

IDEA COMPLIANCE – THE BASICS

What are the current hot topics



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32nd Annual NMSBA

School Law Conference

June 10 – 11, 2011

PRESENTATION FOCUS



- This presentation will focus on those areas which are the elements of most state complaints and due process complaints.
- This presentation will focus on IEP documentation, procedural errors and basic elements which are not adequately addressed by the EDT or IEP teams
- As part of this presentation there will be a review of the items necessary to meet compliance standards.

FAILURE TO EVALUATE



- Failure to consider AT needs
- Failure to conduct BIP
- Failure to conduct evaluation or reevaluation in timely manner or at all
- Failure to respond to parental request for independent evaluation

FAILURE TO TIMELY PROCEED



- Failure to timely schedule MDT
- Failure to timely schedule evaluation
- Failure to respond to parental requests in timely fashion
- Failure to timely schedule IEP
- Failure to timely develop IEP

FAILURE TO CONSIDER ALL NEEDS



- Failure to consider communication needs
- Failure to consider AT needs
- Failure to consider behavior needs
- Failure to consider social needs
- Failure to consider physical needs

BEHAVIOR ISSUES



- Failure to consider behavior in development of IEP
- Failure to consider alternative settings
- Failure to consider FBA/BIP despite behavior issues

BEHAVIOR ISSUES



- Exclusion used as behavior modification technique
- Use of corporal punishment
- Requiring outside evaluations before allowing student to return

BEHAVIOR ISSUES CONTINUED



- Rely on parent to pick student up for behavior issues
- Failure to plan for return from IAES
- Failure to conduct manifestation in timely fashion
- Failure to consider all areas of disability in manifestation determination
- Use of physical restraint

IEP ISSUES



- Failure to implement and develop IEP
- Poorly developed goals and objectives
- Failure to develop transition goals
- Failure to develop appropriate accommodations and modifications

IEP ISSUES CONTINUED



- Failure to include therapies for identified exceptionality
- Failure to use research based strategies and scientifically research based instruction
- Unilaterally modifying IEP without team meeting

IEP ISSUES



- Failure to provide services when student out for illness or surgery
- Failure to conduct child find
- Failure to consider accessibility of facilities for orthopedically disabled student

IEP ISSUES



- Failure to provide ancillary services
- Failure to provide parental training
- Failure to properly document reason for terminating service
- Failure to provide adequate level of services for homebound student

IEP ISSUES CONTINUED



- Failure to provide progress reports
- Failure to consider parental input in determining Pathway to graduation
- Failure to address bullying/peer harassment
- Failure to provide highly qualified instructor
- Failure to provide adequate special education instruction from special education staff
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DUTIES



- This presentation will focus on 5 areas of duty and responsibility for school districts in the provision of special education services and the related support services.
- All school aged children eligible to receive special education services. Services may be available until student reaches the age of 22 or from age 3.

First Duty



- The first duty set out by federal and state law regarding the provision of educationally related services to students with disabilities is the duty of “child find”. This duty is often carried out by special education staff before a student enters public school.
- However, it is an ongoing responsibility and educational staff and administrators should always be on the lookout for students who are struggling to find success.

Second Duty



The second duty is to ensure that the program designed for the students is “reasonably calculated to confer an educational benefit”.

That benefit must be more than slight.

School staff must consider the students current level of functional and academic success in designing and implementing the educational program for each student.

All too often the IEP is poorly drafted and difficult to follow. To add to the problem the IEP is also not followed with the necessary fidelity to insure compliance with all federal and state regulations.

Second Duty Continued



- Administrators should include as part of the overall teacher evaluation consideration of implementation of the IEP both by general and special education teachers:
- Whether there has been adequate communication from all teachers, if there has the required participation in the development of the IEP and if the accommodations and modifications are being provided in the classrooms.

Third Duty



- The third duty is periodically review the IEP and the program being provided to the student to ensure the student is making progress.
- This review must occur at least once a year.

Review the goals and objectives to see if progress is being made



- Each IEP must contain goals and objectives specifically designed to address the needs of the individual student.

Goals and Short-term Objectives



- Annual Goal is a statement that describes what a child with a disability can *reasonably* accomplish within a twelve month time period in the special education program.
- The Short-term Objective should be written in a sequential order to reflect a progression through the various skills needed to meet the goal.

What steps will be taken



- If the student is not making progress on a regular basis the educational staff must be able to explain why that is not occurring and what the steps are going to be to address those deficits.

Consider Behavior Issues



- Along with determining educational progress there must be review of efforts made to improve behavior. If there is no improvement then the administrators and staff must be able to determine why there is no improvement and develop a plan to modify and/or change the directions of the behavior plan.

FOURTH DUTY



- Pursuant to federal and state law school districts have a duty to periodically evaluate a student to determine if there are new or previously undetermined disabilities or to determine that there no longer exists a disability which requires the provision of special education service. This evaluative consideration must be conducted at least once every three years.

