



Spotlight on Practice



Ensuring Meaningful
Parental Participation



What We'll Focus On . . .

- Who Is (and Who Is Not) a Parent
 - Participation by Divorced Parents
- IEP Team Meeting Issues
 - Right to Request and Attend Meetings
 - Conducting Meetings Without Parents
 - Other Parent Rights (Interpreter, Recording Meeting, Representation)
- IEP Development
 - Predetermination
 - Other Parent Rights, Including Duty to Consider IEEs



Introduction . . .

- One of the cornerstones of special education law is maximum practical participation by parents in development of each student's IEP
- Many protections are built into IDEA and California law to facilitate this participation
- Due process filings alleging that parents were excluded from IEP process have increased tremendously over past 10 years (e.g., predetermination claims)



I. Who Is a Parent?



Definition of “Parent”

- Biological or adoptive parent
- Foster parent (if authority of biological or adoptive parent limited by court order)
- Guardian authorized to act as parent or make educational decisions
- Individual acting in place of parent, including relative with whom child lives or other individual responsible for child’s welfare
- Surrogate parent

(Ed. Code, § 56028)



Who Can Not Qualify as a Parent?

- The state or any of its subdivisions
- Nonpublic school or agency under contract with district for provision of special education

(Ed. Code, § 56028)



Divorced Parents

- IDEA rights, including right to attend IEP team meetings and participate in IEP development, apply to both parents, unless court order specifies otherwise

(34 C.F.R. § 300.30; 71 Fed. Reg. 46568 (Aug. 14, 2006))



Divorced Parents at IEP Team Meetings



Practice Pointers

- ❑ Obtain copy of current court decrees that might affect parents' right to participate/make educational decisions
- ❑ Speak with each parent prior to meeting to answer any questions and determine if issues other than those related to IEP might arise



II. Conducting the IEP Team Meeting



What Is (and What Is Not) an IEP Team Meeting?

- Any meeting that addresses
 - Identification;
 - Evaluation;
 - Placement; or
 - Provision of FAPE

is likely to be deemed an IEP meeting requiring parental participation, even if not officially designated as such



What Is (and What Is Not) an IEP Team Meeting?

- Three situations that do not require parental participation:
 - Informal, unscheduled conversations among staff
 - Staff discussions on issues such as teaching methodology, lesson plans or coordination of services
 - Preparatory activities to develop proposal or response to parent proposal that will be discussed at later meeting

(34 C.F.R. § 300.501(b)(3))



Parent's Right to Request IEP Team Meeting

- District must convene meeting when parents request to develop, review or revise IEP
- Must be held within 30 days of receipt of written request, not counting breaks in excess of five school days
- If parents make verbal request, district must notify them of need to put request in writing and provide procedures for submitting to district

(Ed. Code, § 56343.5)



IEP Team Meeting Notice

■ Content

- Purpose, time and place of meeting
- Who will be attending
- Inform parents of right to bring individuals with knowledge or special expertise about student
 - Note: Special rules apply for notice of meetings to discuss postsecondary transition services

(34 C.F.R. § 300.322; Ed. Code, § 56341.5)



IEP Team Meeting Notice

■ Timing

- Early enough to ensure parents will have opportunity to attend
- OSEP suggests 10-day advance notice, but no formal requirement
- But one-day notice clearly is insufficient
 - E.g., Twin Rivers USD v. Student (OAH 2011):
Email to Parent stating that IEP meeting would be held “tomorrow” denied meaningful opportunity to participate

(34 C.F.R. § 300.322; Letter to Constantian (OSEP 1990) 17 IDELR 118)



Deficient Notice as Denial of FAPE

- If faulty (or tardy) notice deprives parent of ability to participate in IEP process, it can be basis for finding of denial of FAPE
 - But when parents are still able to participate fully despite faulty notice, procedural violation generally will not be sufficient to deny FAPE



Case Example

- Los Angeles Unif. School Dist. (OAH 2019)
 - ❑ District administrator telephoned Parent of 8-year-old with autism asking her to meet on following day
 - ❑ Parent thought she would be meeting just with two administrators, but entire IEP team was present
 - ❑ Administrator provided notice at meeting as formality
 - ❑ District sought to implement IEP developed at meeting absent parental consent
 - ❑ ALJ refused: Lack of notice denied FAPE because it “denied Parent her opportunity to adequately prepare for the IEP meeting, and may have contributed to Parent’s misunderstanding of [District’s] IEP offer”

