
Chapter 3



The Individualized Education Program (IEP)

Chapter Overview

The Individualized Education Program (IEP) is a written document that provides a framework for the provision of a Free Appropriate Public Education (FAPE) for an individual child with a disability. Within 30 calendar days after the determination that a child is eligible for special education and related services a meeting must be held to develop an IEP, and as soon as possible after that meeting the provisions of that IEP must be put into effect. Once developed the IEP must be reviewed at least annually and updated during the year if needed. It is important to note that while there are required components to each IEP, the actual content (e.g., special education service, annual goals, related services, accommodations, etc.) is individualized and developed by the IEP team which includes the parents, and the child when appropriate. In other words, there is no such thing as a standard IEP for students with learning disabilities, or students with autism, or students with intellectual disabilities, etc. Each aspect of each IEP must target the “unique needs of the child” that cause the child to require special education services.

The IEP has been described as the heart of IDEA and really is the centerpiece of the law (Bateman & Linden, 2012). It is a contractual agreement between the district and parent in which the district guarantees to provide the services specified in the IEP; however, the actual outcome, or attainment of learning goals by the child, is not guaranteed. Rather, as we shall see, the IEP must be reasonably calculated to produce a meaningful educational benefit, but even with a good faith effort, the child may not achieve all learning targets.

In this chapter, we will discuss the IEP in detail. We will describe the required membership of the IEP team, parent notification, when the IEP must be in effect, specifics of the meeting, and then discuss the required components of the IEP. After reading this chapter, you will have an understanding of IEP team structure, the contents of the IEP, and sufficient understanding to actively participate in the development of an educationally relevant IEP. We believe that some components of the IEP require more in-depth coverage to provide you with the knowledge and skills needed to write truly effective, functional, and legally compliant IEPs. With that in mind, subsequent chapters will build upon the foundational skills presented in this chapter and provide specific guidelines and practice activities focused on developing Present Levels, writing Annual Goals and Short-Term Objectives, applying the LRE requirement of the law, and understanding disciplinary procedures including Functional Behavioral Assessment and Behavior Intervention Plans. Postsecondary transition planning is required to be included in the IEP in effect when the student is 16 years of age. We have devoted a separate chapter to issues regarding transition and the IEP. Finally, since parental involvement is a major pillar of the law, we will devote a chapter to the procedural safeguards (protections) provided to parents to guarantee that they are afforded meaningful opportunities to provide input into the educational programming of their child.

IEP Team Membership

The regulations specify the required participants in an IEP meeting (§300.321). Each of the required members brings with him or her unique understanding of the child and should be prepared to discuss the child's educational needs and be afforded an opportunity to provide meaningful input to the team. The following are typical members of the IEP team, unless postsecondary transition is being addressed (see Chapter 7 for additional information regarding transition): parent, regular education teacher, special education teacher or related service provider, district representative, individual who can interpret assessment results, and others with knowledge or expertise regarding the child. The first four members are required members, but we will discuss the conditions under which required members may be excused and whether a single individual could fulfill more than one role. Before discussing excusal, we will describe IEP team membership.

- (1) *Parent*—Parent participation is a particularly important and crucial component required for provision of FAPE. Presenting parents with a completed IEP prior to a meeting and simply informing them of what will happen to their child is not allowed. When this has been attempted by districts and subsequently challenged by parents, courts have found districts in violation of their legal duty to provide FAPE by denying parents an opportunity for meaningful participation in the development of the IEP (*Deal v. Hamilton County Board of Education*, 2004). In Chapter 1, we discussed jargon and the difficulty its use presents in meetings, so to promote meaningful parental participation, school personnel are reminded to take time and explain topics in jargon-free

TABLE 3-1. Parent Participation Form

Date _____

Dear _____,

On _____, we will be meeting to develop an Individualized Education Program (IEP) for _____ . In that meeting, we will review your child's progress as well as discuss areas of difficulty and develop learning goals. Your input is very important in this process, and we value your participation in this important activity. Sometimes when at a meeting, it can be easy to forget to ask questions or share information that you wanted to share because the meeting moves too quickly. With that in mind, we would like you to consider the following items and encourage you to ask questions and participate in the meeting. (You don't have to complete this form, and at the IEP meeting, we only ask that you share information you are comfortable sharing.)

1. What questions, if any, do you have about special education and the IEP?
2. What are some of your child's strengths and interests?
3. What concerns do you have regarding your child's learning? Don't feel that you have to limit this to academic skills only. If you have other concerns, such as behavior or communication, please list them.
4. Describe how you would view the ideal school day for your child.
5. Other questions or concerns...

verbiage. Table 3-1 contains a form that could be provided to parents prior to the IEP meeting to help them prepare and facilitate their participation.

- (2) *At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)*—Prior to IDEA '97, regular education teacher participation was optional, but with the emphasis that IDEA '97 placed on students with disabilities participating in district/state mandated assessments and making progress in the general education curriculum as well as a heightened emphasis on regular education classroom placement, it was only reasonable that regular education teachers be members of the team. The teachers certainly bring a wealth of knowledge regarding the curricular and behavioral expectations of the regular classroom setting and can provide valuable suggestions in the development of the IEP. As a cautionary note, even though the regulations state that a regular education teacher is required only "if the child is, or may be participating in the regular education environment", great care must be exercised when not inviting a regular education teacher since failure to invite the regular education teacher might be considered a predetermined placement—a serious procedural violation that courts have found to result in a denial of FAPE. As you will learn, the presumed placement for all children is the regular education environment, thus it should be a rare instance when a child would

not be expected to participate in the regular education environment to some extent. Only in those rare cases when a child would have zero participation in regular education activities would a regular education teacher not be a required IEP team member. In cases where a child may have more than one regular education teacher, the school is free to select one of those regular education teachers to serve as the required member of the IEP team. Of course when making this selection, the best interests of the child should take precedent over issues such as scheduling or convenience, and the teacher who is in a position to present the most useful information regarding instruction of the child should be selected. It is also permissible for more than one regular education teacher to attend the IEP.

- (3) *One special education teacher or special service provider*—The intent behind this requirement is relatively easy to understand. It makes sense that a special education teacher would be required when designing an IEP and determining what special education service will be provided to the child. However, the criteria for special service providers vary by state and the type of service provided. For example, in the case of a speech therapist, if speech therapy was provided as a related service (defined later in this chapter), then annual goals would not need to be written and the speech therapist would not need to attend. (We would recommend that the speech therapist still attend or meet with parents and teachers to discuss how the therapy can be extended into the classroom and home settings, if parents desire.) However, if speech therapy was to be provided as specially designed instruction (special education), then annual goals would need to be developed and the speech therapist should attend the IEP. A potential difficulty with this provision of having either a special education teacher or special service provider attend was addressed in the notes accompanying the regulations (Fed. Reg. 71, 46670, 2006) which referenced Attachment 1 of the 1999 Final Regulations for guidance and noted that the person attending should be the one who is or will be responsible for implementing the IEP.

Fortunately, there is nothing in the law that prohibits attendance of both special educator and other related service provider at the IEP. This would technically be a better arrangement and be consistent with the notion of a transdisciplinary team model where experts share their expertise and cross-train each other. Continuing with our speech and language example, students with speech and language issues typically benefit from support across environments, and it would be beneficial for all educators to address communication issues in a consistent manner, not just try to remediate the communication issue with the all too common practice of a 20 minute per week pull-out session with a speech therapist.

- (4) *A representative of the public agency (usually school representative) who:*
*a) is qualified to provide or supervise the provision of special education; b) is knowledgeable about the general education curriculum, c) is knowledgeable about the availability of the resources of the public agency—*This representative is commonly a school administrator but can be a designee, if that person can fulfill all 3 conditions above. In many cases, a special education teacher may serve in this role; however, as Pierangelo and Giuliani (2007) noted, in most states school psychologists, social workers, and guidance counselors could not serve in this role because they are generally not qualified to either provide or supervise the provision of special education. Bateman and Linden (2012) also recognized the importance of the representative as being someone who can commit district resources; a particularly important consideration since, the IEP is a contractual agreement guaranteeing that the district will provide the agreed upon services. For some children, committing resources to meet their needs may not be of great concern, but consider the child who may require a \$6000 communication system or 30 hours per week of home-based services. The district could not refuse to supply the support if the team deems it necessary to provide the child FAPE, but we wouldn't recommend that a teacher assume authority to commit those resources on behalf of the district.
- (5) *An individual who can interpret the instructional implications of evaluation results—*This person could easily be one of the previously mentioned team members, if that person could explain the evaluation results. IDEA specifically defines "evaluation" as the procedures used to determine if a child is eligible and how the findings help identify the necessary special education and related services (§300.15). So, this is particularly applicable for those times when the IEP is written following an initial evaluation or reevaluation. Based upon the evaluation conducted and expertise of the team, a school psychologist, speech therapist, or other related service provider may be a required member of the team unless a different member could competently explain the results.
- (6) *At the discretion of the parent or agency, any other person with knowledge or special expertise regarding the child—*For all practical purposes, the parents can bring anyone to the IEP meeting without informing the district. Following is not an exhaustive list, but the parent could bring a day care provider, another family member, an advocate, or someone else who knows the child.

However, the district must notify the parent in writing of anyone who will be attending the IEP at the request of the district. The notification could, but need not contain names of specific people, but it should list titles, such as "physical therapist". Listing titles rather than a person's name is particularly useful in districts that employ numerous related service personnel and may

not be able to identify the specific person who will be at the IEP. There can also be unforeseen events, such as an illness, that may prevent a particular individual from attending the meeting.

In the case of a child who will be transitioning from Part C to Part B services, an invitation to attend the initial IEP must be sent to the Part C service coordinator or other representative but only if it is requested by the parent. Absent a district providing this information to parents, it is highly unlikely that parents would be aware of this option to invite their service coordinator. So in the interest of *informed consent* as well as promoting parental involvement and striving to obtain input from individuals familiar with the child, it would behoove a district to inform parents of this option.

