

Chapter

Nine

The Special Education Process:
Individualized Education Program (IEP)

The IEP dictates instruction
and services a student will
receive, which, in turn, directly
affect the child's opportunities
for educational success.

Written by

Susan E. Sutler

& Joseph B. Tulman

A free, appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA) essentially consists of special education instruction and related services that are provided "in conformity with an IEP . . ." 20 U.S.C. § 1401 (8); 34 C.F.R. § 300.8(d)(1997).¹ A valid Individualized Education Program (IEP) must meet the requirements of 20 U.S.C. § 1414(d) and 34 C.F.R. §300.340-300.350 (1997) regarding the procedures for creating IEPs and the content of IEPs. *Id.* The IEP is a creature of the IDEA; the Rehabilitation Act does not require such written plans. The Rehabilitation Act does, however, provide that implementation of an IEP developed under the IDEA is one way of complying with the FAPE requirement contained in the § 504 regulations. *See* 34 C.F.R. § 104.33(b) (2).²

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Creating an IEP requires a team effort. The parent, the child, the child's teacher, and an individual qualified to interpret the instructional implications of the evaluation results³ jointly consider all of the

¹As previously discussed, to constitute a FAPE, the education provided a child with a disability must also meet the standards of the state educational agency, including curriculum standards, and provide an appropriate elementary or secondary education as defined in that state. 20 U.S.C. § 1401(8).

²An increasing number of school systems are now developing written "§504 plans" for students who are eligible for services under the regulations implementing § 504 of the Rehabilitation Act, but not under IDEA.

³*See* 20 U.S.C. § 1414(d)(1)(B). At least one regular education teacher of the child and one special education teacher or provider must be part of the team. Another participant required at the meeting is a representative of the school system who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general curriculum; and is knowledgeable about the availability of resources in the school system. 20 U.S.C. §

information gathered through the evaluation process about the child's present academic, cognitive, emotional, and perceptual functioning. This team -- referred to in the IDEA as the "individualized education program team"-- constructs long- and short-term educational goals for the child which respond to the child's specific needs. The "team" must also construct a plan for the child to accomplish those goals. The goals and the plan for accomplishing the goals become part of the IEP.

The child is a member of the team and should be encouraged to attend the IEP conference, the meeting at which the team drafts the IEP. The statute stops short of mandating the child's participation at the meeting,⁴ but does require either participation or input by the child at any meeting in which the team considers transition services.⁵ At an IEP meeting at which transition services will be considered, the public agency must also invite "a representative of any other agency that is likely to be responsible for providing or paying for transition services". 34 C.F.R. § 300.344 (c)(1)(ii)(1997).

The formulation of a written IEP is a critical phase of the special education process. The IEP dictates the

1414(d)(1)(B)(iv).

⁴The relevant provision, 20 U.S.C. § 1414(d)(1)(B)(vii), requires the public agency to ensure the child's participation "whenever appropriate". Given the range of ages and disabilities covered by the IDEA, one might conclude that the modifying language, "whenever appropriate", is not meant to empower school personnel to exclude students, particularly teenagers, from participation. Whether student attendance of IEP meetings is "appropriate" should be determined by parent and student. The independent IDEA requirement that parents be permitted to invite to participate on the team anyone with "knowledge. . . regarding the child," 20 U.S.C. § 1414(d)(1)(B)(vii), buttresses this interpretation. A child's presence has value, and may be "appropriate in the view of parent and/or child," even if he or she is not capable of fully comprehending the import or content of the meeting.

⁵*See* 300 C.F.R. § 300.344(c)(1)(I) (1997)(if purpose of meeting to consider transition services, "public agency shall invite the student")(emphasis added); 300 C.F.R. § 300(c)(2)(1997) (agency re-sponsible to ensure that student's preferences and interests are addressed if student does not attend).

instruction and services a student will receive. In turn, the IEP directly affects the child's opportunities for educational success. In light of the central function of the IEP, counsel must attend and participate in the IEP conference. Counsel often can make critical contributions at an IEP conference. For example, counsel can persuade the other participants at the conference to include a particular service or to change an aspect of the program.

The IEP is particularly important for a child with a disability who is in the delinquency system. The IEP can function as an alternative-to-detention plan, or as a treatment plan that supersedes a standard dispositional program. A properly-constructed IEP should be superior in design and content to anything typically found in the delinquency system. Thus, by ensuring that the IEP includes particular types of instruction, as well as particular related and transition services, counsel can enhance the child's chances of avoiding detention or a delinquency disposition that is punitive and ineffectual.

The overlap of education-related services and delinquency demands may provide better alternatives to a child. For example, if a child has had relatively minor delinquency involvement, a typical disposition might be probationary supervision. An IEP that provides for psychological counseling and some specialized instruction in school may be sufficient to help the child abstain from delinquent conduct. The supervision, structure, and programming in an IEP can easily be more comprehensive than services available through probation or commitment; a judge, therefore, might readily accept the IEP as an alternative to a standard disposition of a delinquency case.

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I. Parent participation

The public agency must take steps to ensure that parents have the opportunity to attend and participate in the IEP conference/meeting. 34 C.F.R. §300.345

(1997). The parent/guardian is a member of the IEP team and has the right to be an equal participant in developing, reviewing, and revising the student's IEP. The public agency must provide the parent with notice – in a language and manner the parent can understand – that indicates the purpose, time, place, who will be in attendance, and the parent's right to bring other persons to assist them at the IEP meeting. 34 C.F.R. §300.345(a) & (b) (1997). All attempts to contact the parent should be documented by the public agency. 34 C.F.R. § 300.345 (d) (1997). Transition services, if necessary, must be indicated in the notice of an IEP meeting. In addition, the agency must also extend an invitation to the student and notify representative from other agencies, if applicable.

The IEP meeting is required to be scheduled at a "mutually agreed upon time and place." 34 C.F.R. §300.345(a)(2). Often, the public agency will schedule a time for an IEP without input from the parent.

