

IEP Workshop Part I: Understanding Your Rights and Recognizing Red Flags

Presented by Elizabeth Hooper and William Hrabec
Matt Cohen & Associates

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Matt Cohen & Associates

Special Education, Disability Rights & Human Services Law

While we are waiting for people to join us...

- In the chat box, please share what your role is as it relates to students with disabilities (parent, teacher, advocate, etc.) and the age(s) of the students you might want to learn more information about.

Today's Agenda

- Who are we?
- Introduction to special education law
- IEP Walkthrough
 - Section-by-section
 - Relevant laws
 - Application in the IEP
 - Introduce IEP overview
 - Tips for writing a good IEP
- Suggestions for what to do you when disagree with the IEP

Who Are We?

- Elizabeth Hooper, MA

- Decades of experience teaching many ages and in a range of roles, primarily as a Special Education Teacher
- Advocacy - 6 years with Matt Cohen & Associates
- Executive Functioning Coaching

- William Hrabe, JD

- Undergraduate degrees in political science and disability studies
- Attorney with Equip for Equality's Special Education Clinic prior to joining Matt Cohen & Associates
- Fellowship project at EFE focused on CPS, the Public Inquiry, and systemic issues

Special Education Laws

- Individuals with Disabilities Education Improvement Act of 2004 (**IDEA**)
 - Federal special education law
 - IEPs
- Section 504 of the Rehabilitation Act (Section 504)
 - Federal anti-discrimination law that applies to schools
 - 504 Plans
- Illinois State Special Education Laws
 - General note – states must at least follow the federal law, but in some cases may have laws requiring a higher standard (i.e., giving students more rights)

IDEA Overview – What Are My Rights?

- IDEA – 20 USC § 1400
 - Part A – General Provisions
 - **Part B – Assistance for Education of All Children with Disabilities**
 - Part C – Infants and Toddlers with Disabilities
 - Part D – National Activities to Improve Education of Children with Disabilities
- Department of Education Regulations – 34 CFR § 300
 - Administrative agencies explain how laws should be interpreted and applied
- Case Law applying IDEA
 - When there is disagreement about what a law says or means, courts decide

IDEA Overview – What Are My Rights?

- IDEA Purposes – 20 USC § 1400(d)(1)
 - (a) “to ensure that all children with disabilities have available to them a **free appropriate public education** that emphasizes special education and related services designed to meet their unique needs and prepare them for further **education, employment, and independent living;**”
 - (b) “to ensure that the rights of **children with disabilities and parents** of such children **are protected;**”
- IDEA Monitoring Priorities – 20 USC § 1416(a)(3)
 - (a) “Provision of a free appropriate public education in the **least restrictive environment.**”

IDEA Overview – What Are My Rights?

- Free Appropriate Public Education (FAPE)
 - 20 USC § 1401(9): "The term 'free appropriate public education' means special education and related services that –
 - (a) have been provided at public expense, under public supervision and direction, and without charge;
 - (b) meet the standards of the State educational agency;
 - (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
 - (d) are provided in conformity with the individualized education program required under section 1414(d) of this title."
 - So...???

IDEA Overview – What Are My Rights?

- Free Appropriate Public Education (FAPE)
 - 34 CFR § 300.17 – FAPE Definition
 - Very similar to the IDEA definition.
 - 34 CFR § 300.101 – 300.102 – FAPE Requirements
 - Must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled.
 - Note: Does allow age exceptions depending on state law, but Illinois is 3 through 21.
 - 34 CFR §§ 300.103 – 300.113 – Other FAPE Requirements
 - Residential placement, assistive technology, extended school year, nonacademic services, physical education, etc.
 - Lots of things that may be part of an “appropriate education,” but still doesn’t explain what that means.

IDEA Overview – What Are My Rights?

- Free Appropriate Public Education (FAPE)
 - *Board of Education of the Hendrick Hudson Central School District v. Rowley* (U.S. 1982): U.S. Supreme Court says that an IEP must be reasonably calculated to enable the child to receive an education benefit.
 - Most courts took this to mean that districts were not required to maximize a student’s educational performance, but only offer *some* educational benefit.
 - *Endrew F. v. Douglas County School District RE-1* (U.S. 2017): Rejected the view that FAPE only requires students make more than de minimis progress.
 - When student is fully integrated in the regular classroom, should typically provide a level of instruction reasonably calculated to permit advancement through curriculum.
 - Otherwise, “educational program must be **appropriately ambitious** in light of [the student’s] circumstances...every child should have the chance to meet challenging objectives.”