- (7) *Child, when appropriate*—There may be times when it is appropriate for an elementary age child to attend all or part of an IEP. Student-led IEPs are gaining acceptance as a means to help students develop self-advocacy skills and participate meaningfully in the development of their education (Danneker & Bottge, 2009; Thoma & Wehman, 2010). Of course, attendance may depend on the nature of the discussion and the ability of the child to meaningfully participate. In addition, there would certainly be times when an IEP meeting would be incredibly boring for a child and of little meaning or the content of the conversation may not be appropriate for young children. In those cases, the child would be best excused from the meeting, but participation may become more important as children become older and develop a basic understanding of the schooling process. For example, a student who will be transitioning to middle school may be able to provide some valuable insights to the IEP team regarding supports that will facilitate that change. Student participation is required when postsecondary transition is discussed.

Excusal of Required Member from IEP Meeting

IDEA '04 introduced legislation that allowed required IEP members to be excused from all or a part of an IEP meeting. The professed goal for making this change was to provide flexibility to IEP teams, and it allows individual teams and schools to determine when an excusal is appropriate. Under certain conditions, the following members may be excused: general education teacher, special education teacher or service provider, agency representative, and individual who can interpret evaluation results (numbers 2–5 in our list of required members described in the preceding section). The regulations specify two conditions under which an IEP team member can be excused. Neither option requires permission from the entire IEP team, just the parent and a district representative who has the authority to agree to that excusal. In either case, it is important to note that without a parent's written agreement or

consent, the team member must be at the IEP. Furthermore, the parent does not have to provide a reason for not agreeing to the proposal excusal and must not be pressured into agreeing to allow an excusal.

The first option for excusal specifies that an IEP team member may be excused from attending all or part of an IEP meeting if, both the parents and district agree, in writing, to excuse the member because that person's curricular area or related service is not being modified or discussed at the IEP meeting. While the regulations do not prohibit excusal from an initial IEP meeting, we strongly discourage such an excusal, because of the potential negative implications. The initial IEP meetings, in particular, can be a stressful and emotional time for parents who may still be coming to terms with their child having a disability and a supportive meeting with school personnel could be of tremendous benefit.

However, the following scenario for an annual IEP meeting scheduled for the middle of the day when the regular education teacher had a 45-minute preparation period may allow a reasonable option for excusal. The parent and district could discuss the regular education portion of the IEP and excuse the general education teacher when that part of the discussion was over; thereby, allowing the general education teacher to go back to the classroom should the meeting last longer than the 45-minute teacher preparation time. However, if the parent did not agree to the excusal, then the teacher would be required to stay and the district would have the option of either having other faculty cover the class or rescheduling the remainder of the IEP so the teacher could be sent back to cover his or her class and attend at the rescheduled time.

The second option allows excusal from all or part of the IEP, when the team member's curricular area or related service is being discussed or modified. In this case, the district must also obtain written, informed consent from the parent. In addition, the IEP team member must submit, in writing, to the parent and the rest of the IEP team information relative to development of the IEP prior to the IEP meeting. The regulations don't state the detail that must be provided by the excused member or how long before the IEP meeting the information must be provided to parents, but the information should be of such specificity that it will adequately inform the IEP team. As with the prior option, the parents could refuse to provide consent or if they did consent and during the meeting found that additional input from the excused team member was needed, the IEP meeting could be rescheduled when all necessary members could be present.

Parent Notification of the IEP Meeting

Given the importance of parent participation in the IEP process, it makes sense that parents must be provided notice of proposed IEP meetings (§300.332). This notice of an IEP meeting should not be confused with Prior Written Notice (PWN) which is required to inform parents of a district's intent or refusal to initiate an action related to the identification, evaluation, placement, or provision of FAPE. While an IEP is certainly a part of the provision of FAPE, merely meeting to review the current IEP and develop new Annual Goals and Short-Term Objectives for the subsequent IEP does not mean that there is any change in FAPE. The new IEP may result in provision of the same level of service but may simply target more advanced or even different skills.

If as a result of the newly developed IEP, the team does make a change in placement (for example, moves a child from a regular class to a pull-out resource room setting) then the district would be required to provide PWN before implementing the change. So, the IEP could be completed, but the change would not be made immediately and parents would be provided PWN. In such a case, the PWN could be completed at the end of the IEP meeting and given to parents immediately. Giving parents PWN provides them with an opportunity to consider the district proposal, and if they ultimately disagree, to reconvene the meeting and discuss concerns or challenge the district proposal under the procedural safeguards. The PWN must be provided even if parents agreed with the proposed change at the IEP meeting and should be provided prior to initial provision of special education services (the first IEP).

The regulations specify that districts must take specific steps to ensure that parents have an opportunity to participate in the development of their child's IEP. In doing so, districts must invite parents to a meeting at a mutually agreed upon time and place. This invitation should be in writing and inform parents of the purpose, time, and location of the meeting. Since districts are required to tell parents who they will invite to the IEP meeting, (remember, it is best to include title rather than an individual's name) that information should also be included on the invitation as well as the name and number of a person to contact should the meeting need to be rescheduled. For a parent(s) whose primary language is one other than English or require an alternate mode of communication, the district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP meeting. A sample invitation is contained in Table 3-2.

In rare cases, parents are unable to attend IEP meetings during the regularly scheduled school day. Nothing in the law requires that districts hold evening IEPs. However, the regulations do specify that districts must take steps to ensure participation, by considering alternatives such as conference calls or video conferencing. In fact, nothing in the law prohibits a district representative from meeting with a parent at home or place of employment if needed to ensure parent participation in development of the IEP. A district's failure to include parents in the IEP process may result in denial of FAPE and monetary consequences (*Drobnicki v. Poway, 2009*). Zirkel (2011) recommended that districts place a priority on including parents in decisions related to provision of FAPE with a central focus on the IEP.

One of the authors worked with a teacher who developed a unique solution to obtaining parental participation in the IEP. In this case, the parent's and teacher's travel paths crossed during the morning commute. The parent was unable to meet with school staff during the school day, but the teacher and parent met along the side of the road during their morning commute. This was before the availability of video conferencing technology, such as Skype, and certainly provides an example of a successful effort to keep a parent involved in his child's education instead of assuming that a parent was unconcerned simply because he could not afford to take time off from work to attend the IEP meeting.

TABLE 3-2. IEP Invitation

Parent/ Guardian: _____ Date: _____
 Student: _____ Student #: _____
 The purpose of this letter is to invite you to an IEP meeting scheduled on _____ at _____ (Date)
 _____. The IEP meeting should be held at a mutually agreed upon time. Should (Time and Location)
 you need to change the meeting time, please contact _____ at _____ to (Name) (Phone)
 reschedule.
 If you are unable to meet at the school, please contact us so we can try to arrange an alternative way for you to participate.
 At this meeting, we will be discussing:
 _____ Annual IEP Review _____ IEP Revision
 _____ Manifestation Determination _____ Placement Issues
 _____ Extended School Year _____ Other: _____
 The district is required to notify you of the individuals who will attend the IEP meeting. Following is a listing of those individuals. If your child is transitioning from Early Intervention Services for young children age birth through two years to special education and you would like your Service Coordinator to attend, we will invite that person. Please contact _____ at _____ with the name of your Service Coordinator and contact information.
 Individuals who the district will bring to the IEP:

 It is important that you attend the meeting, and we welcome your participation. Once again, please contact us if you need to reschedule.

If the child is currently receiving special education services and a district is unable to obtain parental participation in the development of the IEP, the district will still need to develop an IEP before the current IEP expires and send a copy to the parents. While there is no set rule, you might want to schedule the annual IEP review early enough that should the first scheduled meeting not occur, you would have time to reschedule a second and possibly third meeting time before the current IEP expires. If parents fail to attend the third meeting, even though it was scheduled at a mutually agreed upon time, you might consider having the team write the IEP without the parents. It is important that you carefully track IEP dates, because an IEP must be current if a child is to receive special education services. (Note: this is not an option for students whose parents have not provided informed, written consent for initial placement.)

The regulations provide the following specific guidelines that districts must follow to document efforts to include parental participation:

300.322 (d) *Conducting an IEP Team meeting without a parent in attendance.*

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

As a precautionary measure, districts typically require this documentation be kept for all IEP meeting invitations. Then, should it be necessary to hold an IEP without the parent, the necessary paperwork is in place. Whether an IEP is developed with or without parental participation, the parents must be provided a copy of the IEP at no cost (§300.322 (f)).

Components of the IEP (Without Postsecondary Transition Planning)

Table 3-3 contains a list of the IEP components that are required for all students, including young children (Remember, we discuss postsecondary transition and other issues more commonly addressed on IEPs for secondary age students in Chapter 7.). We have presented the components in tabular format as a reference and will discuss these components and a couple of additional items that must be considered by the IEP team. To help illustrate the concepts presented in this chapter, we will describe the components and then present the appropriate part or parts of a simple initial IEP for a second grade child who receives special education support in the area of math calculation. This uncomplicated example will provide you with an opportunity to see how an IEP is constructed. On a side note, IEPs really should be uncomplicated, because if we expect parents to understand the content it must be jargon free, and if we want teachers to implement IEPs during the busy instructional day, then the documents must also be user friendly.