The parent and child should not have to leave work or conform to the agency's schedule if it would cause hardship. Once the evaluations are completed, it is recommended that the advocate propose – in a letter to the IEP coordinator – several dates and times that are convenient for the parent, child and advocate. It will be necessary for the advocate to inform the public agency – in writing – that the parent and student have retained an advocate for the special education case. In addition, the advocate should request that the public agency notify the advocate of any meetings to be scheduled pertaining to the child.

A client may, at times, fail to inform the advocate of information received from the public agency regarding an IEP. The advocate, being proactive, should talk with the client about the importance of keeping the advocate informed of any notices received from the public agency. The advocate should establish a rapport with the client that makes it easy for the client to communicate. An advocate should propose convenient meeting dates and frequently contact the client and the public agency.

In order for the parent to have meaningful input, the public agency may be required to provide an interpreter for a parent who is deaf or non-English speaking. 34 C.F.R. §300.345(e)(1997). The parent

should fully understand the significance of signing the IEP. In some states and school systems, the signature only indicates a parent's presence and participation in the meeting. Signing the IEP does not necessarily signify that a parent agrees with the contents of the IEP. In other states and school systems, however, signing the IEP constitutes agreement with its contents.

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The public agency cannot bring a completed IEP to the meeting and simply request the parent to approve and sign it. In an effort to save time, the public agency will often bring a "draft IEP" based on their recommendation for goals and objectives. The "draft IEP" can then become a working document to be modified in whole or part depending on the parent's input, the student's needs, and the advocate's input during the IEP conference.

Under certain circumstances, the public agency can proceed with the development of an IEP without the parent's presence. When a parent refuses to attend an IEP, or chooses not to attend, and proper notification has been given, the public agency can proceed with the IEP provided they have made a good faith effort, that is well documented, to convince the parent to attend and schedule a mutually-agreed-upon time and place. 34 C.F.R. § 300.345(d)(1997). If the parent cannot attend, the agency must use other methods to ensure parent participation, including individual or conference telephone calls. 34 C.F.R. § 300.345(c)). If an IEP is developed without the parent present, and the parent later claims at a due process hearing that proceeding in the parent's absence constituted a procedural violation of IDEA, the public agency will be re-quired to produce evidence to show that a good faith effort was made to notify the parent and convince the parent to attend before having proceeded. The public agency can bring such evidence as "detailed records of telephone calls," "copies of correspondence sent to the parents. .," and "detailed

records of visits made to the parent's home or place of employment. . ." Even under these circumstances, failure to attend the meeting does not waive the parent's right to challenge the contents of the IEP.⁶

On occasion, a parent may give the advocate permission to attend the IEP meeting without the parent. The advocate should make every effort to encourage the parent to participate. In addition, the advocate should explain the importance of the parent's participation at the IEP meeting. In the event that the advocate waives the client's right to attend the IEP meeting, the advocate should reserve the parent's right to review the IEP and request changes or additions, if necessary. Under these circumstances, an IEP meeting can be reconvened without all the team members, depending on the nature of the parent's disagreements or requests.

II. Purpose of IEP conference

The multiple purposes for the IEP conference are as follows: (1) to review the evaluation information; to explain the team's findings and to answer any questions the advocate and the clients may have; (2) to determine the child's eligibility and needs for special education services; (3) to provide ample opportunity for parent/student input and participation in this decision-making process; and, most importantly, (4) to formulate a written IEP.

A conference to review, revise, and update the IEP must take place at least annually; however, a parent, an advocate, or school personnel may request an IEP review meeting at any time. 20 U.S.C. § 1414(d)(4); 34 C.F.R. § 300.343(d) (1997). The IEP is not considered a binding contract,⁷ but it does serve a

⁶See also *Jackson v. Franklin Co. School Board*, 806 F.2d 623, 632 (5th Cir. 1986)(IDEA right to appropriate education is not simply parent's right to give up; even if parent had voluntarily agreed to child's withdrawal from school in wake of behavioral problems, school district remained obliged to convene IEP meeting and comply with IDEA).

⁷Federal regulations indicate that while the public agency is required to provide the services in the IEP, if the child does not achieve the goals and objectives, the agency is not in violation of the regulations, assuming proper implementation of the IEP and good faith efforts

dual purpose to guide the teacher and service providers in planning and implementing their instruction and intervention services, and to help the parents and advocates monitor the educational progress of the student.

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The IEP is both a process and a written document; the IEP establishes rights for the parents of the child and creates corresponding obligations upon the public school agency. The advocate should be aware that the process affects the product and should raise both procedural and substantive challenges to the client's programming. In the *Rowley* case, the U.S. Supreme Court emphasized the importance of compliance with procedural mandates pursuant to the IDEA as a prerequisite to formulating an appropriate IEP. The involvement and presence of an educational advocate can increase the likelihood of compliance.

The regulations covering IEPs are 34 C.F.R. §§ 300.340 - 300.350 (1997). The advocate should be familiar with these sections of the regulations. It is also imperative that the advocate be thoroughly familiar with Appendix C to Part 300: Notice of Interpretation. This appendix addresses the purpose and requirements of the IEP, covered by the aforementioned statutory provisions, in a question-and-answer format. At due process hearings, the advocate can cite to this appendix as law in support of a substantive challenge.

