a child's IEP should be readily accessible and all those involved in a child's education should be required to read and understand it.

Discussion: Section 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. The purpose of this requirement is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed. We agree with the commenters' recommendation and believe retaining current § 300.342(b)(3)(i) and (b)(3)(ii) is necessary to ensure proper implementation of the child's IEP and the provision of FAPE to the child. However, the mechanism that the public agency uses to inform each teacher or provider of his or her responsibilities is best left to the discretion of the public agency.

Changes: We have restructured § 300.323(d) and added a new paragraph (d)(2) to include the requirements in current § 300.342(b)(3)(i) and (b)(3)(ii).