A copy of the completed IEP for the child we will be discussing is included in Appendix A. As a reminder, we will also discuss the following IEP components in greater depth in subsequent chapters: Present Levels, Annual Goals and Short-Term Objectives/Benchmarks; Least Restrictive Environment, Functional Behavioral Assessment and Behavior Intervention Plans, and postsecondary transition. These tend to be some of the more complex components, but that complexity is often due to a lack of understanding on the part of the IEP team. We will also discuss procedural safeguards in a subsequent chapter. While not technically components of

TABLE 3-3. Contents of the IEP (without postsecondary transition plans for students 16 years and older)

<p>1. A statement of the child's present levels of academic achievement and functional performance</p> <ul style="list-style-type: none"> (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children) or (ii) For preschool children, as appropriate, a description of how the disability affects the child's participation in appropriate activities
<p>2.</p> <ul style="list-style-type: none"> (i) A statement of measurable annual goals, including academic and functional goals designed to <ul style="list-style-type: none"> (A) Meet the child's that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum. (B) Meet each of the child's other educational needs that result from the child's disability (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
<p>3. A description of</p> <ul style="list-style-type: none"> (i) How the child's progress toward meeting the annual goals will be measured and (ii) When the periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided
<p>4. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child</p> <ul style="list-style-type: none"> (i) To advance appropriately toward attaining the annual goal; (ii) To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
<p>5. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities described in paragraph (a)(4)</p>
<p>6. (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessment and</p> <ul style="list-style-type: none"> (ii) If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, as statement of why <ul style="list-style-type: none"> (A) The child cannot participate in the regular assessment; and (B) The particular assessment selected is appropriate for the child; and
<p>7. The projected date for the beginning of the services and modifications described in paragraph (a) (4) of this section, and the anticipated frequency, location, and duration of those services and modifications.</p>

an IEP, the safeguards are important for IEP teams to understand and are a significant source for ensuring informed parental consent. We will now move sequentially through the IEP beginning with demographic information and ending with justification for removal from the regular education environment, if needed (Find more about that later in this chapter and Chapter 5.). We will conclude this chapter with a comparison of the IEP and the IFSP.

Demographic Information

The regulations do not require that demographic information be included on an IEP, but for obvious reasons, we do need to include some basic information, such as student name, address, etc. The form we provided includes only the minimal information that a teacher might consult: student specific information necessary for identification, such as name, student number, birth date. We also included contact information that will be useful when contacting parents and blanks on each page for date and page numbers. (This may seem like an obvious element, but the authors have seen multipage IEPs that did not have page numbers and/or did not have dates on each page. Assuming they were stapled together at one time and then became detached, it can be quite a task to try and piece everything together. We have had to try and do that with several years' worth of IEPs and certainly could have put our time to better use evaluating the IEPs rather than trying to organize a stack of paper.) The demographics section can be completed before the IEP meeting, as long as it is updated if needed at the IEP meeting.

On a majority of IEP forms reviewed by the authors, eligibility category was prominently displayed on the front page as if the categorical designation was related to the type or amount of

Labels seem to get tossed around freely, especially by those who aren't themselves labeled. One of the authors taught elementary students with significant behavioral and emotional needs. On class picture day, one student in each class held a placard identifying the class, such as Ms. Ortiz's First Grade Class. There is no problem with that type of identification as being a first grader does not evoke any negative stigma and it isn't confidential information. However, one student in the author's class was given a placard identifying the class as Mr. X's seriously emotionally disturbed class. Just imagine the possible negative ramifications, not to mention the invasion of privacy, that could have resulted from this picture. We can assure you that the words "seriously emotionally disturbed" were removed from the placard before the class picture was taken. This is not meant to be a negative connotation on the photographer or other school staff, but to emphasize the importance of being extremely careful when attaching labels to a child. In this age of Facebook and pictures/comments on the internet, you must be hyper-vigilant in protecting confidential student information.

service a child would be eligible to receive and in what settings or programs. Districts are required to report the number of students served under each categorical label to the federal government and perhaps that is the origin of this practice. However, when assigning labels that may be stigmatizing, educators must take great care to ensure the confidentiality of that information.

Furthermore, if you recall from our previous discussions, eligibility or the diagnostic indication of a particular disability label should not be taken as determining what specific services a child will need. Decisions regarding service must be made by the IEP team, address all learning needs requiring specially designed instruction, and labels cannot be used to determine what service a child will receive. The label simply has no meaningful programmatic implication and, in our opinion, should not be included on an IEP. Table 3-4 contains a sample demographic statement.

TABLE 3-4. Demographics

Student Name: John Vanberg	Date of Birth: 9-16-2005	Age: 7	Student ID: 154632
Home Address: 1521 1 st Ave South Independence (Street)	WA (City)	98989 (State)	(Zip)
Phone: 555-9090	Alternate Phone: 555-1475	Primary Language: English	
Parent(s)/Guardian(s): Marc and Sylvia Vanberg			
Purpose of Meeting: <input checked="" type="checkbox"/> Initial IEP <input type="checkbox"/> Revision <input type="checkbox"/> Annual IEP			

Present Levels of Academic Achievement and Functional Performance

The second component of the IEP is the Present Levels of Academic Achievement and Functional Performance. These statements are frequently referred to by different names, such as Present Levels of Performance (PLOP) or Present Levels of Educational Performance (PLEP), but for clarity, we will simply refer to them as Present Levels. The regulations (§300.320) provide the following guidance regarding present levels:

- (1) A statement of the child's present levels of academic achievement and functional performance, including—
 - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, a description of how the disability affects the child's participation in appropriate activities.

The Present Levels statement describes how a student is currently performing and will serve as the foundation upon which the rest of the IEP will be structured. Thus, they should

include statements that are instructionally relevant and be expressed in measurable terms (Bateman & Linden, 2012; Salvia et al., 2012). This may seem like fairly obvious guidance, but in numerous IEP reviews conducted by the authors, we have seen many statements of Present Levels that fail to abide by this reasonable and responsible recommendation thereby providing meaningless descriptions of student skill. (We will provide examples in Chapter 4.) Since Present Levels represent the starting point for the IEP, an educational plan, it is clear that the statements must be descriptive of the child's current skill level. In addition, the statements must be quantifiable, because they will serve as the baseline measure for determining progress toward the yet to be developed Annual Goals, and we must be able to measure a student's performance in order to judge the efficacy of the instructional program. In essence, the Present Levels statements describe a child's performance and need only be written in those areas in which special education support will be provided.

In the Present Levels statement included in Table 3-5, you will find that we included all of the required components (§300.320) and also incorporated the requirement for parental input

TABLE 3-5. Present Levels

<p>Present Levels of Academic Achievement (Include a description of student strengths, results of initial or most recent evaluation)</p> <p>MATH CALCULATION</p> <p>John adds and subtracts single digit numbers with 100% accuracy at a rate of 35 per minute with 0 errors when given worksheets with only addition or subtraction problems. His speed and accuracy decline when given a worksheet with 30 single digit addition and subtraction problems mixed. Then, he solves 15 per minute with 2 or fewer errors. He adds and subtracts multi-digit numbers without carrying at 100% accuracy but does not add or subtract multi digit numbers with regrouping. On the Woodcock-Johnson III, John received a standard score of 85 (16th percentile) on the math calculation subtest and a standard score of 70 (2nd percentile) on the math fluency subtest.</p>
<p>Present Levels of Functional Performance, for example, communication, behavior, self-help skills, etc. (Include a description of student strengths, results of initial or most recent evaluation)</p> <p>John behaves well in class and is well liked by peers and staff. He communicates clearly.</p>
<p>Description of how the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or for preschool children, how the disability affects the child's participation in appropriate activities</p> <p>John actively participates in all aspects of the general education math curriculum, but at a level lower than that expected of a student of a student his age and grade. His lack of fluency negatively impacts his acquisition of math skills. He spends a considerable amount of time deciphering basic math facts which interferes with his performance with work and application problems in math. He does understand the questions posed in the application problems when verbally explained to him.</p>
<p>Parental concerns related to enhancing the education of their child</p> <p>Parents are happy with his social performance at school. He has made friends and likes school, except he expresses a dislike for math. Parents would like him to improve his math skills and hope that as he becomes better at math, he will begin to like it more.</p>

regarding their child's education (§300.324(a)(ii)). This is a reasonable place for documenting parental input and fits in nicely with the timing of the IEP meeting. The data in Present Levels will serve as the basis for the development of the Annual Goals, and school personnel are responsible for obtaining parental input throughout the development of the IEP.

The example Present Levels statement makes significant use of data-based descriptions of the child's performance that provide an accurate and understandable explanation of the child's performance on math calculation activities. As we will explain in Chapter 4, results from norm-referenced instruments are of little help when it comes to setting instructional goals and are not required components of every IEP. However, many districts still operate under the faulty assumption that norm-referenced instruments must be used to develop Present Level statements on every IEP. So, in our example, we include results from a child's performance on a norm-referenced instrument, the Woodcock-Johnson Test of Achievement—IV (Schrank, Mather, & McGrew, 2014), after results on curriculum-based measures to demonstrate how to incorporate the norm-referenced data if required by the district. As can be easily seen, the curriculum-based measures provide the specific information needed for development of measurable Annual Goals and associated Short-Term Objectives. There is one other instance in which you might reasonably expect to find scores from norm-referenced tests on an IEP—when the IEP follows an evaluation. IDEA requires that IEP teams consider results of recent evaluations, but references to the child's performance on the norm-referenced tests that may have been used in evaluations could be dealt with in the manner just described, if needed.

Consideration of Special Factors

IDEA requires that IEP teams consider the following “special factors” and plan appropriately: 1) behavior, 2) English proficiency, 3) vision impairment including blindness, 4) special communication needs, and 5) assistive technology needs (§300.324(a)(2)(i-v)). While written documentation verifying consideration of the “special factors” is technically not a required component of the IEP, we have included “special factors” section on the sample IEP form included in the appendix because it provides a convenient place to document that the team addressed the issues as required, and their inclusion on the IEP forms all but ensures that the items will be discussed at the IEP meeting. We placed the item close to the beginning of the IEP, because if any are concerns, they must be addressed appropriately in the IEP. It is more likely that a team will identify appropriate actions if they have necessary knowledge at the beginning of the meeting than if it were presented at the end of a meeting and the participants were required to go back and modify the just completed IEP. The five special factors that must be considered are:

- (1) *Does the child's behavior impede the learning of self or others?* An affirmative answer would cue the IEP team to consider developing Annual Goals and Short-Term Objectives to address behavioral needs. (Note: A child does not have to be identified as having a behavioral disorder in order to receive

behavioral support. Student need, not label, drives the identification of services that will be provided). The team may also decide to conduct a Functional Behavioral Assessment (FBA) to determine the actual function of the behavior of concern.