The regulations should be taken to the IEP conference for reference purposes. The advocate should also be familiar with the state's specific standards and

have been made to help the child achieve. 34 C.F.R. §300.350 (1997).

eligibility requirements for each category of disability. In addition, the advocate should be familiar with the state standards for special education programs and services. The state standards should be in written form in every state and the advocate must obtain and keep a copy of them. The IEP team relies on such standards in determining eligibility and, in some cases, the kinds of services and instructional supports that the child will receive. Therefore, it is important that the advocate take the state standards to an IEP meeting as well. The public agency is responsible for the development and implementation of IEPs for children placed in public facilities and students placed and funded in private facilities by the public agency. 34 C.F.R. § 300.341 (1997). As a general rule, the public education agency is responsible for initiating and conducting the IEP conference with all the necessary participants present. 34 C.F.R. § 300.343 (1997). If, however, a client has already been identified as eligible and has been placed and funded in a private school by the public agency, the private facility may initiate and conduct the IEP conference "at the discretion of the public agency," on the condition that both the parent and the agency are involved in decisions made regarding the IEP before it is implemented. 34 C.F.R. § 300.348(b)(1997).

Regardless of the particular state's applicable time line for completing assessments and proposing placements for eligible children, one of the few time lines contained in the federal regulations mandates conducting an IEP conference "within 30 calendar days of a determination that the child needs special education and related services." 34 C.F.R. § 300.343(c) (1997). In addition, the IEP must be implemented 'as soon as possible following' the IEP meeting. 34 C.F.R. § 300.342(b)(2)(1997). The purpose for this regulation is to ensure that the student should receive the benefit of specialized instruction and related services as soon as possible.⁸

⁸The U.S. Department of Education's 1997 proposed amendments to the IDEA regulations state that "[f]or most children, it would be reasonable to expect that a public agency offer services in accordance with an IEP within sixty days of receipt of parent consent to initial evaluation." Note to proposed 34 C.F.R. §300.343, 62 Fed.

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The advocate must ensure that the public agency representatives do not limit instructional goals or recommended services to the available resources of the school system; rather, goals and services must meet the individual educational needs of the child.

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III. Contents of the IEP

The contents of the IEP must be tailored to meet the specific individual needs of the child being represented. The goals and objectives in an IEP provide a mechanism for determining whether the student is progressing, whether the desired out-comes are being met, and whether the placement and services are appropriate to meet the student's needs. The goals and objectives in the IEP should focus on deficiencies that interfere with the child's learning, the child's ability to learn what all children are taught in the general curriculum, and promoting the child. The goals and objectives require specialized instruction, related services, and/or transition services. At the IEP meeting, an advocate and parent must articulate, in detail, any instruction or services they want or expect the child to receive. The ad-vocate must ensure that the public agency representatives do not limit instructional goals or recommended services to the available resources of the school system; rather, goals and services must meet the individual educational needs of the child.

The child's current performance levels should be based on data taken from testing less than one year old. The team should consider and review standardized and informal assessment measures; teacher-made tests; classroom observations; teacher/service provider anecdotal and progress notes; and behavioral statements and programs.

Mastery of goals and objectives can be measured in

percentages, ratios or time. With respect to percentages, the goal may be that the student will perform a task with eighty percent accuracy over a specified period of time. This particular means of measuring mastery of a goal is often confusing to parents and educators, unless it pertains to test scores. For example, the student will show mastery of two digit addition/sub-traction when he obtains eighty percent or higher on three consecutive teacher-made tests. A student can also demonstrate mastery of a goal by performing a task a certain number of times correctly when performing the task for a specified number of tries. For example, if the student can "tie his shoe," eight out of ten tries, the student is mastering this goal with eighty percent accuracy. In other examples, a student can "identify the main theme in a paragraph," or, "correctly get in and out of a specific computer program" eight out of ten tries and master such goals with eighty percent accuracy.

It is helpful to prioritize goals in the IEP by starting with the skills most difficult for the child. For example, if the child is found to be seriously emotionally disturbed, the IEP should first address emotional and behavioral goals with recommended objectives and services. If the child is learning disabled in reading, spelling, and math, the IEP should first address academic goals and objectives designed to reduce and improve the deficits in reading, spelling and math, and enable the child to attain the mastery all other students are expected to attain.

Related or transition services should be specified regardless of whether the public agency is actually providing the service or funding a private provider. It is not enough to simply indicate the need for counseling. If the child needs psychological counseling, and the advocate and the client want a particular type of professional to provide the service, the IEP should expressly state that. For instance, depending on the student's needs, the IEP may need to denote a "school psychologist" or perhaps a "clinical psychologist" as the provider. This type of detail is required. Without such detail on the IEP, the child will not receive either the service, or the public agency will make a determination unilaterally. Advocates should prevent the public agency from

making such decisions when they can easily be determined at the IEP conference.

The IEP should contain great detail when the child needs any technical equipment, instructional materials, furniture, or supplemental aids – in the special or regular education classrooms – to ensure educational benefit. If the child needs to have access to a computer or calculator, manipulatives, a specially designed chair, or preferential seating, the advocate should ensure that such devices and adaptations are reflected in the IEP with specificity.

The frequency of services a child is to receive per week (e.g., once or twice per week), the duration of time the student is to receive each service (e.g., thirty or forty-five minutes), and the type of setting in which the child is to receive each service (e.g., group, individual, classroom, consultative), must be indicated on the IEP. Consultation is designed to be provided directly to the teacher as opposed to the student. For example, the IEP should indicate that the speech therapist will consult with the classroom teacher, biweekly, for thirty minutes. It is also important to be specific in the IEP when a need for a service provider to conduct an “in class” service to the student is necessary, while he or she is involved in a class activity, as opposed to pulling the student out of the classroom.

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Nothing should be left open to interpretation by the teachers or decided at a later time by a service provider. The parent, teacher, or service provider can always request to reconvene the IEP meeting to amend or modify an IEP, if necessary. The advocate and parents are not limited to the related services specifically outlined in 34 C.F.R. § 300.16(1997). As indicated in the note following that statutory

provision, the list of services is not exhaustive of all the developmental, supportive, or corrective services a client may need. Further, it is critical for the advocate to remember that related services should be included based upon the student’s desires and the student’s needs. Often, public agency representatives do not want to include certain services because they can not provide them or they do not have the resources to acquire the service or equipment. An advocate should not be deterred from requesting that certain services be incorporated into the IEP. An agency’s lack of resources is not a determining factor for what should or should not be in a student’s IEP; the student’s specific needs govern. 34 C.F.R. § 300.17(a)(1)(1997).