(Los Angeles Unif. School Dist. v. Student (OAH 2019) Case No. 2019030744)



IEP Team Meeting Notice



Practice Pointer

- ❑ Case decisions on improper notice have focused on following issues:
 - ❑ Providing sufficient time in advance of meeting
 - ❑ Listing individuals being invited to attend
 - ❑ Stating purpose of meeting
 - ❑ Accurately identifying time, date and location
- ❑ Document and make copies of all notices sent, as paper trail may be important



IEP Team Meeting Notice



Practice Pointer

- ❑ When district intends to hold virtual IEP team meeting, be sure meeting notice includes name of virtual platform (with instructions on how to participate)
- ❑ Send parents link to meeting on same day you send notice, as well as on day before meeting as reminder



Scheduling IEP Team Meetings

- “Mutually agreed time and place”
- Standard of reasonableness should apply
- Not unreasonable to schedule team meetings during regular business hours
 - But there might be circumstances where parents’ employment situation restricts availability; districts should be flexible in those instances

(34 C.F.R. § 300.322(a)(2); Letter to Thomas (OSEP 2008) 51 IDELR 224)



Alternative Means of Participation

- Parents and district may agree to use alternative means of participation for IEP team meetings, including video conferencing and conference calls
- Both parties must consent
- If additional costs result, district is responsible
- USDOE encourages use of flexibility during COVID-19 in conducting meetings via alternative means of participation “when face-to-face meetings are not feasible or practicable”

(34 C.F.R. § 300.328; COVID-19 Q & A (IDEA Part B) (OSEP 2020) 77 IDELR 138)



Conducting IEP Team Meetings Without Parents

- Parents have absolute right to attend all IEP team meetings
 - Even when districts are certain they will reject proposed course of action
- District must make every effort to secure presence of parents

(Shapiro v. Paradise Valley Unified School Dist. (9th Cir. 2003) 38 IDELR 91)



Conducting IEP Team Meetings Without Parents

- Meetings may be conducted without parents only if district “is unable to convince parents that they should attend”
- Must keep records of attempt to arrange meeting
 - Log of phone calls
 - Copies of correspondence
 - Document visits to home/work

(34 C.F.R. § 300.322(d); Ed. Code, § 56341.5, subd. (h))



Conducting IEP Team Meetings Without Parents

Circumstances where districts may hold meetings without parents are decided on case-by-case basis, taking into account actions by both parties before (and sometimes after) meeting

Consider these case examples from 9th Circuit, federal District Court and OAH . . .



Case Example

- Doug C. v. Hawaii Dep't of Educ. (9th Cir. 2013)
 - ❑ School wanted to hold IEP meeting before annual review deadline
 - ❑ Parent could not be present during various dates proposed by team (and did not want to participate by phone), so meeting proceeded without him
 - ❑ Failure to include Parent infringed on ability to participate, denied FAPE
 - ❑ 9th Circuit: "Under the circumstances of this case, the [school's] decision to prioritize strict deadline compliance over parental participation was clearly not reasonable"

(Doug C. v. State of Hawaii Dep't of Educ. (9th Cir. 2013) 61 IDELR 91)



Case Example

- Cupertino Union School Dist. v. K.A. (N.D. Cal. 2014)
 - ❑ IEP team adjourned before completing discussion of IEE obtained by Parents but after discussing goals
 - ❑ Parents filed for due process claiming team failed to adequately consider their IEE
 - ❑ District reconvened IEP meeting without Parents (who refused to attend) and finalized IEP based, in part, on information previously discussed with Parents
 - ❑ Court found no predetermination (reversing ALJ)
 - ❑ IEP with partial parental input was better option than proceeding indefinitely with outdated IEP

(Cupertino Union School Dist. v. K.A. (N.D. Cal. 2014) 114 LRP 51523)