IDEA Overview – What Are My Rights?

- Students with disabilities are entitled to FAPE in the LRE
- FAPE
 - Education programs for students with disabilities must be designed to meet their needs to the same extent that the needs of nondisabled students are met.
- LRE
 - Students with disabilities must be educated with non-disabled peers to the maximum extent possible.

IDEA Overview – What Are My Rights?

- Least Restrictive Environment (LRE)
- 34 CFR § 300.114 – LRE requirements
 - (a)(2)(i) To the **maximum extent appropriate**, children with disabilities must be educated with children who are nondisabled; and
 - (a)(2)(ii) Special classes, separate schooling, or other **removal of children with disabilities** from the regular educational environment **occurs only if** the nature or severity of the disability is such that **education in regular classes** with the use of supplementary aids and services **cannot be achieved satisfactorily**.

IEP Walkthrough

- Individualized Education Program (IEP) is a document that outlines what services a student will get at school to get FAPE in the LRE
- Relevant Sections
 - Student / Meeting Information
 - Procedural Safeguards
 - Present Levels of Performance
 - Goals (Specialized Instruction)
 - Accommodations and Modifications
 - Assessment Accommodations
 - Special Factors, such as transportation, assistive technology, BIP, and ESY
 - Supports for School Personnel
 - Transition (14 ½ and older in IL)
 - Educational Placement and Related Services (LRE Grid)

IEP Overview Template

Child's Name (Grade , eligibility)

Next IEP:

Annual IEP:

Reevaluation:

<i>Strengths/ Preferences</i>	<i>Challenges</i>	<i>Present Levels</i>	<i>Goals</i>	<i>How goals are measured</i>	<i>Accommodations/ Services</i>
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IEP Overview Template - Sample

XXX (Early Childhood, Developmental Delay) Last IEP: 4/09/22 Annual IEP: 4/28/2023 Reevaluation: 4/6/2024

<i>Strengths/ Preferences</i>	<i>Challenges</i>	<i>Present Levels</i>	<i>Goals</i>	<i>How goals are measured</i>	<i>Accommodations/ Services</i>
<ul style="list-style-type: none"> • Happy to be at school • Smiles at teachers • Greets peers by name • Given "first, then" options • Art center-"proud of work" • Choosing a class job • small groups (1-2 students) • posted visual schedule • imitates verbal models • when upset, will return to an activity if it continues on without him • sensory breaks • <i>Outside therapies</i> • <i>Completing activities before transitioning</i> • <i>Visual activities (ex legos, building blocks)</i> • <i>Can sit and attend to given table top activities</i> • <i>Making choices, being in charge</i> 	<ul style="list-style-type: none"> ✓ Large groups ✓ Close proximity to classmates (ex. Waiting in lines) ✓ Showing skills when teachers request ✓ Using the bathroom ✓ Cleaning up ✓ Safe behaviors ✓ Perseverating on ideas (ex. Class rules) ✓ Play time ✓ Transitions ✓ <i>Creative play</i> 	<ul style="list-style-type: none"> ➤ Social/Communication-makes a verbal plan to play. Transitions to different toys/centers. 5-8 word sentences-to request, to protest, to greet, to comment, and to end activities. To protest an activity he will: say "all done", put his head down, fall on the floor. Follows single step directions. ➤ Academic-match & label basic colors (trouble w/purple and pink),count by rote to 30, count with 1:1 correspondence to 3, identify basic shapes. Label details & repeat phrases from stories. Identify upper and lower case letter names, recognize his name in print ➤ Occupational Therapy-can trace letters/shapes with an emerging ability to copy. Right handed-with some hand switching. Can run, jump, walk backwards. (<i>copies horizontal & vertical lines; cut with assistance</i>) 	<ol style="list-style-type: none"> 1. Manage transitions/adapt to changes in routine 2. Share and take turns 3. Eliminate aggressive behavior and language 4. Independently follow 3 step directions 5. With visual cues, answer who, what, where questions (no visual cues) answer yes/no questions 6. Use verb + ing; respond to adults in large group 7. Maintain a topic for 3 conversation turns 8. Will copy different types of lines; hold and use scissors correctly 9. Use tripod grasp 10. Given sensory supports will attend for 10 minutes and not bump into peers or objects 	<ol style="list-style-type: none"> 1. 3 out of 4 times-observation 2. 3 out of 4 times-observation 3. ?-observation 4. 80% accuracy-observation 5. 80% accuracy-observation 6. 75% accuracy-observation 7. 75% of the time-observation 8. 3 out of 4 times-observation 9. 80% of the time-observation 10. 3 out of 4 times-observation 	<ul style="list-style-type: none"> ○ Early Childhood classroom 2 ½ hours, 5 days per week ○ Social work 30 min per week ○ Speech 60 min per week ○ Occupational Therapy-60 min per month ○ Models, visual cues ○ Preferential seating/calming area ○ Shortened tasks & directions ○ Small group/individual help ○ Behavior Plan ○ Constant adult supervision ○ Sensory breaks