Finally, the advocate must be thoroughly familiar with the definition and types of “assistive technology devices and services” available. 20 U.S.C. §§ 1401(1), 1401(2), 1414(d)(3)(v)(B); 34 C.F.R. §§ 300.5, 300.6 (1997). These services and devices can be invaluable tools for students with disabilities. These too, must be outlined with specificity in the student’s IEP. The advocate should keep in mind that these provisions may support and require the public agency to evaluate the client to determine if some type of technological device or service is required. The advocate may be able to get assistance for the child’s family to learn how to use or operate the technological device if it is something the child needs at home to insure progress at school. The advocate should take advantage of these provisions.

IV. Transition services

When the IDEA was amended in 1990, one of the primary amendments mandated that students age sixteen or older and, when appropriate, students fourteen or older, have transition services integrated into their IEP. The 1997 IDEA amendments strengthened this mandate, requiring transition services related to the child’s course of study beginning at age fourteen, and the full panoply of transition services beginning at age sixteen, and earlier “if appropriate..” 20 U.S.C. § 1414(d)(1)(A)(vii). The IDEA defines transition services as follows: “A coordinated set of activities for a student, designed within an outcome-oriented

process, which promotes movement from school to post school activities, including: post secondary education; vocational training; integrated employment (including supported employment); continuing and adult educational adult services; independent living; or, community participation." 20 U.S.C. § 1401(30)(A); 34 C.F.R. §300.18(a) (1997). The statutory provision further requires that the coordinated set of activities be included in the student's program and based on the student's individual needs, interests, and preferences. 20 U.S.C. § 1401(30)(B).

Additionally, the set of activities outlined in a student's IEP must include the following: "instruction; community experiences; development of employment and other post school adult living objectives; and, when appropriate, daily living skills and functional vocational evaluation." 20 U.S.C. § 1401(30) (A); 34 C.F.R. § 300.18(b)(2)(1997). If the team decides the student does not need services in any of the previously-specified areas, the IEP must contain a statement to this effect and the basis upon which this decision was made. 34 C.F.R. §300.346 (b)(2).

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A. Goals of transition services

There are four primary goals of transition from school life to life in the community. The advocate and team need to address any or all of these areas when integrating transition planning into the IEP process. They include: (1) employment and education; (2) independent living; (3) interpersonal and social relationships; and (4) self-advocacy. When integrating these aspects into the IEP, the advocate and the team must design objectives and activities

which promote the achievement of these goals. Further, the transition goals and objectives must be based on the student's current levels of performance. However, unlike developing statements pertaining to special education instruction and related services, the team must look several years into the future in order to pro-actively address the transition needs of the student. The advocate and team must ask themselves the following question when considering transition planning each school year: in light of the remaining number of years the student has in school, the student's level of performance, and where he or she needs to be at the end of high school, what transition services are needed this year?

The first category – education and employment – can include among other things, college, apprenticeships, continued vocational training, independent or supervised employment, and volunteer positions. The second category – independent living – pertains to such skills as the student's ability to: care for, feed, cloth, and provide shelter for himself; manage time; pay bills; travel from place to place; become involved in the community; and relax. The third category – interpersonal and social relationships – involves skills in the areas of self-awareness and confidence, written and verbal communication, the ability to read social cues, and to interact and behave appropriately. Finally, the fourth category – self-advocacy – pertains to knowing basic rights, standing up for yourself, assuming responsibility for your actions, articulating your needs, asking for help when necessary, and problem solving and decision-making skills.

B. Transition planning

In order for transition planning to be effective for a child with disabilities, that planning must begin while the child is still in school. The transition goals must be a component of the IEP in order to ensure that the student gets assistance, experience, and practice prior to leaving the school setting. The IEP team must discuss, re-view, reassess and even modify, if necessary, the student's curriculum in light of transition goals. The team members should link the student's curriculum to the skills the student needs in order to meet post-secondary-education goals.

Transition planning is a process which involves the student, the family, school and post-school service personnel, local-community represent-atives, employers, members of the business community, advocates, transition specialists, work-experience coordinators, and government-al-service personnel. The advocate must be familiar with the student’s interests and preferences to help determine what other agencies, if any, the student should attend. Some transition services will not be delivered by the school system; rather, another participating agency or private industry will provide the agreed-upon services.

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The advocate must ensure that the agency/private provider is specified in the actual written IEP. In addition, the advocate should have strategies outlining how that agency will assist the student in meeting the transition objectives explicitly stated in the IEP.

The advocate should inform the public agency’s IEP coordinator of persons to notify from outside private and public agencies. The advocate should also notify these person/ agencies independently, to assure their atten-dance at the IEP meeting. When possible, the advocate should have already forwarded the following documents to outside agencies: evaluation reports; the last IEP; the applicable curriculum; the student’s schedule; and any other relevant information. By forwarding such in-formation, the advocate enables the appropriate personnel from the outside agency to become familiar with the student’s level of performance, as well as with the student’s strengths and weak-nesses. The advocate should talk with outside agency staff prior to the IEP meeting. Again, despite the legal obligation created by the IDEA, advocates should not rely on the public

agency to do all the necessary preparation or identifica-tion of appropriate persons or agencies needed to develop, implement, and finance transition ser-vices for the student.

If the participating agency fails to provide the services, it is the educational public agency’s obligation to reconvene the IEP meeting in order to identify another agency, come up with some alternative strategies to meet the student’s transition program, or revise the IEP. 34 C.F.R. § 300.347(a)(1997).