Case Example

- John Swett Unif. School Dist. (OAH 2018)
 - ❑ Parent and District disputed proposed placement for 11-year-old Student with ADHD and ED
 - ❑ District convened IEP meeting without Parent and developed proposed IEP
 - ❑ District filed for due process hearing seeking order to implement IEP without parental consent
 - ❑ District's procedural violations defeated effort to show appropriateness of IEP
 - ❑ No documents or records to support testimony that District attempted to contact Parent to schedule meeting
 - ❑ No one called Parent on day of meeting to determine if she intended to participate

(John Swett Unif. School Dist. v. Student (OAH 2018) Case No. 2018050384)



Conducting IEP Team Meetings Without Parents



Practice Pointers

- ❑ Comply with legal requirements to document efforts to persuade parents to attend:
 - ❑ Copies of all written communication (emails and letters)
 - ❑ Phone logs of calls and voice mails
 - ❑ Date and time of visits to home/work
- ❑ Send copy of any IEP developed without parents
- ❑ Offer to reconvene IEP team when parents are available



Interpreters at IEP Team Meetings

- Districts must take whatever steps are necessary to ensure parents understand proceedings of meeting
 - Includes arranging for interpreter for parents with deafness or whose native language is other than English
 - OCR: Failure to provide interpreter and written translation during IEP process may violate Section 504

(34 C.F.R. § 300.322(e); Ed. Code, § 56341.5, subd. (i);
Victor Valley (CA) Unified School Dist. (OCR 2007) 50 IDELR 141)



Interpreters at IEP Team Meetings



Practice Pointers

- ❑ Obligation to provide interpretation is on district
 - ❑ Even if parents offer to bring interpreter, consider inviting member of staff who can interpret
- ❑ Be careful about using outside sources to obtain interpreter or translator
- ❑ Ensure that any interpreter or translator is familiar with special education terminology



Right to Record IEP Meetings

- Both districts and parents have right to audio record meeting
 - 24-hour notice required
 - District may not record if parent objects
 - Recording becomes education record subject to FERPA
- Parents may:
 - Inspect and review recording
 - Request amendment if they believe recording is inaccurate or misleading

(Ed. Code, § 56341.1, subd. (g))



Right to Representation

- OSEP has acknowledged that both districts and parents may invite their attorneys to IEP team meeting as part of team if attorneys “possess knowledge or special expertise regarding the child”
 - But “an attorney’s presence would have the potential for creating an adversarial atmosphere that would not necessarily be in the best interests of the child. Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged”

(Letter to Clinton (OSEP 2001) 37 IDELR 70)



III. Formulating and Implementing the IEP



Predetermination

- Occurs when districts decide on IEP content/issues prior to IEP team meeting precluding meaningful parental participation
- Allegations of predetermination frequently arise with respect to:
 - Preparatory meetings
 - Draft IEPs
 - (Lack of) meaningful discussion at IEP meeting



Preparatory Meetings

- Districts may engage in preparatory activities to develop a proposal or response to parent proposal that will be discussed at later meeting
 - Example: Staff may review assessment recommendations or placement options in advance of meeting, but must discuss those options with parents and make decisions at the IEP meeting
- Difference between preparation and predetermination is sometimes hazy

(34 C.F.R. § 300.501(b))



Draft IEPs

- Permissible to develop draft IEP
 - Share with parents before or during meeting
 - Must be used for discussion purposes only
 - Cannot be presented as completed document
- USDOE: If draft IEP is developed, district should:
 - Make clear to parents at outset of meeting that it is preliminary recommendation for review and discussion
 - Provide parents with copy

(Letter to Helmuth (OSEP 1990) 16 IDELR 503; 71 Fed. Reg. 46678 (Aug. 14, 2006))



Draft IEPs



Practice Pointers

- ❑ Consider the following to avoid any appearance of predetermination when using draft IEPs
 - ❑ Stamp or write “DRAFT” on each page
 - ❑ Ask for parent feedback throughout meeting
 - ❑ Keep detailed notes and handwrite changes on draft
 - ❑ Do not complete FAPE offer portion of draft IEP prior to meeting
 - ❑ Consider saving draft with handwritten notations to allow comparisons with final IEP



Meaningful Discussion

- Parents' presence at meeting is not enough
 - Must have opportunity to voice concerns
 - Must have their input considered by the team
 - Must have opportunity to ask questions and be provided with meaningful answers
- “Take it or leave it approach” evidences predetermination
 - Frequent topic of litigation as the following case examples illustrate . . .