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Student / Meeting Information – Legal

- 20 USC § 1414 – Evaluations, eligibility determinations, individualized education programs, and educational placements.
- Date of meeting
 - Must hold at least one IEP meeting annually to review and revise the IEP
 - Parent and/or school can request meetings sooner / more often if needed
- Date of most recent evaluation / next reevaluation
 - After initial evaluation, school must reevaluate **at least every three years**
 - Procedures for conducting evaluations (provide notice describing evaluations, **parental consent required**, 60-day timeline for completing evaluations)
 - Use a **variety of assessment tools** and strategies to assess in **all areas of suspected disability**.

Student / Meeting Information – Legal

- Eligibility Category

- 20 USC § 1401(3) – The term “child with a disability” means a child:
 - With intellectual disabilities, hearing impairments, speech or language impairments, visual impairments, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, or developmental delay (IL age 3 through 9); and
 - Who, by reason thereof, needs special education and related services.
- These are the 11 IEP eligibility categories under IDEA

- Meeting Participants

- 20 USC § 1414(d)(1)(b) – IEP Team
- Includes: Parents, teachers, local educational agency (LEA) representative, clinicians, related service personnel, the student (if appropriate)

Student / Meeting Information – Advocacy

- Date of meeting
- Date of most recent evaluation / next reevaluation
- Eligibility (primary and secondary)
- Resident School and Serving School
- Mode of communication
- Meeting Participants

Procedural Safeguards – Legal

- 20 USC § 1415 – Procedural Safeguards
- Parents of a child with a disability shall have the opportunity to:
 - **Examine all records** relating to such child;
 - **Participate in meetings** with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child; and,
 - Obtain an independent educational evaluation of the child.
- 105 ILCS 5/14-8.02f – IL law on IEP meeting protections
 - Written notice at least 10 days ahead of meeting (unless waived by parent)
 - Provide written copy of draft IEP / evaluation results at least 3 days before

Procedural Safeguards – Legal

- 20 USC § 1415 – Procedural Safeguards
- Written prior notice shall be provided to the parents whenever the LEA proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, education placement, or provision of FAPE.
 - **IL – “reasonable time” for prior written notice is 10 days**
- Parties must be provided the opportunity for mediation or to present a complaint if there is a disagreement.
- Generally, parents must be provided a copy of procedural safeguards upon initial evaluation, once per year thereafter, or upon request.

Present Levels of Performance – Legal

- 20 USC § 1414(d)(1)(A)(i) IEP must include:
- A statement of the child's present levels of **academic** achievement and **functional** performance, including how the child's disability **affects** the child's involvement and **progress in the general education curriculum**.