We will discuss the FBA process in an upcoming chapter, but for now, suffice to say that a quality FBA would require the allocation of some resources for observation and should not even be attempted by individuals while sitting around a table developing an IEP. Rather, the team could decide that an FBA was necessary, set a timeline for completing it, and schedule a time to meet again. At that meeting, the results of the FBA could be reviewed and the team could develop a Behavior Intervention Plan (BIP). The IEP could be amended with the attachment of the BIP and any additional Annual Goals and Short-Term Objectives that resulted from the FBA. The clear goal from IDEA is for the IEP team to develop and implement strategies that will benefit the child by supporting the child's behavioral needs without the use of punishment or exclusion as the first options.

- (2) *Does the child have limited English proficiency?* If yes, the IEP team must consider language needs as they relate to student learning and the IEP. Strategies to promote understanding and acquisition of English must be considered and should be implemented on a systematic basis. The following scenario provides a clear example of the importance of working with parents and obtaining parental input in the development of the IEP. Assume that the child had a significant cognitive delay, did not speak English, but did have a vocabulary of 25 words in her primary language. That fact could have serious implications for the instructional program and maybe the teacher would be required to learn some words that are not his or her primary language in order to support the student with his or her transition to English. Absent parental involvement in the IEP process, this important communicative repertoire could have been overlooked and the child's education could have been negatively impacted.
- (3) *Is the child blind or visually impaired?* This question doesn't refer to common refractive problems readily resolved with the use of prescription lenses. Rather, the question refers to students with significant vision problems—including those students who may qualify for special education due to blindness or vision impairment. If the child does have a vision impairment or blindness, the IEP team is required to include instruction in Braille in the IEP unless based on evaluation results it is determined that Braille is not appropriate for the student. So, if an evaluation has not been completed, it should be scheduled without unnecessary delay and a subsequent IEP meeting held to amend the document as necessary.

- (4) *Does the child have special communication needs?* This is an important issue and should not be considered in isolation of other learning and behavioral issues. If a child has a unique way (e.g., a signal) of indicating his or her preference but that signal is not understood by school staff and ultimately ignored, it could result in unanticipated behavioral outbursts as the child tries to communicate his or her needs in an alternate manner. For example if a child was nonverbal but used a pictorial communication system, such as the Picture Exchange Communication System (Frost & Bondy, 2002), then it would be important to indicate that in the IEP. Or if a child used a more sophisticated technology device for communication, the teacher may require training to support the child's communication (i.e., the teacher may need to be trained on the operation of the device and that training could be included in the IEP). In both examples presented, staff would need to ensure that the appropriate academic and conversational vocabulary choices were available, and the IEP team could specify what training or support would be provided to the teacher in order to work effectively with the child. For a child who is deaf or hard of hearing, the IEP team must also consider opportunities for direct communication with peers and professionals in the child's language and mode of communication.
- (5) *Does the child require assistive technology (AT) devices and services?* Before an IEP team can answer this question, it is critical that the team know what IDEA means by both AT devices and services. Both the definitions of devices and services are quite involved, and the authors are certain that most IEP teams do not consider AT in depth. However a clear and informed understanding of district responsibility regarding provision of AT is critical, because the regulations clearly require its use as needed to ensure FAPE:
- 300.5 *Assistive technology device* means any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such device.
- 300.6 *Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—
- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
 - (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities,

- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

Given the broad definition of both AT device and AT service this should be a major consideration for an IEP team. Team members often go to the default position that assistive technology is little more than expensive computer equipment. However a computer based approach to assistive technology is only one of many possibilities. AT can include items as simple as pencil grips that help students with fine motor difficulties hold a pencil and write legibly, talking calculators, magnifying glasses, and a whole host of other items that range in expense. It is helpful to consult with individuals who are familiar with the wide range of AT devices currently available and have kept up with the rapidly changing technologies, particularly for more complex items. For example, some students who were nonverbal used voice synthesizers that cost thousands of dollars and could present quite an expense for districts. However, a cheaper option has become available in recent years using the iPad™ and new communication applications. So, rather than spending several thousands of dollars on a single communication device, a district could spend much less than one thousand dollars on an iPad and software that would provide a very functional and useful communication device. The device would have more uses than a voice synthesizer, and should it become damaged, it would be relatively cheap to replace, but cost is not the overriding consideration. If a child required a more expensive device to meet his or her Annual Goals, then the district would be responsible for securing access to the appropriate device.

In addition to the mere “functional” or “adaptive” examples of AT just provided, there is a growing amount of AT related to academic content. Given the requirement that students with disabilities have access to and make progress in the general education curriculum, academic AT is of increasing importance. Some examples include modified texts, novels controlled for reading skill, voice recognition, and writing software.

The regulations are very clear in permitting the use of district purchased AT in the child's home or other nonschool district environments (e.g., daycare, preschool, community recreation activities, etc.) if their use is needed in those environs for the child to receive FAPE. Since the district maintains ownership of the device should it be damaged or stolen, the district might seek reimbursement from the parents, so parents should be informed of any

responsibility they may have regarding safeguarding any AT. Before ending this discussion on AT, it is important to note that a separate section of the regulations outlines school district responsibility for maintaining hearing aids and the external components of surgically implanted devices, such as cochlear implants (§300.113).

Annual Goals, Short-Term Objectives and Report of Progress

Now that the IEP team has developed Present Levels that objectively describe a child's performance and identified any special factors that must be addressed, the team is ready to develop Annual Goals (AG) and Short-Term Objectives (STO). For all children, an IEP must contain measurable Annual Goals tied directly to the child's stated Present Levels of Performance. The Present Levels serve as the starting point, describing the child's level of skill, and the Annual Goals represent how far the IEP team expects the child to advance during the calendar year. Annual goals are written for all areas in which the child will receive special education support but do not need to cover every single thing a child will learn. Rather, the development of Annual Goals is a way for the team to prioritize learning outcomes for the child and provide educators with major foci for instructional planning. So, depending on the needs of the child, not eligibility label, the IEP team might develop Annual Goals for academic skill areas such as reading, math, and written expression as well as behavior and functional skills that cover daily living, including recreation and adaptive physical education. The regulatory language covering Annual Goals, Short-Term Objectives, and progress reporting follows (§300.320):

- (2) (i) A statement of measurable annual goals, including academic and functional goals designed to
 - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.
 - (B) Meet each of the child's other educational needs that result from the child's disability.
- (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (3) A description of
 - (i) How the child's progress toward meeting the annual goals will be measured and
 - (ii) When the periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

Prior to IDEA '04, IEP teams had to develop Short-Term Objectives or Benchmarks for each annual goal. Short-Term Objectives or Benchmarks served as intermediary steps to help focus the IEP and provide measurable targets to ensure that the child was making progress toward the Annual Goal. In this chapter, we will focus on Short-Term Objectives and differentiate them from Benchmarks in Chapter 4. Since the amendments of 2004, however, IEP teams are only required to write Short-Term Objectives or Benchmarks for students who take alternate assessments aligned with alternate achievement standards if the state opted to use alternative assessments and alternative standards. Generally, this applies to students with more significant disabilities. It is important, however, to remember that any state may choose to include Short-Term Objectives and/or Benchmarks in any or all IEPs and you should check to see what your state and local policy is in this area. The decision on the type of participation in assessment is made by the IEP team, and is the next component we will discuss. As you can see, due to the interrelated aspects of an IEP, it is difficult to approach in a strictly linear fashion.

Bateman and Linden (2012) described the decision to remove Short-Term Objectives from most IEPs as "... a wildly misguided move to reduce paperwork ... (p. 170)." We concur as it makes no sense to write IEPs for children without Short-Term Objectives, especially when there are no formal assessments as is the case with most children in preschool through second grade or for students who have other learning targets including behavior and self-help skills that are not included on the state and district mandated assessments. IEP teams are not prohibited from writing Short-Term Objectives and Benchmarks for children, whether the students take the regular state/district mandated assessments or not. We agree with Bateman and Linden (2012) that Short-Term Objectives constitute educational "best practice" and should still be written for all children. We address this point further in Chapter 4.

For John, our hypothetical student, we are only addressing math calculation and providing just one Annual Goal that is based upon skills described in the Present Levels and has reasonable projections for annual growth (See Table 3-6). We do this for simplicity, but in all likelihood, an IEP would contain more than a single Annual Goal. For John, the law simply requires that the IEP team develop measurable Annual Goals, because he will be participating in the regular state mandated assessment. However, we have gone a step further and also included Short-Term Objectives in our example. As you will see, the Short-Term Objectives break the Annual Goal into discrete, intermediary steps. At this time, we would also like to call your attention to the fact that the Annual Goal and Short-Term Objectives are written in terms anyone can understand and are measurable. There really is no doubt what skill he will be expected to demonstrate and at what level of proficiency. If a particular skill can't be objectively measured, then the IEP team should not attempt to write a "measurable" Annual Goal or Short-Term Objective.

The regulations require the IEP team to describe how a child's progress toward Annual Goals will be measured, so it is critical that goals be written in objective measurable terms or you couldn't describe progress (See Table 3-6). Essentially this means that they should be written to describe discrete acts or behaviors that are manifestly observable and require little interpretation. Parents must also be advised on a periodic basis of their child's progress toward

attainment of the Annual Goals. The regulations don't require any particular timeline for progress reporting, but do offer the very sensible suggestion to provide a report on progress on the IEP at the same interval as progress reports are provided to all students. That decision is left to the IEP team, but we strongly urge that recommendation be followed, because doing so will make your life as a teacher much easier with only one progress report timeline to track.