Case Example

- Tehachapi Unif. School Dist. (OAH 2017)
 - ❑ Parent obtained insurance approval for funding of 40-hours-per-week ABA aide
 - ❑ Asked for IEP meeting to discuss permission for aide to provide services at school
 - ❑ District decided prior to meeting that aide could not accompany Student at school
 - ❑ ALJ found District's actions amounted to predetermination and denial of FAPE
 - ❑ Despite history of prior disputes with Parent, District should have discussed and considered request during IEP meeting
 - ❑ ALJ ordered IEP meeting and staff training

(Student v. Tehachapi Unified School Dist. (OAH 2017) Case No. 2016110289)



Case Example

- A.V. v. Lemon Grove School Dist. (S.D. Cal. 2017)
 - ❑ IEP team agreed that Student with dyslexia required NPS
 - ❑ After discussing various options, team decided on NPS that differed from NPS preferred by Parents
 - ❑ Parents claimed District gave them “take it or leave it” offer of placement
 - ❑ Court found no evidence of predetermination
 - ❑ District’s offer of placement was made after meeting where other options were considered, including Parents’ preference
 - ❑ Subsequent meeting was convened to address Parents’ concerns

(A.V. v. Lemon Grove School District (S.D. Cal. 2017) 69 IDELR 155)



Meaningful Discussion



Practice Pointers

- ❑ Tips to Ensure Meaningful Parent Participation:
 - ❑ Explain purpose and reason behind any preparatory meeting
 - ❑ Be careful of statements at IEP meeting suggesting:
“Here’s what we decided”
 - ❑ When option is proposed, seek parents’ input/response
 - ❑ Give parents enough information about all possible placements so that they can take part in discussions
 - ❑ Ensure enough time for questions



Other Parent Rights Re: IEP Development

- Documenting Parent Concerns and Objections
 - IDEA requires team to consider concerns for enhancing education of student
 - Team should specifically ask parent about concerns and indicate on IEP document that it has done so
- Right to Copy of IEP Document
 - IDEA requires district to provide IEP copy at no cost
 - California requires free copy in parents' primary language

(34 C.F.R. § 300.324(a)(2); 34 C.F.R. § 300.322(f); 5 C.C.R. § 3040(b))



Other Parent Rights Re: IEP Development

- Right to Be Informed of Student's Progress
 - Each IEP must include description of how and when parents will be informed of progress student is making toward meeting annual goals (such as through use of quarterly or other periodic reports, concurrent with issuance of report cards)
 - Includes progress reporting on postsecondary goals

(34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3));
Letter to Pugh (OSEP 2017) 69 IDELR 135)



Other Parent Rights Re: IEP Development

- Right to Have IEP Team Consider IEE
 - IEP team has duty to consider any IEE shared by parents, if IEE meets district criteria
 - Duty to consider does not equate to duty to accept recommendations
 - No IDEA or state law provision setting parameters for what it means to “consider”

(34 C.F.R. § 300.502(c); Ed. Code, § 56329, subd. (c))



Case Example

- Torrance Unif. School Dist. (OAH 2016)
 - ❑ Parent of 16-year-old with autism requested IEP team meeting to review independent assessment of Student's cognitive abilities
 - ❑ District team members agreed to convene to discuss the report, but subsequently cancelled the meeting
 - ❑ ALJ: "[I]t is difficult to see how the impact of the independent assessment, if any, on the FAPE for a child can be determined without an IEP team meeting and the participation of the parent"
 - ❑ Questionable testimony as to whether team members even considered report among themselves

(Student v. Torrance Unif. School Dist. (OAH 2016) Case No. 2015100570)



“Considering” IEEs



Practice Pointers

- ❑ Document the following in IEP team meeting comments as evidence that team members discussed and considered IEE
 - ❑ That IEP team considered the report
 - ❑ That IEP team discussed the report
 - ❑ Whether IEP team members agreed or disagreed with the facts, opinions, conclusions and recommendations contained in the report



Take Aways . . .



- Understand broad range of responsibilities to ensure meaningful parent participation in IEP process
- Attempt to develop ongoing and collaborative relationship with parents
- Emphasize meaningful participation as the standard for IEP team meetings and entire IEP development process

