

IEP Implementation and Review

A Fact Sheet from the Minnesota Disability Law Center

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INTRODUCTION

The federal legal provision on this issue is relatively straightforward; it provides that the district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.”¹ Basically, if a service, adaptation, or responsibility appears on the IEP, the district must implement it as written. Of course, it is important and necessary to base the IEP on a comprehensive evaluation and an appropriately developed IEP as well as to review and revise the IEP when necessary.

This factsheet reviews this basic responsibility to implement IEPs, the ongoing duty to review and revise the IEP, and trouble-spots revealed by Minnesota Department of Education special education complaint decisions.

IEP IMPLEMENTATION

While basic, the responsibility to implement an IEP as written is broad and covers just about everything on the IEP from providing transportation and related services to progress reporting and adaptations or modifications for the student. If an IEP team chooses to list services provided by other agencies, for example, county provided day treatment services, the IEP must clearly state the county is responsible for implementing those services. If the IEP does not specify which entity is supposed to provide the services, it is assumed the district is responsible and will be held in violation if the services are not provided.²

Similarly, districts are typically free to choose which educational strategy or methodology to use. If, however, the district includes these particulars in the IEP, it must follow them or later seek parental consent to use different approaches.³ There may be situations where it is wise or necessary to include a particular approach, but including these specifics should be only written into the IEP with a clear rationale and an understanding that parental approval is needed to change the IEP. For example, an IEP that states that modifications or adaptations will be implemented “when necessary” or “where appropriate” was found to be in violation for not providing sufficient specificity to parents, staff, or the student; such language provides no guidelines or background of why it is included, for what specific reasons, or for when exactly it is to be used.

MDE has provided additional guidance on the implementation of IEP in complaint decisions and when the district is not strictly bound to the terms of the IEP. For example, MDE stated:

The amount of weekly service documented on a student's IEP represents an average to be provided over the term of the IEP. The actual amount of service may vary due to student absences, school schedule changes, school holidays, or provider absences.

An IEP is not a contract that guarantees the provision of services with the exact number of minutes indicated. Minutes of service are normally treated as estimates over the term of the IEP. There are many reasons why the exact number of minutes are not provided: field trips, student absence, teacher absence, emergency school cancellations, etc. School districts typically are not required to make-up for services that are not provided for such reasons.⁴

Similarly, the district is excused from implementing the IEP

In the event that school is not in session as a result of a holiday or emergency, the District is not responsible to provide make-up services for any special education and related services the Student may have missed on that day.

In addition, if the Student is absent or participates in an extracurricular activity during the time school is in session, the District is not responsible to provide make-up services for any special education related services the Student may have missed on that day.⁵

Additionally, the IEP must be specific enough to give parents and staff sufficient understanding of when and how IEP provisions are to be implemented and how they will enable the student to advance toward IEP goals, be involved in the regular education curriculum and be educated with non-disabled peers.⁶

IEP IMPLEMENTATION: REVIEW AND REVISION

The District must review and revise, as appropriate, the IEP "not less than annually."⁷ Failure to conduct the annual review will result in violations.⁸ There is also a responsibility to review and revise the IEP if there is a lack of expected progress, new evaluation or other information about the student, a change in the student's anticipated needs, or "other matters."⁹ Most commonly, districts have been found in violation where a student's behavior changes during the year and no IEP meeting was held to address the appropriateness of the IEP.

Reviewing and revising IEPs is particularly important to ensure the educational program is consistent with the student's needs. The failure to have an appropriate and up-to-date may be traced to further, more substantial problems such as disciplinary incidents, decline in attendance, lower student motivation, and, importantly, decreased academic performance in class, IEP goals, and standardized tests.¹⁰

ANALYSIS OF COMPLAINTS

So in what specific areas (e.g. service minutes, adaptations, related services) have there been problems with regard to IEP implementation? How has compliance been demonstrated? And, what can prevent allegations? The next section examines these questions by reviewing 50 complaint decisions with implementation failure issues. These

decisions should constitute a fairly representative sample of the types of allegations in this area and demonstrate various trends and patterns.

Overall, the MDE found violations in 27 of the 50 decisions or 54%. The violations ranged in type and severity. For example, there were 13 instances where the MDE determined the district or charter school did not provide the required number of service minutes specified in the IEP.¹ This suggests problems with having the required staff members to provide the services, scheduling issues, lack of clarity in the IEP or misunderstanding between districts and parents, or a student's program slipping through the cracks.

There were 12 times where the MDE found the district or charter school did not provide adaptations listed in the IEP.¹¹ Several of the violations related to the weekly provision of a notebook, progress report or checklist to parents. The source of these problems may be in districts agreeing to provisions (such as weekly reporting) that are time consuming, administratively difficult, and/or not necessary for the student.