TABLE 3-6. Sample Annual Goal, Short-Term Objective, Progress Report

Measurable Annual Goals and Short-Term Objectives
<p>Area of Need: <u>Math Calculation</u></p> <p>Measurable Annual Goal When presented with 50 single digit, mixed addition and subtraction problems using numerals (0–9), John will write the correct answer to 48 problems within 60 seconds.</p> <p>Short-Term Objective 1 Given a worksheet with 30 single digit addition problems (0–9) and a direction to complete it, John will write the correct answer to 29 problems within 60 seconds on three consecutive opportunities.</p> <p>Short-Term Objective 2 Given a worksheet with 30 single digit subtraction problems (0–9) and a direction to complete it, John will write the correct answer to 29 problems within 60 seconds on three consecutive opportunities.</p> <p>Describe how progress will be measured: John's progress will be measured on timed fluency measures.</p>
<p>Progress Report</p> <p>Identify when periodic progress reports regarding the student's progression on annual goals and/or objectives will be made: Progress reports for IEP goals and objectives will be provided at the regular quarterly report card distribution time.</p>

Participation in State and District Mandated Assessment

IDEA requires that children with disabilities participate in state and district mandated assessments and that student performance will be used in determining Adequate Yearly Progress (AYP) as required by NCLB. This is just one area in which IDEA '04 was aligned with NCLB. While there are many concerns with the method in which AYP is computed and reported as well as with the current practice of wide-scale assessment (worthy discussions, but well beyond the depth of this text), the mandatory inclusion of students with disabilities in state and district mandated assessment, beginning with IDEA' 97, was a fundamentally positive requirement. It was positive because it highlighted the importance of students with disabilities having access to and making progress in the general education curriculum. It also reinforced recognition that students with disabilities must receive a quality education if they are to be afforded opportunities to be happy, productive, successful, and contributing members of American society and their local communities.

In addition, and on a somewhat sarcastic note, it may have been a response to professional concerns that in many pull-out special education classrooms there was no curriculum and nothing special nor educationally relevant happening. In a documentary by Habib (2009), disability

rights advocate, Keith Jones, provided an accurate, yet disheartening critique on what happened in many separate educational settings. He attended a special school as a child and complained that he was not being challenged. Instead of learning mathematics or other academic skills, he was involved in making items with craft sticks. So requiring that students have access to and progress in the general curriculum, even if done at a very different level or depth than typically developing peers, recognizes the importance of a meaningful education for all students. Making items with craft sticks may be a fun activity for children, and may be very appropriate for young children, but it should not be a substitute for academic instruction for older students.

Before IDEA '97, IEP teams could excuse a child with a disability from participating in state and district mandated assessments. There may have been good reason for excusing some children, particularly those who could not participate in paper and pencil tests and those who did not have the academic skills necessary to comprehend the grade level test that would be administered. However with IDEA '97, states were required to develop alternative assessment opportunities for students and include all students in assessments. Now, states have five different options for conducting assessments as described by the U. S. Department of Education, Office of Special Education Programs (<http://www.osepideasthatwork.org/>). The first is simply completion of the regular grade level assessment. The second option is the grade level assessment with appropriate accommodations that maintain the validity of the test. For example, a student with a vision impairment may be provided with a test that has enlarged text. As with the first two options, the third still measures a student's performance on grade level standards, but the assessment can be presented in an alternate format. (We will discuss accommodations and modifications shortly.)

The final options reference modified or alternate achievement standards and are available for use only with students with disabilities. The fourth option is for students to complete an assessment that is still based on the standard curriculum, but with a modified achievement standard, which may simply be a lowered level of proficiency or testing at a lower grade level. The fifth option is for the student to complete an alternative assessment using alternative achievement standards. This final option is typically reserved for students with significant cognitive disabilities or preschool age children and may include a portfolio assessment with activities and data collected over several months rather than the usual one or two week testing period commonly associated with the other four assessment options.

The current regulations state the following guidelines and IEP team responsibilities regarding participation in state and district wide assessments (§300.321):

- (6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessment and

- (ii) If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, as statement of why
 - (A) The child cannot participate in the regular assessment; and
 - (B) The particular assessment selected is appropriate for the child.

As you complete the IEP, you will find the terms accommodations and modifications frequently used when referring to supports provided to students with disabilities—whether instructional, environmental, or assessment supports. For assessment, specifically, accommodations generally refer to changes in the input (the way information is provided to the student) or output (the way information is demonstrated by the student). An accommodation does not alter what a student is expected to learn but serves as a means of providing equitable access. For example, a child with a vision impairment may get the accommodation of having the test material presented in large font or braille (input) and may write the letter of the answer to a multiple choice question or indicate choice verbally rather than fill in a bubble sheet (output). In this example the content has not changed from that included in the standard assessment and the accommodation simply allowed the student to participate in the assessment without being discriminated against due to disability.

The term modification refers to a change in performance expectation for a child. The change can be a lower level of academic achievement on the regular curriculum or an individualized performance standard on an alternative curriculum that is tied to the regular education curriculum. For example, a student who participates in a reading assessment but at a much lower grade level has been provided a modification; that is, the instructional expectations have been lowered or modified.

Since states have considerable latitude in conducting assessments, we recommend that you regularly check with your district or state department of education for specific actions that are allowable without jeopardizing the validity of the assessment. But first and foremost it is critical to keep in mind that it is the child's performance relative to the Annual Goals and Short-Term Objectives in the IEP that is most important. Teachers should monitor, above all else, whether or not Annual Goals and Short-Term Objectives are being met in a timely fashion. If they are and if the Annual Goals and Short-Term Objectives were designed to allow progress in the general curriculum, then there should be little concern regarding mandated state and district assessments. The IEP team should also write Annual Goals and Short-Term Objectives for all areas in which the child will receive special education support, not limit themselves to the academic areas covered on the mandated assessments. For areas not covered by mandated assessments, such as behavior, the team should always write Short-Term Objectives for each Annual Goal.

Acceptable accommodations are generally grouped by type: presentation, response, setting, or timing and scheduling. Before moving to the next section of the IEP, we will provide

an illustrative (and by no means exhaustive) listing of commonly used accommodations, and Table 3-7 contains an example of an IEP statement regarding participation in state and district mandated assessments. Following is a listing of possible accommodations:

Presentation Accommodations:

- Directions read orally to the student
- Directions reread as often as needed
- Directions provided in primary language or mode of communication
- Large print or braille
- Audio amplification system
- Human readers (except for reading tests)
- Read aloud computer translations
- Assistance tuning page
- Fewer items per page

Response Accommodations:

- Use of pencil grip
- Larger bubbles on answer sheets
- Student dictates answer
- Manipulative to help compute mathematics problems
- Calculators
- Rulers, graph paper, abacus
- Speech activated software
- Word processor

Setting Accommodations:

- Complete test in different location
- Use sound deadening headphones
- Administer test individually or in small group

Timing and Scheduling:

- Provide extra time for writing
- Provide frequent breaks
- Extend test time (3 weeks instead of 2 weeks)
- Break test into smaller increments

TABLE 3-7. Participation in State & District

State and District Mandated Assessments	
<u>Student will be taking standard assessment:</u> If the student will be participating in the assessment but needs modifications or adaptations for any of the sections, identify what modifications or adaptations will be allowed and for what assessment.	
John will be allowed up to twice the allotted time for completion of math application sections of the assessment that are not timed fluency measures. He will be allowed to complete the assessment in an alternative setting, such as the office or resource room or other quiet setting.	
<u>Student will NOT be taking standard assessment:</u> If the IEP team determined that the standard assessment would not be appropriate, answer the following:	
1. Describe why the student cannot participate in the standard assessment.	_____

2. Describe why the particular alternative assessment selected is appropriate for the student.	_____

Statement of Special Education and Related Services

The identification of what special education and related services and supplementary aids and services will be provided to a child is a required component of the IEP, but that determination cannot be made until after the development of Annual Goals and Short-Term Objectives, as appropriate. For obvious reasons, it would be impossible to identify what services will be provided to a child without first identifying the target learning outcomes. The regulations (§300.320) provide the following regarding the content specifically related to special education and related services that must be included in the IEP:

- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child
 - (i) To advance appropriately toward attaining the annual goal;
 - (ii) To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities;
 - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

As you may have noticed, there are several components to this requirement, and in order to complete an IEP correctly, you must be familiar with the meaning of each component. We will

provide the legal definition of special education and related services, but want to point out a couple of items in the regulatory language that deserve special attention. First, the requirement that special education services be based on practices supported by peer-reviewed research to the extent practicable was a new requirement of IDEA '04 that sought to align this legislation with the No Child Left Behind Act of 2001. At this time, there is not research supporting all practices in schools, but that does not relieve schools of the ethical responsibility of implementing research supported interventions whenever possible. This is a relatively new requirement, but as Bateman and Linden (2012) noted, courts haven't gotten into the point of determining which practice is best, rather they continue to be guided by the standard of benefit set forth by the 1982 US Supreme Court decision in *Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (hereafter Rowley). Commonly known as the Rowley Standard, this ruling made it clear that special education services must be reasonably calculated to provide a child with meaningful educational benefit but need not "maximize" a child's potential. Public schools aren't required to maximize the potential of any student (even if we could measure potential).

We also want to emphasize the importance of items (ii) and (iii). A review of these requirements reveals the clear and overriding Congressional intent that children with disabilities be educated with their typically developing peers in both academic activities (with a particular focus on the general education curriculum) and nonacademic activities (recess, lunch, assemblies, fieldtrips, etc.) and extracurricular activities, such as school clubs. To comply with the law and congressional intent, the IEP team must assume that the child will be educated in the regular education setting with the use of supplementary aids and services as stated in the Least Restrictive Environment (LRE) section of the regulations (§300.114). This is an incredibly important point, from both an educational perspective and a civil rights perspective, which be discussed further in Chapter 5. But we need to mention it here to emphasize that the team must consider regular education placement before considering any other placement. This legal presumption of placement in the regular education environment can only be rebutted if the child's needs cannot be met in the regular education environment with the use of supplementary aids and services, a determination that can only be made at the end of the IEP meeting.

Now that we have covered regulatory guidance for research-based intervention along with the presumption of regular education placement, we can provide the definitions of special education, related services, and supplementary aids and services. First, special education is defined in the regulations as follows:

300.39 Special education.

(a) *General.*

(1) *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—

(i) Speech-language pathology, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(f) *Individual special education terms defined.* The terms in this definition are defined as follows:

(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as part of the regular education program.