The vast majority of special-education-eligible clients who have cases pending in the delinquency system will be eligible for transition services. For those students, transition services open a door to a wide range of services. These services exceed what is available pursuant to the IDEA’s related-services provision and what the delinquency court can offer typically. The ad-vocate plays a critical role in ensuring that trans-ition services are identified and integrated into the IEP. To secure a successful transition ser-vices program the advocate should, among other things,

- N remind the public agency of – and hold them accountable for – their obligation to provide transition services as created in the statute;
- N assist the student/client in identifying interests, career goals, and any post-secondary objectives, and make these known to the public agency;
- N begin to identify and contact post-secondary schools, businesses, other government agencies, programs, services, and sources of financing -- based on the client's interests;
- N notify necessary persons about the IEP and provide each person with the information needed to allow for meaningful planning and input;
- N monitor and follow-up with appropriate contacts to ensure compliance with and success of the transition services program; and, notify the public agency and team to reconvene the IEP, if modification of the transition services program is needed.

In constructing a transition plan, the advocate needs to be innovative and creative. It is unlikely that one person, agency, or organization can design the plan or put it into operation. Collabor-ation and

coordination are central to the success of a transition service plan, and will pose a significant challenge for the advocate and team members. Much of the transition service planning must take place prior to the IEP meeting. Transition planning cannot happen if the advocate, clients, school system, and other appropriate agencies have not coordinated their efforts prior to, and in preparation for, the IEP meeting.

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C. Other legal resources for transition services

In addition to the IDEA, three other federal laws provide resources for transition services. They are (1) The Carl D. Perkins Vocational and Applied Technology Education Act, (2) The School-to-Work Opportunities Act, and (3) The Rehabilitation Act (for funding of state initiatives and services). The advocate should be familiar with all three of these federal laws.

The Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. §2301 *et seq.*, provides funds to states and local school systems for vocational education programs for all students. The Perkins Act provides special rights and protections for students who are members of "special populations," including students who are economically disadvantaged (low-income); educationally disadvantaged (low-achieving); have disabilities; have limited English proficiency (LEP); are seeking to participate in programs designed to eliminate sex bias (i.e., students trying to enter a field not traditional for their gender); and are in correctional institutions. 20 U.S.C. §2471(31). School systems receiving Perkins funds must provide special population students with equal access to the full range of vocational education programs; to recruitment, enrollment, and placement activities;

and, to the extent practicable, to comprehensive career guidance and counseling services. 20 U.S.C. §§ 2328 (a)(1), 2328(2). Moreover, programs may not discriminate on the basis of special population status. 20 U.S.C. § 2328(a)(2). Beyond provision of equal access and nondiscrimination, Perkins recipients have an explicit obligation to provide supplementary services to enable students to succeed in programs. 20 U.S.C. §§ 2328(c)(3), 2343(12)(B), 2471(38). Supplementary services include curriculum modification; equipment modification; classroom modification; supportive personnel; instructional aids and devices; counseling; English language instruction; child care; and special aids. *Id.*

The School-to-Work Opportunities Act, 20 U.S.C. § 6101 *et seq.*, provides states and local communities with funds to create "school-to-work systems" that provide all students, including students with disabilities, with the opportunity to participate in programs that integrate school- and work-based learning, vocational and academic education, and secondary and postsecondary education. In addition to school- and work-based learning, school-to-work programs must include school- and work-site mentoring, assistance with placement into both jobs and postsecondary education and training, and linkages to other community services that may be necessary to assure a successful transition from school to work. 20 U.S.C. §§ 6112-6114.

Finally, advocates should be aware of transition-related services to which their clients may be entitled under their state's vocational rehabilitation program. These services, funded in part through the federal Rehabilitation Act, 29 U.S.C. 701 *et seq.*, are geared towards allowing individuals to prepare for and engage in employment. As adolescents (and adults) who meet eligibility requirements are entitled to services, the state vocational rehabilitation agency is often a critical participant in transition planning and transition service delivery under the IDEA.

There may be a Transition Advisory Committee (TAC) in each jurisdiction or district that functions at the state or local level. This decision-making body operates as a community inter-agency transition planning committee. An advocate should inquire and

take advantage of the TAC, if available, for knowledge and resources. The public agency should be aware of such a committee, or one can contact the regional Council For Exceptional Children (CEC) office, if such an organization exists in your jurisdiction. The Council For Exceptional Children publishes documents on a variety of issues pertaining to children with special needs.⁹

V. Preparing for the IEP

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In order to have meaningful input during the IEP, the parent and advocate need time to review the reports alone, with each other, and with an outside expert (e.g., educational consultant, psychologist), if applicable.

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Early in the evaluation process and in preparation for the IEP meeting, the advocate should make a written request of the public agency to provide copies of the evaluation reports to the advocate and parent/guardian upon completion of all assessments, and at minimum, seventy-two hours before the IEP meeting is conducted. Although there is no regulation which mandates a time certain for receipt of the evaluation reports, the regulations require the public agency to comply with parents' request to review and receive copies, ". . . without unnecessary delay and before any meeting regarding an IEP . . . and in no

case more than forty-five days after the request has been made." 34 C.F.R. §§ 300.562 (a), 300.562(b) (2) (3) (1997). This regulation also makes it clear that a parent's representative has every right to inspect the student's educational records, as well. In order to have meaningful input during the IEP, the parent and advocate need time to review the reports alone, with each other, and with an outside expert (e.g., educational consultant, psychologist), if applicable.

If an outside expert is needed, the reports will have to be forwarded to the expert with sufficient time to review, and in some cases produce a written response to, or critique of, the public agency's report. A written report will be especially important if the expert can not attend the meeting and is disagreeing in any way with the public agency's findings or recommendations. The advocate may want to submit the report to the team for consideration.

In light of the above, the advocate should make three (3) copies of the documents received. One clean copy of each report should be kept in the file. The advocate may need to reproduce these documents again for use at a due process hearing. One set should be forwarded to the clients; one set should be used as a working document for the advocate to highlight and annotate with questions and comments; and the advocate should forward the last set to an expert for review. In some instances the advocate will not receive the evaluations more than seventy-two hours before an IEP meeting, and the reports may only be *handwritten*. To accomplish the client's objectives, however, the advocate may need to go forward with the development of the IEP. A pending delinquency court proceeding, for example, may necessitate the expeditious production of an IEP.

