

Resolving and Possibly Preventing Special Education Disputes

Federal Programs – ESSA and IDEA
Summer Professional Learning Series
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Learning Targets

I can discuss some techniques and strategies to possibly prevent special education disputes.

I can discuss some IDEA issues that are frequently raised in formal complaints and due process hearings.

I know where to locate some resources to assist in analyzing certain special education issues.

A Parent's Experience with the Special Education System



What Can Educators Do?

- Communicate, communicate, communicate
- **Build trust**
- Listen
- Eliminate jargon
- **Structure IEP Team meetings**
- Understand perspectives
- Reduce power imbalance
- **Support family engagement**



A major system of the complex school organization that develops quality links between local school professionals and the parents and community the school is intended to serve



Invest early in building trusting, working relationships with parents.

Family Engagement and Dispute Resolution Unit

Providing a continuum of resources for Georgia families and school districts

Family Engagement

- Georgia Parent Mentor Partnership
- State Advisory Panel (SAP)
- Collaboration with Parent2Parent of Georgia
- Collaboration with Title I Family-School Partnership Program

Dispute Prevention

- Procedural Safeguards (Parents' Rights)
- Special Education Help Desk
- IEP Facilitation

Dispute Resolution

- Mediation
- Formal Written Complaints
- Due Process Hearings/Resolution Session Meetings

FY21 Parent Mentor Partnership Contacts

Type	Number
Calls/emails/Texts from parents	73,517
IEPs attended	1,179
Number of Parent Meetings	2,317
Number of Parent Mentor Trainings	596
Number of Parents Trained	7,631
Number of Administrator /Staff Trainings	434
Number of Administrator/Staff Trained	5,280