(5) *Physical education* means—

(i) The development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports; and (ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the contents, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(i) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

We have provided the legal definition, but need to offer some clarifying commentary on selected items. As is apparent from the definition, special education includes specially designed instruction designed to meet the unique needs of the child. This means that there is no single special education instructional practice that will be appropriate for a child with a specific disability label (as we discussed in Chapter 1), rather service decisions must be made on an individual basis for each child based upon his or her unique needs. Thus, the assessments that were conducted as precursor to the IEP development must be educationally relevant, and the results must be clearly and operationally specified in statements of Present Levels. Only by having a solid understanding of the unique educational needs of a specific child will the team be able to identify what the child will require and develop a truly Individualized Education Program.

It is also important to note that special education is provided at no cost to the parent, regardless of the parent's income level. All states have mandatory attendance laws and provide education at no cost to students without disabilities. To charge parents of students with disabilities tuition or other fees not levied against parents of children without disabilities would be clearly discriminatory. If that were allowed (and it was allowed before legislation in the 1970s specifically prohibited such practice), then a child with a disability could be kept from school due to parents' inability or unwillingness to pay extra for an educational service that the state provides to other children without disabilities free of charge. However, this does not prevent districts from charging students with disabilities fees to participate in activities, such as field trips or sports, if those same fees are required of students without disabilities.

So, we know that special education is specially designed instruction provided free of charge. However, it is important to recognize that it can be provided in a variety of settings. While the presumed placement of the child is the regular education setting, special education supports can be provided in the home or in community preschool settings where the child will have an opportunity to interact with peers without disabilities. For older students placement at a jobsite in the community with nondisabled coworkers could be done in compliance with the LRE mandate and intent. The "continuum at the alternative placements" describes placement options ranging from regular class to very restrictive institutions and will be discussed in detail in Chapter 5. However, it is important for IEP teams to recognize that placement, or the setting(s) in which the child will receive specially designed instruction, is determined annually and on an individual basis after Annual Goals and Short-Term Objectives are developed and with a presumption of placement in the regular education setting.

The regulations offered some guidance on specially designed instruction which provided IEP teams an opportunity to adapt content, methodology, or delivery of instruction. The content requirements could be modified and reflected in the IEP goals and objectives. For example, some children may receive reading instruction on skills typically acquired in earlier grades (content adaptation) or students may receive instruction in content not typically considered

part of the formal school curriculum (e.g., eating, toileting, or mobility). Specific methodological practice is generally left to the purview of the school and court decisions have found that if the child benefitted from the special education provided at the school, then parents could not force a district to change methodology (*Lachman v. Illinois State Board of Education, 1988*). However, it is allowable for an IEP team to decide that a specific methodology will be used with a particular child. For example, an IEP team might determine that a particular child requires some home-based Applied Behavior Analysis (ABA) training in order to benefit from special education. In that case, the school would be required to provide that service and ABA would be considered specially designed instruction. Provision of home-based service is an expensive proposition and underscores the importance of having a representative of the public agency at the IEP meeting.

We chose this example because the use of ABA with children with autism has been an area of contention and legal challenge. Many times, districts have tried to avoid the cost associated with home-based ABA, but lost their case in due process hearings and were ordered to provide the service because the child had not been making satisfactory progress in the program provided by the district which meant that the child was not receiving FAPE. However, had the district provided FAPE as indicated by the child making satisfactory benefit from whatever methodology the district had implemented, then it is highly unlikely that a district would have lost a hearing on an issue of methodology just because a parent preferred a different methodology.

We have discussed some major components of the definition of special education that are included in most IEPs. The regulatory language does not require that each item identified in the definition of special education (§300.39) be included in an IEP. For example, not all children require travel training, mobility training, or specially designed instruction in PE. The thing to remember is the supports to be provided are those that enable the child to benefit from special education, have access to the general education curriculum, and interact with typically developing peers to the maximum extent appropriate.

In one of the most egregious practices involving provision of special education services of which the authors are aware, the district would only provide speech and language services to children who had an IQ score above a certain arbitrary level. This practice was clearly illegal because the district policy stripped the IEP team of its right and responsibility to develop a truly individualized IEP. Additionally, the policy made absolutely no sense. In this scenario, children with severe disabilities who had extremely limited communication skills were barred from receiving speech and language therapy (communication skills) because the district had determined that the low IQ score precluded them from benefitting from that intervention. In other words, children who were in greatest need of communication support were denied that support. The district was requiring those students to demonstrate their ability to benefit from special education service—a requirement forcefully negated by the 1st Circuit Court in the 1989 decision in *Timothy W. v. Rochester School District*. <http://law.justia.com/cases/federal/appellate-courts/F2/875/954/179023/>

In addition to identifying special education services, the IEP must also specify the related services as well as supplementary aids and services that will be provided for the child to benefit from special education. We will continue our discussion by moving on to the topic of related services that are simply defined as services that a child needs in order to benefit from special education. The regulations include the following overarching definition:

300.34 Related services.

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

This listing is not exhaustive but does identify the most commonly used related services. They are called “related services” because they are related to the child’s special education. In other words, the child could receive the services at no cost only if needed to benefit from special education. Giangreco (2011) argued that related services should only involve as much support as is necessary and must be clearly educationally relevant. He provided an interesting example that one of the authors also encountered while consulting with a school district. The related service in question was horseback riding or “equine therapy” for the development of motor skills. There simply was no justifiable reason for provision of horseback riding as a necessary related service. Any motor skills developed through horseback riding could have been addressed during more typical times and activities, such as physical education or recess.

Now, let’s consider a couple of very simple scenarios regarding related services without reading anything extra into the description or making any assumptions. These are intended to be simplistic in order to illustrate the basic points. Our first example is very unlikely (not the bicycle accident and sprained ankle, but trying to relate the sprained ankle it to reading support). Suppose you had a student with a learning disability who received special education support for reading. One day, this student had an accident while riding her bike, sprained an ankle, and the doctor ordered physical therapy. Now, just because physical therapy is listed as a related service and she receives special education does not mean that she would now be eligible for physical therapy as a related service. To get the service, she would need it in order to benefit from special education, and it would be nearly impossible to successfully argue that a sprained ankle impacted her ability to benefit from specially designed instruction in reading.

For our next example, assume you work in a district that provides transportation for students who live two miles or more from the school. You have a kindergarten student with an orthopedic impairment who uses a walker, moves very slowly, and tires easily from the walking. She lives less than one-half mile from school, but the IEP team could easily determine that she would need transportation as a related service in order to get to school in a timely manner and have enough energy to participate in instructional activities and benefit from her special education. One final point about transportation, there is no requirement that it be provided on a “short bus”. In our example, the full-size bus that transports students without disabilities could make an extra stop and pick her up—this would actually be consistent with the LRE requirements by supporting her participation in nonacademic activities with typically developing peers to the maximum extent.

We will provide the rather lengthy regulatory definitions for each of the related services previously listed. Before presenting that information, we do want to bring your attention to a few items. First, there are some restrictions on many of the services. For example, the list includes both “health services” and “medical services” as related services. School districts must provide “health services,” but only need to provide “medical services” if needed for diagnostic purposes. In *Irving Independent School District. v. Tatro* (1984), a case involving Clean Intermittent Catheterization, the U.S. Supreme Court provided guidelines regarding the identification of medical services that districts need not provide. Essentially, the Court determined that medical services are those that must be provided by a licensed physician and unless required for diagnostic purposes, the district is not responsible for their provision. <http://supreme.justia.com/cases/federal/us/468/883/case.html> Second, the regulations specifically limit district responsibility for surgically implanted devices, specifically mapping cochlear implants that many children with hearing impairments use. Our third point is particularly important for preschool teachers who receive children transitioning from Part C services. With the exception of some parent training and provision of information, related services are provided to children only. Under Part C, some adult family members or even siblings may have been recipients of Early Intervention Services that are now considered related services under Part B, so this could be a significant change for some families. Finally, IEP teams should avoid the temptation of thinking that since a particular related service was required by a child on a prior IEP that the related service will always be required and should be included in subsequent IEPs. What is needed one year may not be needed the next year.

Following is the extensive description of related services as provided in the regulations (§300.34).

(c) Individual related services terms defined. The terms used in this definition are defined as follows:

(1) *Audiology* includes—

- (i) Identification of children with hearing loss;
- (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

- (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;
 - (iv) Creation and administration of programs for prevention of hearing loss;
 - (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
 - (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) *Early identification and assessment* of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- (4) *Interpreting services* includes—
- (i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
 - (ii) Special interpreting services for children who are deaf-blind.
- (5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- (6) *Occupational therapy*—
- (i) Means services provided by a qualified occupational therapist; and
 - (ii) Includes—
 - (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
 - (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
 - (C) Preventing, through early intervention, initial or further
- (7) *Orientation and mobility services*—
- (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to

and safe movement within their environments in school, home, and community; and

(ii) Includes teaching children the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8) (i) *Parent counseling and training* means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) *Physical therapy* means services provided by a qualified physical therapist.

(10) *Psychological services* includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(11) *Recreation* includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(12) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation service provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) *School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) *Social work services* in schools includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) *Speech-language pathology services* includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) *Transportation* includes—

(i) Travel to and from school and between schools;

- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

IEPs must identify the supplementary aids and services that will be provided to support the child in achieving the IEP goals. They are defined as aids, services, and other supports provided in regular education classes, other education related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate (§300.342). This requirement is clearly aligned with the LRE provision of the law which has been in place since passage in 1975. The presumption that children with disabilities would be educated with typically developing peers is not a new idea or some passing fad. These aids, services, and other supports are varied and can include assistive technology, adult support, peer supports, and modification of architectural barriers to allow access, or even access to resource room supports. An example of when a resource room might be considered as a supplementary aid or service rather than a placement would be when a student receives all instruction in the regular class but only goes to resource room to take a test in a quiet setting. The definition is broad and one could make a reasoned argument that it is broad by design, because those who wrote the law could not have foreseen the various types of individualized supports that children might need.

