

STAFF RESOURCES

Are Your PLAAFPs Legally Defensible?

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A brief history

It might seem like changes to our IEP process are never-ending and sometimes unnecessary. However, there is history behind all adjustments that are made. The original law (Public Law 94-142) passed in 1975 has been revised several times, resulting in changes to our requirements for special education. Revisions made to the Individuals with Disabilities Education Act (IDEA) with each reauthorization (every five years by law) basically reflect the outcomes of litigation issues involving special education students.

Updates to IDEA in 1997 emphasized integration into regular education, which initiated a movement to promote inclusion for students with disabilities in regular classrooms with their peers. The 1997 reauthorization also emphasized access to the general curriculum, focusing on the delivery of services and making the IEP more results-oriented. The needs of students not only in school but also beyond were considered, with IEPs focusing more on transition.

Another reauthorization of IDEA occurred in 2004. This reauthorization included more revisions to the delivery of services for special education students, with emphasis on revising the eligibility criteria for special education placement. It also outlined specific content for the Present Levels of Performance.

IEP teams need to understand and work with these changes to make IEPs legally defensible. We do not like to think that our IEPs will come under scrutiny, but we should be prepared for the possibility. Can you defend your IEPs? Would they pass a legal test in a due-process hearing?

Another acronym for special educators

IDEA 1997 gave us Present Levels of Educational Performance (PLEP), and the 2004 reauthorization gave us a new acronym – PLAAFP. Each child's IEP must now have a statement of the child's Present Levels of Academic Achievement and Functional Performance (PLAAFP). The 2004 reauthorization requires that the PLAAFP content must have specific, key components addressed in detail. The PLAAFP must be readable by the general public (parents, advocates, attorneys) and provide substance regarding the student and his or her Present Level of Functioning for each annual IEP.

Making our PLAAFPs legally defensible

According to 34 CFR 300.320–24 of the 2004 reauthorization, PLAAFPs must include responses to the following:

- 1) How does the child's disability affect his or her progress in the general education curriculum?
- 2) What are the strengths of the student?
- 3) What are the concerns of the parent for enhancing the student's education?

- 4) Are there changes in current functioning of the student since the prior IEP?
- 5) Give a summary of the most recent evaluation or reevaluation results.
- 6) Give a summary of the student's performance on the MAP or MAP-A.

Our PLAAFPs must address all of these key components to be legally defensible. If these areas are not addressed appropriately, the PLAAFP is legally weak and will be more difficult to defend. Missing pieces are problematic as pointed out by a due process hearing officer from the Rutland South Supervisory Union schools (taken from the Individuals with Disabilities Education Law Report):

“The IEP can be viewed as an intricate puzzle that has been pieced together by the combined efforts of teachers, parents, school staff and other professionals whose sole purpose is to create an educational program from which a disabled child can benefit. How the puzzle is constructed is crucial. Missing pieces jeopardize the whole picture.”

1) How does the child's disability affect his or her progress in the general education curriculum?

This particular statement needs to be interpreted correctly for MSSD students. IEP teams must understand and consider the intent of IDEA to respond accurately. The legal base for IDEA assesses special education ➔

students from the viewpoint of being able to participate in regular education. It will help to restate the question, "Why can't the student participate in the regular public school/general education?" It is not enough to list the student's disability. Explain why he or she cannot participate with same-age peers in the regular school environment. In addition, what modifications or accommodations are needed for the student to be successful at MSSD? A statement such as "John participates in the functional curriculum at MSSD with modifications as outlined in this IEP" would clarify this point.

2) What are the strengths of the student?

The 2004 reauthorization specifies that the educational strengths of the student (learning styles, methods of compensating, basic skills, etc.) must be considered by the IEP team when responding to this item. For students with transition plans, the strengths are related to their anticipated post-graduation goals. For MSSD students, identified strengths could be related to academics but are most likely related to self-care and/or independent-living skills. The intent of the law is to identify strengths with regards to the student's ability to learn, or skills for potential employment and/or independent living.

3) What are the concerns of the parent for enhancing the student's education?

IDEA 2004 (34 CFR 300.324(a)(1)(ii)) specifically addresses the involvement of the parent in the IEP process and directs that parent concerns are to be identified and considered. Parent concerns should be solicited and recorded in this section

of the PLAAFP. Do not leave concerns hanging. Occasionally, the IEP team will determine that a parent's request cannot be granted. A Notice of Action is required in these instances. Many times the concerns of the parent are already being addressed in the IEP through goals or benchmarks. It is appropriate to indicate where the concern is addressed on the IEP (i.e., Goal No. 3, Benchmark No. 4) or to indicate that a Notice of Action (refusal) has been provided to the parent. It is legally defensible to pay attention to parent concerns and to address them appropriately.

4) Are there changes in current functioning of the student since the prior IEP?

This section is for updates on the student's performance over the past year. The classroom teacher should recap IEP goals the student has achieved or progress made toward goals. If the student receives related services (OT/PT/speech), a summary from the therapists should be included indicating progress made by the student in those areas. If tests or surveys have been given to the student for program planning, include the results in this section. Concerns identified here should become goals for the new IEP. Any changes in health status or attendance should be noted as well. Missing the mark legally would be to not give enough detail on the student's progress on this item.

5) Give a summary of the most recent evaluation or reevaluation results.

This requirement by IDEA is for a summary of the student's last educational evaluation. These are the eligibility evaluations done by local

school districts for MSSD students. If the student's three-year evaluation has occurred since the last IEP, go into detail regarding the results. List test scores and the eligibility determination for the student. For many of our students, three-year reevaluations are completed by school districts as reviews of existing data. If this is the case, list the results and date of the review in this section.

6) Give a summary of the student's performance on the MAP or MAP-A.

If the student has taken the MAP-A since his or her last IEP, give a performance recap. Avoid using acronyms and terms that a general reader would not understand. Provide some detail about the content of the MAP-A and the student's performance in areas assessed. If the student did not take the MAP-A in the past year, indicate that in this section.

A final thought

Addressing these key components of the PLAAFP will provide an adequate baseline for the new IEP. Addressing them in detail will help make your work legally defensible. ♦

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