Present Levels of Performance – Advocacy

- Areas needed for improvement *and* strengths
- Important to know current levels to determine what to work on and expected progress for the coming year.
- IDEA requires school districts to develop appropriately challenging IEP goals calibrated to make “**meaningful progress**” (Endrew F)

Present Levels of Performance – Advocacy

- Strengths-should include **learning preferences and parent/student input**
- Parent Concerns -**summarize in IEP and attach letter to document**
- Academic-data for specific skills
 1. **progress on goals**
 2. evaluations
 3. **baseline for draft goals**
 4. present level page
- Communication-expressive, receptive, functional, and pragmatic
- Social Emotional-ability to regulate emotions, and how they interact with peers and adults

Present Levels of Performance – Advocacy

- Functional Performance-self-care, and (sometimes) sensory needs, **executive functioning**, *transition skills*
- Motor skills-fine and gross motor (sometimes) sensory needs
- Impact on access to general education curriculum-deficits that should be targeted by goals
- Post-secondary transition (age 14 ½ and above)-Employment, Further Education, Independent Living

Goals – Legal



- 20 USC § 1414(d)(1)(A)(ii-iii) IEP must include:
- A statement of measurable annual goals, including academic and functional goals, designed to:
 - Meet the child's needs that result from the child's disability to enable the child to be involved in a and make progress in the general education curriculum; and
 - **Meet each of the child's other educational needs that result from the child's disability;**
- A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided

Goals - Legal

- 20 USC § 1414(d)(1)(A)(iv, vii) IEP must include:
- 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 for the child...**to advance toward attaining the annual goals.**
- The projected date for the beginning of the services and modifications described and the anticipated frequency, location, and duration of those services and modifications.
- Related services include developmental, corrective, or other supportive services (SLP, PT, OT, social work, nursing, etc.) (See 2020 USC § 1401(26))

Goals - Advocacy

- IEPs must include measurable goals designed to meet the child's needs that result from their disability.
- Must include special education and related services, based on peer-reviewed research, to be provided to enable the child to advance appropriately toward attaining the annual goals.
- Goals is a way to track whether a student is making **meaningful progress**.

Goals – Advocacy

Goals should drive programming!

- **Baseline-measurable data that directly relates to goal**
- **Each goal should include:**
 - * **behavior-specific skill(s)**
 - * **condition-supports (ex. Assistive Technology)**
 - * **criteria-speed, rate, quality, etc.**
 - * **contexts-where skill will be measured (focus on generalization!)**

Accommodations and Modifications – Legal

- IEP should include any necessary accommodations and modification to allow a student with a disability to access their education in the least restrictive environment.
- Should **not remove student from general education if they can make appropriate progress with accommodations / modifications**
- A note on 504 Plans vs. IEPs – does the student require specialized instruction?

Accommodations and Modifications – Advocacy

- Accommodations- **do not reduce** learning expectations.
(*presentation, response, setting, and timing/scheduling*)
- Modifications-**Change, lower, or reduce** learning or assessment expectations
- Accommodations and modifications can be very important for allowing students to access their education in their LRE.

Assessment Accommodations - Legal

- 20 USC § 1414(d)(1)(A)(vi) IEP must include:
- 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 assessments**
- If the IEP Team determines that the child shall take an alternative assessment on a particular State or districtwide assessment of student achievement, a statement of why –
 - The child cannot participate in the regular assessment; and,
 - The particular alternate assessment selected is appropriate for the child

Assessment Accommodations - Advocacy

- *Are often similar to class accommodations*
- For future standardized testing, important to have an established pattern of a student's need for assessment accommodations.
 - **Can inform college board (SAT) assessments and post-secondary accommodations**
 - *Need to show you use accommodations in order to get them for College Board*

Special Factors - Legal

- 20 USC § 1414(d)(3)(b) Consideration of Special Factors
- Behavior
 - If a child's behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
 - 34 CFR §300.304 – Districts **are mandated to complete functional behavioral assessments and behavior intervention plans to provide appropriate supports**
- Communication
 - Consider the communication needs of the child, including opportunities for direct communications with peers and professional personnel and direct **instruction in the child's language and communication mode**

Special Factors - Legal

- 20 USC § 1414(d)(3)(b) Consideration of Special Factors
- **Assistive technology** devices and services.
 - 34 CFR §300.5-6 – **Device** is defined as “any item, piece of equipment, or product system...that is used to increase, maintain, or improve the functional capabilities of a child with a disability.” **Services** assist with the selection, acquisition, or use of an AT device (such as, evaluation, purchasing/providing device, customizing device, coordinating use in therapy, and training for child/family/staff.
- Extended School Year services (34 CFR § 300.106)
- Transportation services – included as a related service under 20 USC §1401(26)