Given that these supports could be quite varied, we thought it might be helpful to provide some illustrative examples. Please remember that these supports may not need to be provided at all times; this is especially true of the assignment of an adult assistant. Since assignment of an adult assistant is so prevalent and beset with difficulty, we want to discuss it at some depth. It often seems that children with significant disabilities are automatically tethered to an adult at all times. Some children may need an adult with them to monitor serious medical issues, such as a ventilator, but even then the adult should only be as close as absolutely necessary. Having adults in constant proximity can have detrimental outcomes as identified by Giangreco, Edelman, Luiselli, and MacFarland (1997) including the unintended effect of causing students without disabilities to avoid the student with a disability or altering or limiting interpersonal interactions (we all know that 11 year olds act differently with other 11 year olds when an adult is present than when an adult is not present). <http://www.uvm.edu/~cdci/archives/mgiangre/helpinghovering.pdf> The proximity of the adult may also result in a phenomenon known as “learned helplessness”, because the adult, trying to be helpful, overcompensates and does things for the child without requiring that the child complete the task. In some cases, the adult may even speak for the child and/or interpret what the child is saying, which may negatively impact a child’s opportunities to improve communication skills. In many cases, there is also the risk that the child with a severe disability, a child who likely requires the most specialized instruction, is instructed by individuals with the least amount of training, teacher assistants. This is not meant to minimize the high quality work done by

many teacher assistants, but to point out that unless specifically trained, they may not have the necessary skills. Merely having experience with children with disabilities doesn't equate with instructional competence.

If additional adult support is necessary to ensure that a child with a disability receives the appropriate support, then the adult could work with children without disabilities and support the child with a disability only when he/she needs the support. That additional adult support would likely be welcome in most classrooms. As an aside, and an important point, the regulations do not require that all the additional supports be provided by an adult. The peers of the student with a disability are great sources of support and may provide more natural support than an adult, but they too may need some training or direction for working with a particular child. Or if an adult is required, it may only be for specific support activities at times such as meals or toileting.

The examples of accommodations and modifications previously mentioned for use on assessments could also be used in the classroom; in fact, when used with students on state and district mandated assessments, it is generally required that they must have been used by the student on a regular basis in the education setting and not just selected for use on the assessment. So, it is important that consideration be given to ensure that students have regular access to needed accommodations or modifications during the school year. Some examples of additional supports that may or may not be appropriate for inclusion in assessment activities, but could be included on an IEP, include items, such as

- pencil grips that make it easier for a child with fine motor difficulties to grip a pencil
- provision of an alternate setting to take tests
- heavy paper for writing rather than the newsprint
- preferential seating (not necessarily seating next to the teacher as this is punishing to some students)
- audio amplification
- picture schedule and verbal reminder approximately 5 minutes before change in activity
- picture communication system
- assignment notebook to be checked by teacher at the end of the day
- use of calculator for math computation problems
- audio taping or reading of math application story problems
- seating support and straps on preschool playground toys
- access to nurse's office for toileting assistance
- supervised access to food

- assigned playground area
- use of restroom when no other children are present
- adult assistance with toileting
- taped responses rather than written responses
- text adapted to reading level
- copy of classroom material for use at home

The regulations also require that the IEP include supports that will be provided to the teacher to allow the child to participate and benefit from the regular education setting. As evidenced throughout this chapter, the regulations consistently reference the goal of enabling the child to access and progress in the general education setting and curriculum. This particular requirement may have the effect of minimizing the excuse that many teachers, in the past, used to keep a child out of the classroom—“I don’t have the training.” This excuse was never acceptable, because no child should have to pay the price for the teacher’s lack of training by being relegated to a segregated setting or denied entry to school.

This excuse also implied that if the child was sent to another setting, the teacher in that segregated setting would be appropriately trained. Let us take a minute to disabuse you of this type of thinking. We personally know of situations where students with disabilities have been sent away from regular schools with fully certificated teachers to special education classrooms with uncertified teachers. Consider the following: child rode a “short bus” to attend a bilingual special education program only to find that it was staffed by a substitute teacher who was not fully certificated and only spoke English. There was absolutely no justifiable reason to send that student from his home school where there was a fully certificated special education teacher. Neither teacher spoke Spanish, but the student was removed from his home school under false premise of receiving competent bilingual and special education support from a fully certificated teacher. Consider the case of another student who was sent to a special school that supposedly had faculty with specialized training in the application of applied behavior analysis only to discover that he was placed in a class with a substitute teacher who did not have a bachelor’s degree and had no specialization in behavioral intervention. We must avoid the assumption that removal from the regular education setting and placement in a special education setting automatically results in the student receiving highly specialized educational interventions. We must also avoid the temptation of believing that highly specialized services cannot be provided in the regular education setting when in fact, many can and should be provided there.

In addition to identifying the special education, related services, modifications and adaptations and use of supplementary aids and services that will be provided, the IEP team must identify the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications.

Location does not need to identify the specific school site, but only include a general specification as to where the services will be provided—whether regular classroom setting,

a pull-out setting, or some other setting—is sufficient (71 Fed. Reg. 46588, 2006; Letter to Wessels, 1992). Since districts may have an appropriate placement at more than one location, the district is afforded flexibility in assigning a student to a particular location. Despite these clarifications, in an unpublished decision, which is not precedent setting, the Fourth Circuit Court determined that IEP teams should identify the specific school (*K.J. v. Fairfax County School Board, 2010*) whereas, in a published decision, the Second Circuit Court ruled that IDEA does not require identification of a specific school, merely the placement where the IEP will be implemented (*T. Y. v. New York City Department of Education, 2009/2010*). The Second Circuit decision was appealed to the U.S. Supreme Court who refused to hear the case, indicating that the Second Circuit interpreted the law correctly. Zirkel (2011) noted that a subsequent decision by the Fourth Circuit indicated that identification of a specific school depends upon the circumstances of the case. We mention this issue, not to cause confusion or concern on your part, but to note that schools in the Fourth Circuit may have different practices, based on the court ruling. This difference of opinion among the courts also serves to illustrate the importance of keeping abreast of legal rulings. Should there be decisions that impact your locale, the school district should keep you informed. One last comment regarding the cases mentioned above. These cases were a result of serious disagreements between parents and school districts. You will likely never find yourself in such a position, but if you do, then rest assured that the district will have legal counsel and administrators working to try and resolve the issue. There are plenty of opportunities for the school district and parents to reach a resolution before the case ends up in court.

The team should specify the number of minutes of special education and any related services that the child will receive. The IEP must identify the specific number of minutes that will be provided to the child and cannot simply be a range of time. So, 15 minutes twice per week would be allowable, but 15–20 minutes once per week would not be an acceptable level of specification. The team would need to identify either 15 or 20 minutes.

An exception to this rule would be a service such as transportation; you don't need to identify the number of minutes of transportation provided per day, just identify that the child will be transported to and from school and on what days. Many districts use an additional form for transportation to document information needed by the bus driver including specific directions such as whether the child can be left at home alone. This is important information, and the district should take steps to ensure that the bus driver, including substitute drivers, have the information. The IEP should also specify the number of minutes of special education support services provided, but could also identify that some services will be available as needed. An example of an as needed support could be providing the student access to the resource room for test taking if the regular classroom setting is too distracting.

Table 3-8 contains a Service Summary Matrix that is a useful way of documenting special education, related services, and supplementary aids or services that will be provided to the child. We remind you that this IEP example for John was purposefully simple, because we could show you the IEP components in a straightforward manner. Once you can complete a

TABLE 3-8. Special Ed and Related Services

Special Education, Related Services, and Accommodations/Adaptations					
Describe the special education and related services, based on peer-reviewed research to the extent available, that will be provided to enable the student to 1) make adequate progress toward meeting annual goals and/or objectives, 2) to be involved and make progress in the general education curriculum, including extra-curricular and nonacademic activities, 3) to be educated with other students with and without disabilities. Include any modifications or supports provided to school personnel.					
Special Education	Begin Date	Frequency	Location	Duration	Person Responsible
Small group instruction	9-10-2012	Daily	Regular Ed Classroom	20 minutes	Special and Regular Ed. Teachers
Related Service	Begin Date	Frequency	Location	Duration	Person Responsible
Accommodations/Adaptations: None needed					
Supports provided to school personnel: None needed					

basic IEP, it becomes easier to add on more components. On this form, we did include a place to identify who is responsible for providing the service. The responsible person cannot be the parent or the student. Children and their parents cannot be required to implement the IEP, because it is the duty of the school to provide FAPE.

LRE Statement

Throughout this chapter, we have noted that the law presumes that children with disabilities are educated in the regular education class and have access to extracurricular and nonacademic activities with their typically developing peers. The regulations (§300.320(5)) require that the IEP contain:

An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities described in paragraph (a)(4)

We will reserve a discussion of acceptable reasons for removal from the regular education setting for Chapter 5, and just note the requirement here. In Table 3-9, we provide a sample

TABLE 3-9. LRE, ESY, PBS

<p>Least Restrictive Environment</p> <p>Provide an explanation of the extent, if any, that the child will not be participating with children without disabilities in the regular class and extra-curricular or nonacademic activities. _____</p> <p>_____</p> <p>_____</p> <p>Percentage of time in general education setting ___ 100% _____</p>
<p>Extended School Year</p> <p>Is the child eligible for Extended School Year Services? ___ Yes ___ No</p> <p>Decision will be made by ___ May 1, 2013 _____</p>
<p>Positive Behavioral Supports</p> <p>Does the child have a Behavior Intervention Plan? ___ Yes <input checked="" type="checkbox"/> No (If yes, attach to the IEP)</p>

LRE statement for John, our hypothetical student. Since he will spend 100% of the time in the regular class, there is no need to make any justification for removal. We have also included a section denoting whether he will receive Extended School Year services (discussed in the next section) and a blank to indicate whether he has a Behavior Intervention Plan (BIP). We will discuss BIP in Chapter 6, but want to include it on the IEP to ensure that the use of such a plan is documented. We recommend attaching the BIP to the IEP, but more of that in a subsequent chapter.