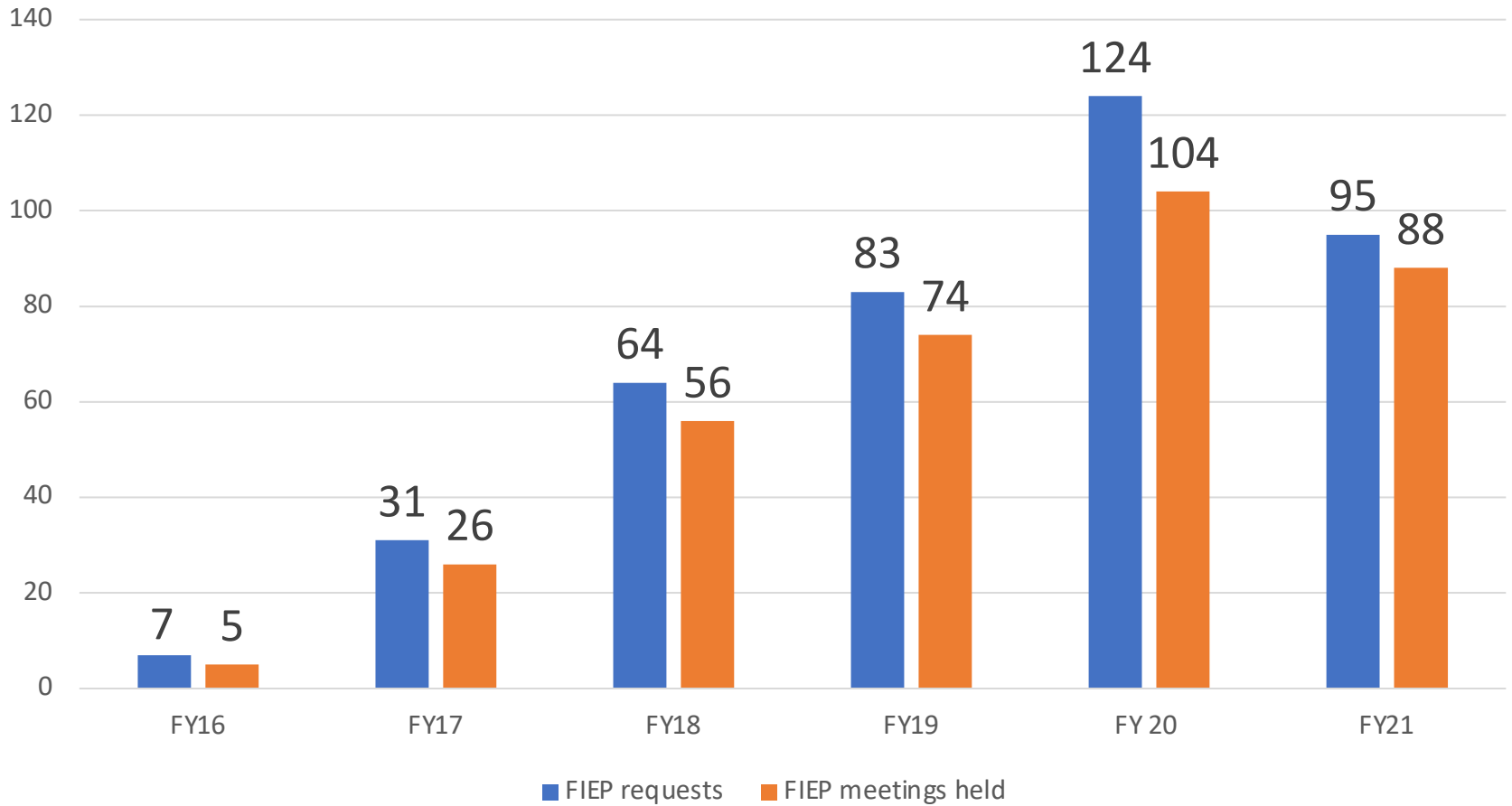
FY21 Special Education Help Desk Data

July 1, 2020 – June 30, 2021

- **User of the Special Education Help Desk**
 - 78% Parents
 - 15% Districts
 - Content Category of Calls is primarily IEP questions, Dispute Resolution, Evaluation/Eligibility and most recently, Special Education Reimbursement