Special Factors - Advocacy

- Assistive Technology (AT)
 - includes both devices and services
 - Evaluation-identify strengths and needs (motor, cognitive, and social barriers) includes trialing tools**

Free technical support provided through **Illinois Assistive Technology Project (IATP)**

- Behavior Intervention Plan-based on data, often through **Functional Behavior Assessment**; may ask for **BCBA involvement**

Supports for School Personnel - Legal

- As previously mentioned...IEP must include
- 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 for the child –
 - To advance appropriately toward attaining the annual goals;
 - To be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities; and,
 - To be educated and participate with other children with disabilities and non disabled children in these activities.

Supports for School Personnel - Advocacy

- IEP must include any necessary supports for school personnel to allow student to make appropriate progress and be involved in the general education curriculum
- **Who, when, and what regarding staff training, *individualized* to your child**
 - Examples: **written instructional plans for aides**, Wilson Reading, ABA
- Lack of appropriate staff training may be used as an argument for changing placement/schools

Transition - Legal

- 20 USC § 1414(d)(1)(A)(viii) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter
 - Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to **training, education, employment, and, where appropriate, independent living skills**;
 - Transition services (including courses of study) needed to assist the child in reaching those goals; and
 - At least 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of their rights, if any, that will transfer to the child on reaching the age of majority.
- 105 ILCS 5/14-8.03 – In IL, first IEP in effect when student is 14 ½

Transition - Legal

- 34 CFR § 300.43 - Transition plan should be designed within a results-oriented process, focused on the individual student, to facilitate movement from traditional schooling to post-school activities
- **As previously mentioned – in IL, students can continue to receive through the age of 21 (day before 22nd birthday)**
- If the IEP team agrees your child should stay in school beyond 12th grade, they can continue to receive services through public school
- **Note re graduation – important that a student does not graduate if you want them to continue receiving services, instead should defer graduation and remain enrolled**

Transition - Advocacy

- Linkages with outside agencies

Illinois Department of Human Resources

Disability & Rehabilitation

<http://www.dhs.state.il.us/page.aspx?item=29727>

- Community/vocational surveys, experiences, skills, job shadowing—
ensure assessments and programming are meaningful to the individual student

Educational Placement/Services - Legal

- Remember - LRE
- 20 USC § 1414(d)(1)(A)(iv-v) IEP must include:
- A statement of the special education and related services and supplementary aids and services...to be provided to the child...
 - To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and,
 - To be educated and participate with other children with disabilities and nondisabled children in these activities.
- **An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities**

Educational Placement - Advocacy

- Least Restrictive Environment-To the maximum extent appropriate, children with disabilities are educated with children who are not disabled.. given the use of supplementary aids and services
- Push-in versus Pull-out Service Minutes
- Discussion about a students right to 1.**FAPE** in 2. LRE and how this can be used by parents and/or the school district; **% of day student is excluded from General Education**

IEP Implementation

- IEPs are legally binding (**including the conference notes**) – your student has a right to the services in the IEP
 - Be wary of schools saying they are or will do something without putting it in the IEP
-
- If your student doesn't get the services in their IEP, they may be entitled to compensatory education
 - School must provide written notice if services aren't implemented within 10 school days of when the IEP goes into effect
- Comp Ed – additional services to put the student in the place they would be in had they received appropriate support.
 - Students may also get comp ed if the IEP doesn't provide FAPE

IEP Disputes

- What if you disagree with the IEP team or they aren't following the IEP?
- Advocacy strategies
 - Request an IEP meeting
 - Request updated evaluations
 - Get outside support from experts
- Formal dispute resolution
 - ISBE Complaint
 - Mediation
 - Due Process Hearing
- Important – if you disagree with changes the school has made, you have 10 days to “invoke stay put” by requesting mediation or due process if you want to stop the changes from going into effect.

Questions?

- If you would like to learn more about advanced advocacy and legal strategies for when the school isn't doing what you want or you disagree with the school, consider registering for [Part II](#)
- If you have specific questions about an individual case / situation or would like one-on-one support applying the information in this presentation, we recommend you contact us for a consultation with an advocate or attorney.

Contact

Matt Cohen & Associates

866-787-9270

<https://www.mattcohenandassociates.com/>