Extended School Year

Extended School Year (ESY) is technically not a component of the IEP, but the decision to provide ESY rests with the IEP team, and it certainly makes sense that the decision be documented on the IEP form. Inclusion on the form provides some assurance that the issue was discussed and assists with record keeping. Extended School Year is defined as:

300.106 (b) Definition. As used in this section, the term extended school year services means special education and related services that—

- (1) Are provided to a child with a disability:
 - (i) Beyond the normal school year of the public agency;
 - (ii) In accordance with the child's IEP; and
 - (iii) At no cost to the parents of the child

The determination of ESY is clearly an individualized determination and the regulations specifically prohibit the district from limiting the provision of ESY to particular

disability categories, or unilaterally limiting the type, amount, or duration of the ESY services. In the past, hopefully not in the present, some districts have imposed arbitrary limits on ESY services. For example, a district might have stated that the only ESY service available was during a specified 6 week summer session, 4 hours per day, 4 days per week—for a total of 96 hours per student. We hope that you realize that type of restriction on service is clearly not appropriate because it deprives IEP teams of making individualized decisions for the specific child of concern. In fact, the regulations prohibit districts from limiting ESY according to disability category, or limiting the amount, type, or duration of those services (Yell, 2006).

ESY has commonly and erroneously been equated with summer school. Summer school is an optional program offered by school districts during summer break, and districts typically charge tuition and provide limited curricular choices. Elementary age students may participate in enrichment courses, while high school students frequently participate in summer school if they failed a class required for graduation, want to take courses to hasten their completion of required graduation requirements, or take enrichment courses such as driver's education. ESY, on the other hand, is a continuation of special education services as identified in the IEP and is provided free of charge. A school district is not required to provide summer school services, but ESY support must be available to eligible students who need it. In addition, ESY offering need not be restricted to summer months. ESY could also result in a longer school day for a child. Imagine that you were a preschool teacher implementing a traditional toileting strategy with a child. This strategy required a specific procedure be conducted at the "period of maximum likelihood," i.e., when the child was most likely to eliminate. Now, if this time overlapped with school excusal, the IEP team could make a cogent case that ESY service should be implemented and the child's school day lengthened to allow the toilet training procedure to occur during that "period of maximum likelihood." Failure to do so could deprive the child of an important learning opportunity and the instruction needed to achieve an Annual Goal or Short-Term Objective. ESY services could also be offered on weekends or during breaks other than summer vacation.

States can set criteria for determining whether a child is eligible for ESY (Fed. Reg. 71, 46582, 2006). Many states have developed criteria requiring the consideration of regression and recoupment of skills where regression refers to the loss of skills during a break in instruction and recoupment refers to the time it takes for the child to regain skills lost during a break. These conditions regarding ESY eligibility highlight the importance of IEP team members being well versed with state guidelines and regulations and that the school staff collects appropriate data. Of course, if IEP teams are uncertain of particular eligibility criteria or if it is simply too soon to determine if the child will be eligible for ESY, the IEP could be reconvened at a later time to address that issue. A final comment on ESY is that parents cannot be required to send their child to ESY services even though the majority of the members of the IEP team think that it is needed and appropriate. Compulsory attendance laws simply don't apply to ESY services.

IEP Summary

In the previous pages, we have provided you with a detailed description of the components that are contained in the IEP. You should now possess knowledge that will help you be a productive member of an IEP team in the development of an educationally relevant IEP for a young child who requires additional assistance in order to succeed at school. Our intent has been to provide a simple description of the IEP without postsecondary transition and in Appendix B we provide blank sample IEP Forms, and in Appendix C we provide a checklist for completing the IEP which also serves as a brief overview of the steps in developing an IEP—from setting up the meeting through completing the IEP. In subsequent chapters, we will provide a more detailed discussion of several key items including Present Levels, Goals and Objectives, postsecondary transition, Least Restrictive Environment, and Procedural Safeguards. We will also provide guidelines for implementing the IEP in an inclusive elementary classroom. This strategy could easily be adapted for the secondary setting. A comprehensive set of questions and answers regarding the IEP was revised by the U. S. Department of Education in 2010. <http://www2.ed.gov/policy/speced/guid/idea/iep-qa-2010.pdf> Since you should now have basic understanding of the IEP, we will provide a brief comparison with the IFSP which will be particularly useful for those of you who will be working with children and families who are transitioning from IFSP services to IEP services.

Comparison of IEP with IFSP

As we discussed in Chapter 2, an Individualized Family Service Plan is a document that contains the outline of Early Intervention services for eligible children between the ages of birth and three years. Unlike the IEP that is for students age 3 years to 22 years of age, it is family focused and differs in many significant ways from the IEP. Some of the more important differences include:

- (1) Whereas the IEP begins by including a statement of present levels of academic achievement and functional performance, the IFSP must include a statement of the child's development in the areas of physical development (vision, hearing, health, cognitive development, communication development, social development, and adaptive development). Clearly the emphasis in the IFSP is upon child development and not academic achievement as is the case in the IEP.
- (2) The IFSP must, with the family's permission, include a statement of family concerns, priorities, and resources relative to the development of the child as identified through a series of assessment procedures detailed in the regulations that govern the administration of EI services (34 CFR 303). The IEP does not include any such statement or reflect a requirement to focus upon the family. Herein is the essence of a major difference referred to above. The family is the focus of the IFSP and the child is the focus of the IEP.

- (3) The IEP must include a statement of measureable Annual Goals and Short-Term Objectives; the IFSP must include a statement of measureable outcomes or results to be achieved for the child and for the child's family. The difference between an Annual Goal and Short-Term Objective versus an Outcome or Result is not as large as it may at first seem. We will address this point more later, but for now it is important to note that both must be observable and measureable.
- (4) While the IEP requires that services be provided in the LRE to the maximum extent appropriate and an explanation for why a child is removed from the regular educational setting, an IFSP must include a statement that each service is provided in the natural environment to the maximum extent appropriate and when that is not the setting for a service or services a justification must be provided as to why not a natural environment. When first exposed to the term "natural environment" the thought may be that for an infant or toddler that must mean the home. But that is not the case. "Natural environment" means any setting that is natural or typical for infants or toddlers the same age without disabilities that may include the home or any one of a host of other community settings such as daycare, the YMCA, a park, etc.
- (5) The IFSP must include the name of a person who will act as the Service Coordinator. The Service Coordinator is an individual who is from a profession closely related to the needs of the child or who is otherwise qualified to fulfill the responsibilities of the position. The Service Coordinator is responsible for insuring that all services specified in the IFSP are delivered in a timely and effective manner. The Service Coordinator is an especially important resource person for parents preparing to transition from Part C to Part B services and must be invited by the district to attend the initial IEP meeting upon parental request. The IEP does include a provision for a Service Coordinator.
- (6) The IFSP must include a transition plan. The transition plan is a list of steps taken to insure the smooth transition of an eligible child and that child's family to preschool Part B services or other services once the child becomes 3 years of age. A transition plan must be in effect for a child with an IEP by age 16 whereas such a plan must be a part of the IFSP when first developed.
- (7) The IEP is written for a calendar year and must be rewritten each year. Gathering the IEP team during the year to review the child's progress toward the Annual Goals is optional and generally done only if revisions are necessary. The IFSP is written annually, but the IFSP must be reviewed and revised as needed every 6 months.

While these seven differences between the content of the IEP and the IFSP are significant, there are also many similarities. Both the IEP and the IFSP statements regarding achievements must be in objective clearly specifiable terms that anyone can understand; both require a

clear unequivocal delineation of services to be provided, including a timeline for when they are to begin and how long they are to be provided; both require specification as to when and how progress is to be measured and communicated and as one may conclude from #3 above, both reflect the undeniable preference for the provision of services in inclusive settings with children the same age without disabilities. Finally it is important to note that both the IEP and the IFSP require that the services that are included are based upon peer reviewed research whenever possible.

Chapter Summary

The IEP represents a collaborative effort by numerous people who are involved in the education of the child and the process places a high level of importance on parent participation. That does not mean that parents get whatever they want, rather it means that they are informed participants and the school considers parental opinion and insights. If parents and the district disagree on the IEP, then, as we will describe in Chapter 7, there are safeguards that allow the parents to challenge the proposal. Failure to involve parents in the process can place a district in a precarious position should the IEP be challenged. Legal issues aside, we do know that children benefit when schools and parents are cooperative and work as a team, and cooperation should be a goal, but not at the expense of providing the child FAPE. One step in ensuring meaningful parental participation is ensuring that teachers are well informed on the many aspects of the IEP. We have covered basic issues regarding IEP development and will investigate other topics at more depth in the following chapters. However, the IEP is an individualized document and all possibilities could not be covered in any book, because there will always be a unique, child-specific issue that must be addressed. By having a basic understanding of the process and district responsibilities, you will be in a position to develop high quality IEPs, and should an issue arise that you cannot answer without additional research, then the IEP meeting could be reconvened to discuss that aspect or the team could agree on part of the IEP and then reconvene to address the topic of concern.

Interpretation of the law is an ongoing process, so it is important that part of your ongoing professional development include keeping apprised of any changes. Some options for keeping current include attending professional conferences, school district or state level trainings, and reading professional journals and other publications.

Chapter Activities

1. Why do you think that IFSP focuses upon the family but the IEP focuses almost exclusively upon the child?
2. Why in the IFSP is there a focus upon “development” but in the IEP the focus is upon “academic achievement”?
3. Why isn’t every child receiving ESY?
4. Identify the major components of an IEP.
5. Why is it important the Present Levels and Annual Goals be measurable?
6. Find the appropriate website for your state and find the regulations and procedures related to special education. Read the sections on IEP development. Does your state have requirements in addition to those presented in this chapter?
7. What guidance do your state regulations provide for determination of ESY service?
8. Does your state have model IEP forms, including PWN and invitation to IEP meetings?
9. Find and compare an IEP form with an IFSP form.
10. Locate your state guidelines regarding acceptable modifications and adaptations in state and district assessments. Can you think of instances how you might incorporate those modifications or adaptations into instructional activities should you have a student that may require them?

11. Read your state guidelines on the participation of students with disabilities on state and district mandated assessments. Are there separate guidelines for students who have an IEP, students with a 504 plan, or students whose primary language is one other than English? What are the different options that an IEP team could consider?

12. Compare your state options for participation in the regular assessment with the available alternative assessment option.

**KH
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