⁹Other resources for advocates on transition services issues are the National Transition Alliance for Youth with Disabilities (University of Illinois, 113 Children's Research Center, 51 Gerty Dr., Champaign, IL 61820; 217-333-2325); the National Transition Network, University of Minnesota, 106 Pattee Hall, 105 Pillsbury Dr. SE, Minneapolis, MN 55455; 612-626-7220); and National Information Center for children and Youth with Disabilities (NICHCY) (which puts out information on a variety of issues, and has an extensive publications catalog), P.O. 1492, Washington DC 20013-1492; 800-695-0285 or 202-884-8200).

Pursuant to a request at the outset of the representation for a client's educational records, the advocate should have received and reviewed all of those records with particular focus on the student's existing (or last) IEP, the last assessment reports preceding the current evaluation, and the student's grades and attendance records, again with an emphasis on the last two years. Of course, any outside evaluation reports submitted to the public agency for review, pursuant to 34 C.F.R. §§

300.503(c)(1), 300.503(2) (1997), either done by private practitioners or through the court system, should also be thoroughly reviewed and considered when preparing for the meeting. If the advocate or the school assessment team members suspect that the child may be eligible as a Seriously Emotionally Disturbed (SED) student, the advocate's record review will need to go back further in time, since eligibility in this disability category requires that the child exhibit certain "characteristics over a long period of time and to a marked degree". 34 C.F.R. § 300.7(b) (9) (1997).

In addition to the evaluation reports, the advocate should have a number of other documents when attending IEP conferences. The advocate should bring to the IEP, for reference purposes, a copy of the special education regulations and any other state code provisions, or Board of Education Rules, which may apply in the jurisdiction. The advocate must also be familiar with, and have a copy of, the applicable state standards and eligibility requirements for each disability category and for the special education programs (i.e., teacher-pupil ratio, class size, age range, etc.). This information should be in written form in every state. The team relies on state standards in determining eligibility and placement. This document is referred to during eligibility and IEP meetings. Having the written eligibility criteria accessible is helpful in keeping the team focused. The special education advocate should use such standards also in formulating questions to challenge or clarify the team's eligibility findings.

Another critical document is the student's existing or recently-expired IEP. For a student who has already, the team members should review annual goals and objectives set forth in the last IEP and also, of course, should discuss any new test results. The teacher or service provider should go through each of the objectives and discuss to what extent over the past school year the student accomplished the goal and any of the incremental objectives, and whether the particular goal needs to be included, modified, or left out of the new IEP. There should also be discussion about what teaching techniques did or did not work in assisting the student accomplish these goals. The advocate must be familiar with the last IEP, compare

the information contained therein with the new evaluation data, and be prepared to ask questions or make recommendations. The advocate should have discussed the current IEP with the client before the IEP conference to determine what goals the parents believe did or did not get accomplished and what they want the student to focus on during the upcoming school year.

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 If the outside expert reviewing the evaluation reports is unable to attend the IEP meeting, the advocate needs to confer with that person prior to the meeting to obtain advice and answers to questions.
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If the outside expert reviewing the evaluation reports is unable to attend the IEP meeting, the advocate needs to confer with that person prior to the meeting to obtain advice and answers to questions. If the expert plans to write a report or attend the meeting, preparation should include reviewing the evaluations, interviewing the student (and others), and observing the student in class, etc. The advocate should explain to the expert what the client's short- and long-term objectives are in order to avoid having the expert articulate some position during the meeting that is contrary to the client's objectives.

Finally, the advocate will want to meet with the client to go over the evaluations; the goals on the last IEP; the student's accomplishments and any pending issues or problems needing to be addressed by the team; any questions the clients may have; and what is it the clients want for the student, based on their knowledge, objectives and information received from the evaluations. Particularly for clients who have never participated in an IEP meeting the advocate must describe what will take place and how the meeting is conducted. Prior to representing a family at an IEP meeting, a novice advocate should observe at least a few IEP meetings. If a more experienced advocate's client gives permission, an opportunity to

observe can easily be arranged. It is also important for the clients (parent and student) to know that they are key members of the team and that their attendance and participation is important. The clients should be informed that if they have questions, comments, or disagree with anything said, they should express their concerns during the meeting or inform the advocate to share their concerns. If the client has been, or is in, the delinquency system with pending court case(s), the student and parent/guardian should be advised not to discuss any arrests, charges, or dispositions during the evaluation process and the IEP conference, unless there is some beneficial or strategic reason to do so.

In providing family history to the team social worker, parents often volunteer information that is negative and irrelevant with respect to eligibility and designing an educational program for the student. As a general rule, the advocate should request that details about the student's present and past delinquency involvement be deleted from the report. Often such information is irrelevant to the issues being discussed and is presented either inaccurately or in a fashion which assumes guilt. This is a particular problem when a client is incarcerated during the time of the evaluation and IEP conference.

Public agency personnel may make frequent references to the student's having been arrested, charged, and incarcerated. Further, during the placement stage, public and private school administrators use this information as a discriminatory basis for rejecting the students.

VI. The IEP conference and its participants

The public agency must ensure that the following persons participate in the formulation of a child's IEP: the child's parents; at least one of the child's regular education teachers; at least one of the child's special education teachers or providers; a representative of the school system who is (I) qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, (ii) knowledgeable about the general curriculum, and (iii) knowledgeable about school system resources; an

individual qualified to interpret the instructional implications of evaluation results; and the child, whenever appropriate. 20 U.S.C. §1414(d)(1)(B).¹⁰ The school system representative on the team must have the authority to commit the agency to provide whatever services are included in the IEP, so that the IEP will not be "vetoed" by school administrators or other school officials. 34 C.F.R. part 300, App. C, ¶ 13 (1997). If the IEP is to include transition services, both the student and representatives from any agency providing transition services must be invited and present. 34 C.F.R. §300.344(c) (1997).