The third main type of violation was a failure to provide the required progress reports.¹² While the IEP may have contained the required elements of progress reporting (how progress will be measured toward each goal, how the parents will be informed of progress,¹³ and the extent to which the student is likely to achieve the goals at the end of the year¹⁴, the district must also actually provide the full progress reports. Failure to do so constitutes a failure to implement the IEP.

Overall, whether implementation violations resulted from simple poor implementation, a lack of service providers, or for some other reason is hard to determine from the complaint decisions. However, some violations seemed to stem from problems in transportation,¹⁵ unilateral changes without parental involvement,¹⁶ inconsistent provision of adaptations,¹⁷ poor follow through by the case manager or teacher,¹⁸ losing the student in the system,¹⁹ and not having enough or the right staff.²⁰

Demonstrating Compliance

Districts and charter schools were able to demonstrate compliance in three main ways. First, most often, schools produced documentation or evidence of compliance with phone and personal logs, service provider records, IEP meeting documentation, written progress reports, student schedules, staff records of providing adaptations, and having complete due process files for the complaint investigator.²¹

Second, schools also showed legal compliance by having IEP meetings to address problems and taking steps to stop them from recurring and by constantly monitoring the student and making efforts to address problems.²² Third, districts were able to show that they continued to offer services or "stood ready" to provide FAPE even though the parent or student did not avail themselves of services.²³ However, it should be noted that if a student is not attending classes or accessing services, the district must at least inquire

¹ Minnesota Department of Education Complaint Decisions 1905, 1912, 1936, 1977, 1960, 1996, 2006, 2019, 2031, 2036, 2040, 2046, 2078

why and take steps to get the student to class and services. In other words, it is not enough to only offer services, the district must also determine strategies to enable the student to access services.

MDE also determined that the district was in compliance when the alleged violations did not have a basis in the IEP²⁴ or when another service provider was responsible to deliver services.²⁵

CONCLUSION

Districts mainly had difficulties in providing the required number of service minutes or providing adaptations listed on the IEP. These problems may be avoided by monitoring service and adaptation provision and holding IEP meetings to review and revise IEP contents when needed. It is likely that if parents are aware of problems and the district is actively working on them, parents may not resort to filling a complaint or a request for a due process hearing.

Another common violation was the failure to provide progress reports. Progress reports can be crucial in determination and communicating how well the student is doing in school and whether there are any noteworthy problems or changes. Proper progress reporting serves to inform the parents but also can serve to provide schools with the information they need to make necessary revisions and changes in accordance with the student's evolving needs.

Districts have demonstrated compliance with clearly drafted IEPs, "standing ready" to provide services where students and parents fail to avail themselves of the services, and with creating and maintaining documentation of its efforts to provide services, monitor student progress, contact parents, and hold meetings to address

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¹ 34 CFR §300.323

² Minnesota Department of Education Complaint Decision 1517

³ Minnesota Department of Education Complaint Decision 2021

⁴ Minnesota Department of Education Decisions 1307, 1374, 1466

⁵ Id.

⁶ 34 CFR §300.329

⁷ 34 CFR 300.324 (b); Minn. R. 3525.2810, subpart 3.

⁸ Minnesota Department of Education Complaint Decisions 1874, 1886, 1929, 1965, 1988, 2008

⁹ 34 CFR 300.324 (b); Minn. R. 3525.2810, subpart 3.

¹⁰ See, e.g. Minnesota Department of Education Complaint Decisions 1014, 1019, 1856, 1919, 2101, 2169, Hearings 189, 282, 418

¹¹ Minnesota Department of Education Complaint Decisions 1906, 1909, 1912, 1922, 1931, 1979, 1990, 1996, 2017, 2007, 2027, 2030

¹² Minnesota Department of Education Complaint Decisions 1921, 1923, 1990, 2008

¹³ 34 CFR §300.320 (a)(7)

¹⁴ Minn. R. 3525.2810, Subpart 1 A (9)

¹⁵ Minnesota Department of Education Complaint Decisions 2036, 2046

¹⁶ Minnesota Department of Education Complaint Decisions 1905, 2031

¹⁷ Minnesota Department of Education Complaint Decisions 1906, 1909, 1922

¹⁸ Minnesota Department of Education Complaint Decisions 1923, 1990

¹⁹ Minnesota Department of Education Complaint Decisions 1912, 1977

²⁰ Minnesota Department of Education Complaint Decisions 1999, 1960, 2040, 2078

²¹ Minnesota Department of Education Complaint Decisions 1911, 1934, 1935, 1942, 1947, 1950, 1954, 1972, 1981, 1983, 1991, 2003, 2010, 2011, 2014, 2021, 2033, 2039, 2045

²² Minnesota Department of Education Complaint Decisions 1927, 1934

²³ Minnesota Department of Education Complaint Decisions 2011, 2038

²⁴ Minnesota Department of Education Complaint Decision 1947

²⁵ Minnesota Department of Education Complaint Decision 1978