Initial Evaluations



- Either a parent or the school district may request an initial evaluation to determine eligibility.
- An evaluation must be completed within 60 days (calendar days - not school days) of receiving parental consent to evaluate. Conservative view is that 60 days include writing of report.
- Consent should be obtained by the evaluator - not by the SAT team.
- Parental consent must be obtained prior to conducting an initial evaluation. This is **not**, however, consent to initial placement.

Initial Evaluation



- If the parent refuses to consent to initial evaluation, the school district may file a complaint for due process seeking to allow the evaluation.
- The school district can compel testing through due process, however, it cannot compel placement in special education.
- If the parent refuses to consent to evaluation or fails to respond to the district's request for consent to evaluation, the district has no further obligation.

Initial Evaluation - Consent



- Advise the parent by certified letter that their refusal or failure to respond to consent is considered a refusal of services.
- The child will not be considered a student with a disability for any disciplinary or educational purposes.
- This notice should be in clear and concise terms and provide for both regular mail delivery and other delivery methods.

Re-evaluation



- A re-evaluation will be conducted:
 - At least once every three (3) years, unless the parent and the District agree one is not necessary
 - When parent or teacher requests a re-evaluation
 - When the District determines that the student's educational needs, including performance, warrants re-evaluation

Re-evaluation



- But not more frequently than once a year, unless parent and District agree.
- Before determining a student no longer qualifies for special education services, the District must evaluate the student unless the student's eligibility has terminated due to graduation with a regular diploma or their age exceeds that of eligibility.

FIFTH DUTY



- The Individuals with Disabilities Education Act also requires that school district take specific steps to prepare a student to “transition” from public secondary school programs to post-secondary programs of a wide variety. This preparation is to be an integral part of the educational programming for all special education students over the age of 14.
- Transition planning is to include class selection, establishing connections with outside agencies, exploring post-secondary options and identification of student strengths and weaknesses.

Transition



- The following information needs to be included in the IEP:
 - A statement of the transition services needs under the applicable components of the IEP that focus on the student's course of study,
 - Needed transition services including any outside agency linkages
 - Student informed at one year before 18 years of age that rights will be transferred at that time.



Avoiding Problems with Teachers #1

Teachers are not always careful about statements to Parents

A.B. v. Clarke County Sch. District, 52 IDELR 99 (2009).

Teacher of severely disabled high school students wrote notes to parents detailing inappropriate sexual activities occurring in her class, rather than informing her supervisors about the problem.



Avoiding Problems with Teachers #2

Teachers do not consistently document student performance--

Sykes v. District of Columbia, 49 IDELR 8 (2007).

A district's failure to keep accurate records of the services provided proved very costly for the school district. According to the student's grandmother, the court observed, the student went without special education services for approximately 19 months. "Although the district's special education coordinator maintained that the district provided all of the services to which the student was entitled, the district provided no documentation of the service the student received."



Avoiding Problems with Teachers #3

Teachers do not always implement the IEP program—

Miller v. Board of Educ. of the Abq. Public Sch, 46 IDELR
162.

Although a district's use of a specific reading instruction program did not amount to a denial of FAPE under the IDEA, its failure to properly implement the program obligated it to reimburse a middle schooler's parents for two years of private reading instruction.



Avoiding Problems with Teachers #4

Teachers do not always prepare for IEP meetings

Teachers need to review a student's progress or evaluation reports, or by talking with other teachers who have the student in class. Lack of adequate preparation is one of the most common reasons for IEP mistakes, and makes staff appear to be less than qualified.



Avoiding Problems with Parents #1

Parents want their child to learn—

No matter how easy to please, difficult or hostile a parent may seem in a IEP meeting, parents want their child to learn at school. Always remember this in dealing with parents in stressful situations. Try to find the common ground.



Avoiding Problems with Parents #2

Parents are usually willing to compromise—

No matter what they say in the heat of the moment, parents are usually willing to compromise rather than to litigate if the district is reasonable. Parents may make threats of lawyers, taking it to the U.S. Supreme Court, or taking their case public with the media, but most parents don't want to litigate. Use that knowledge to settle the dispute.



Avoiding Problems with Parents #3

Disagreements/disputes between divorced parents-

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Letter to Cox, 110 LRP 10357 (2009).

OSEP explained what LEAs must do when parents who both have legal authority to make educational decisions on behalf of a child clash on revoking consent. Once a parent authorized to do so revokes consent, the LEA must provide prior written notice in accordance with 34 CFR 300.503. As long as the parent has authority, the LEA must accept the parent's revocation.



Avoiding Problems with Parents #4

When is it appropriate to question a parent's insistence on a specific label on their child's IEP/eligibility?

Pohorecki v. Wayne Local Sch. Dist., 53 IDELR 22 (2009).

Student's mother filed a due process complaint based on her son's exceptionality. Student was initially diagnosed as ED and later diagnosed as ADD, ADHD, and Asperger Syndrome. However, student's IEP continued to read "emotional disturbance." The Court noted that the IDEA does not require children be classified by their disability. The IDEA requires that a child who needs special education and related services be regarded as a child with a disability and receive an appropriate education.

Enjoy the days of summer!



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