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To ensure the presence of all the appropriate persons at an IEP meeting, the advocate should inform the school system's IEP coordinator, in advance and in writing, who from the public agency should attend. It is advisable to have the entire assessment team present at initial and triennial evaluations to discuss their findings and recommendations and to answer questions. When vocational assessments or transition services are to be discussed, the vocational assessors or transition specialists also should be present. The advocate should not assume that public agency personnel will make arrangements to have all of the necessary persons present. Therefore, the advocate

¹⁰These requirements reflect modifications made by the IDEA Amendments of 1997, Pub. L. 105-17 (June 4, 1997). IDEA regulations promulgated prior to the 1997 legislation provide that, in the case of a child who has been evaluated for IDEA services for the first time, the IEP the child and is familiar with the evaluation results. See 34 C.F.R. § 300.344(b) (1997). The U.S. Department of Education proposed regulations implementing the 1997 amendments delete this requirement. See 62 Fed. Reg. 55089 (October 22, 1997).

should be prepared to notify all persons who should be present. The advocate's decision on whom to include in an IEP meeting and how to proceed should always be client-centered and influenced by the facts of the case.

For an initial evaluation and placement, the team members should begin by sharing their test results and observations. Too often, however, the main focus is on information from persons who have recently tested the student. The student's teachers are critical members of the team. Because teachers work with the student on a daily basis, their perspective and knowledge is of particular importance. A teacher can attest to the child's strengths, weaknesses and learning styles. If the client has a number of teachers, it is useful to hear from all of them. It is usually a must, however, to have present at the IEP meeting the teachers who focus on math and language arts. With input from teachers, parents, the child, and evaluators, the team collectively determines the child's eligibility and disability classification.

The designated agency representative attending the meeting should have the authority to guarantee that the programs and services described in the IEP will be provided and the authority to commit the necessary agency resources to implement the plan. Who from the agency assumes the role of representative depends on the student's disability, intensity, and the extent of services required. A teacher, counselor, principal, or high-ranking administrator may assume the role.

If mandated or critical participants are not in attendance, the advocate has several options to pursue. As a general rule, the preference should be to move forward to complete the IEP. One option is to proceed with the IEP, with the persons who are present, while having someone try to get the missing person(s) to the meeting before it is over. Another option is to complete as much of the IEP as possible and schedule another date to allow for the missing persons to have input. Yet another option is to request to adjourn before starting the IEP and reschedule the conference for another day when all persons can be present.

The advocate's decision on how to proceed will depend on the facts of the case. For example, it may be necessary to complete the IEP prior to an upcoming delinquency status hearings trial, or disposition without further delay if it will in any way assist in getting the desired outcome in the delinquency case.

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 The advocate's decision on who to include in an IEP meeting and how to proceed should always be client-centered and influenced by the facts of the case.
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As a general rule, the student should attend the IEP meeting. Even though the parent and student have the final decision on whether to attend the IEP, the advocate should strongly encourage the student's participation. The student's attendance is of particular importance when transition services are included in the IEP because the student's vocational/career interests and post-school preferences must be taken into account. 20 U.S.C. §1401(30)(C); 34 C.F.R. §300.18(b)(1) (1997). If the student is fourteen years old or older (or younger, if appropriate), transition services must be discussed at the meeting and the public agency must have invited the student to attend. 20 U.S.C. §1414(d)(1)(A)(vii); 34 C.F.R. §300.344(c) (1997).

Attendance and notice requirements may be mandatory for younger students in appropriate cases. This is especially true for younger students who are in the delinquency system, have dropped out of school, have high rates of truancy, have extremely low levels of academic functioning, and have little-to-no interest in, or compatibility with, conventional education settings. It is also important for the student client to exercise some control over what is taking place in the education arena. Many student clients will not have a voice because it is difficult for them to express their transition needs, vocational/career interests, or they are not sure what their interests really are. The advocate will need to engage the

student and explore those interests. In addition, the advocate should prepare the student to communicate such interests to the team during the meeting. One way to pursue engaging a student is to inquire about any jobs the student has already had and ask whether the student liked or disliked the jobs. It can also be helpful to discuss any hobbies the student may have or how the student spends free time. The advocate can also make arrangements with the public agency for the student to participate in career exploration by visiting some of the vocational schools/centers in the system. Such an opportunity will allow the student to see what is available. A vocational assessment must be completed and should be helpful in developing recommendations about the types of jobs which seem suitable to the student's strengths, weaknesses, and interests. Despite what the vocational findings are, the advocate should not allow the team to limit the student's exposure or opportunity to investigate certain job experiences when the student has expressed an interest in a field which may not "appear" to some team members to be suitable for the student.

A. When parties disagree at the IEP conference

The public agency is mandated to develop and implement an IEP for a child with disabilities. 34 C.F.R. §300.341 (1997). Even though statutory and case law requires parental participation in an IEP, much is left to the agency's discretion. There will be times when the public agency and the parent, along with the student, will not agree on what should be included in the IEP or how and where it should be implemented. The public agency should inform the parent(s) of their right to resolve the issues at a due process hearing. The advocate should make every effort to help the team resolve differences during the IEP meeting so that the student can begin to receive all of the desired services as soon as possible.

When disputes are related to any IEP issue, the parties should try to arrange an interim course of action. If there is no agreement as to the interim measure to be taken and/or the parent decides to file a complaint, the student would remain in the current educational setting, unless the parties agree

otherwise. 20 U.S.C. §1415(j); 34 C.F.R. §300.513 (1997). A student who is in a regular education class, would remain there. If the student has already been identified, the student would continue to get services under the existing IEP, in the current placement, until the matter is resolved. See 34 C.F.R. Part 300, App. C ¶ 35 for a complete discussion of alternatives available when the parties disagree.

Parties may agree with the overall IEP, but disagree with respect to the provision of a related service. In particular, parties may disagree on whether a service is needed, the frequency of the service, or who will be the provider. In such a case, the parties can agree to implement the portions of the IEP not in dispute while the parties negotiate, mediate, or go to hearing on the disputed issues.

If the parties disagree with the continuum level of services (e.g. a resource room versus a self-contained classroom), pending resolution, the parties can leave the student in the current placement or select one of the other options as a temporary arrangement for the student. In the aforementioned example, the student could be placed in either the resource room of the self-contained class. This temporary setting would constitute an "interim" placement until resolution of the matter. The benefit of an interim placement is, at minimum, twofold. The student begins to receive some of the appropriate services while decisions are made as to the appropriateness of the interim placement itself. Under any of the aforementioned circumstances, the advocate with a client who has a pending delinquency case will want to opt for an interim placement. The advocate will then be in a position to show the court that the client is not only disabled and eligible for special education services, but also that the client is receiving individualized services and is making progress toward rehabilitation.

It is good practice to write an education status memorandum to the judge in the delinquency case. The memorandum should outline some of the critical evaluation data, the student's disability classification, the related services, equipment, and the specialized instruction the client is to receive pursuant to their IEP. Such a memo should be written

and submitted to the court whether the IEP is final or interim. In addition, the memo should integrate the special education information in a way that encompasses the following: (1) supports a denial, mitigation, or justification of the client's involvement in the "alleged" charges; (2) influences the judge to dismiss the case or reach a suitable disposition; and (3) specifically sets forth the client's re-requested relief. A copy of the IEP or any other educational reports that will promote the client's objectives should be attached to the memo for the judge's review.

The downside of an interim placement is that the student may have to change placements after developing relationships with the staff and students. Transitional times are often difficult for children with special needs, but the decisions made by the advocate and client should balance the student's strengths and weaknesses, reflect the current and long-term objectives based upon what is at stake for that student.

B. Follow-up to the IEP conference

In many cases, the public agency will come to the IEP conference with a beginning draft of an IEP from which the team will work during the meeting. The advocate and client should request their own copies of the draft as soon as the meeting begins. The team should not have to share one or two copies. The law clearly states that "the public agency shall give the parent, upon request, a copy of the IEP." 34 C.F.R. §300.345 (f) (1997). The advocate and parent will need their own copies in order to document – during the meeting – any additions, modifications, etc. At the completion of the meeting, all participants will sign off on the IEP. If the parent disagrees or has a problem with anything in the IEP, the advocate should either make an entry on the public agency's actual document, or should write out on a separate sheet the client's dissenting opinion. The advocate should then request that this page be attached and incorporated as part of the IEP document itself. The advocate should make and keep a copy of this written dissent. Parents also have the option of reserving a decision on the IEP and taking the time they need to reflect upon it. Further, the advocate must re-request a

copy of the completed IEP from the public representative on behalf of the parent/ guardian.

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 If no actual placements were offered or considered during the meeting, there must be a discussion to determine when a meeting to discuss placement will be held.
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If the document needs to be cleaned up or re-written to reflect all of the modifications, the advocate should request delivery of a finalized copy of the IEP by a specified date. The advocate should determine who will be responsible for delivering the document. The advocate must be sure to get the address and phone number of the person responsible for delivering the IEP. If anything different than what was agreed to is in the finalized copy, the IEP will have to be changed to reflect accurately what occurred at the conference, or, if necessary, the team will have to reconvene. The parent always has the right to file a complaint. 20 U.S.C. §1415(b)(6); 34 C.F.R. §300.506 (1997).

Within twenty-four hours of the IEP meeting, the advocate should write a follow-up letter to the IEP coordinator. The follow-up letter should accomplish the following: state when the IEP is to be received; state any IEP-related agreements between the parties; state the issues that are pending, disputed or unresolved; and state the client's expectation with respect to each of the mentioned IEP-related concerns. A courtesy copy of the follow-up letter should be sent to the IEP coordinator's supervisor. The follow-up letter may become a critical document if a due process hearing is necessary later on.

In some cases, it is possible to discuss placement options during the IEP conference after the document is completed. If the public agency proposes a placement or placement options during the IEP meeting, the advocate should seek assistance in

scheduling a visit by the parent and student. The advocate should ensure that a notice of placement is not issued until the parent has had an opportunity to visit the programs. It is good practice to maintain communication with assessment team members prior to the meeting because they often will provide to an advocate information regarding the type of program they think may be appropriate for the client. Opinions on placement options may change as a result of the IEP conference; however, obtaining opinions from evaluators prior to the IEP meeting does provide the advocate with an opportunity to visit some programs even before the IEP meeting. Additionally, if the client already has a desire to attend a particular program, the parent may want to inform the public agency and during the IEP conference make a request for that placement.

If no actual placements were offered or considered during the meeting, there must be a discussion to determine when a meeting to discuss placement will be held. The 1997 amendments to IDEA explicitly grant parents the right to be members of any group that makes placement decisions. *See* 20 U.S.C. §1414(f). The advocate should know which member of the IEP team is responsible for arranging this meeting. It is necessary for the advocate to know this process, how this takes place, and when a proposed placement will be discussed. Again, the advocate should obtain the name, phone number and address of the person(s) involved in the placement decision. The follow-up letter should include this information and the advocate's understanding regarding the placement process.

The advocate and parent must always keep in mind that the least restrictive environment is determined during the development of the IEP. The placement proposed is determined by the continuum of services, the contents of the IEP, and is the means by which the IEP is carried out. The student is not entitled to receive any goals, related services, transition services, equipment, or professional services if they are not specified in the IEP document without either reconvening the IEP conference, or prevailing pursuant to a hearing.