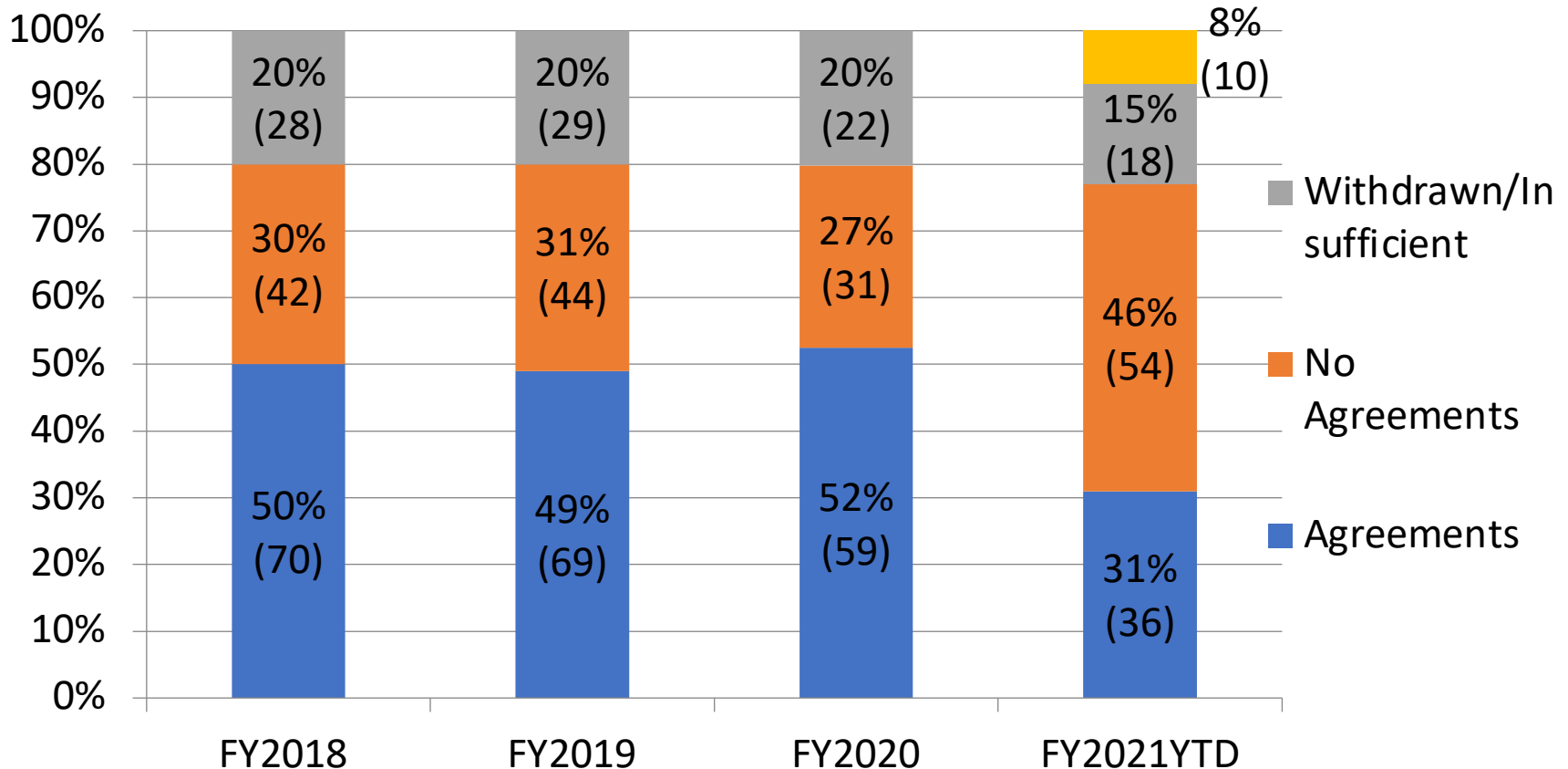
**Total number of calls/emails:
1044**

FIEP Team Meeting Program



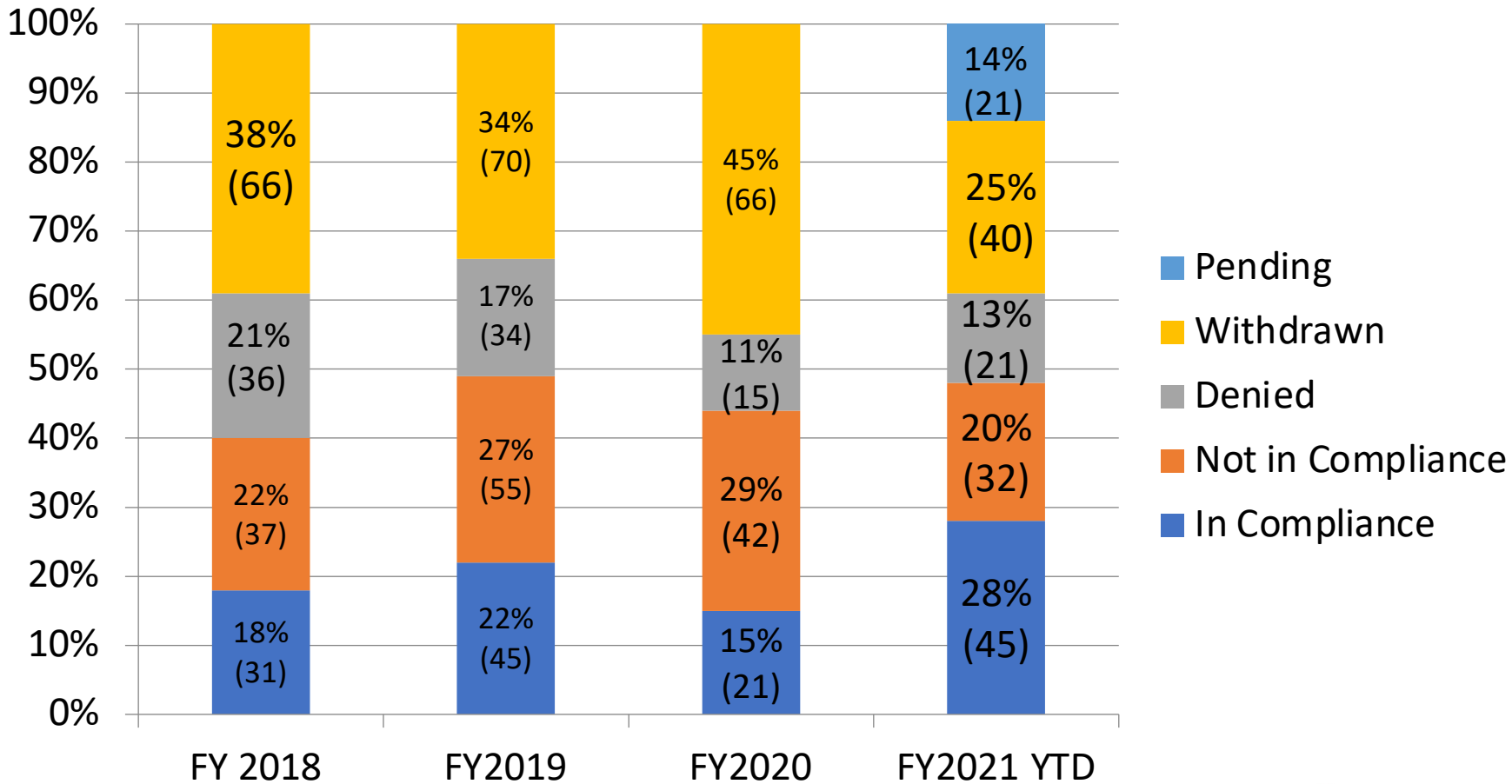
Mediation - FY 2018 – 2021 Year to Date (YTD)

Mediation requests **increased slightly** from **140** in FY 2018 and to **142** in FY 2019. In FY 2020, mediation requests decreased to **112** and in **FY 2021**, there were **118** mediation requests.



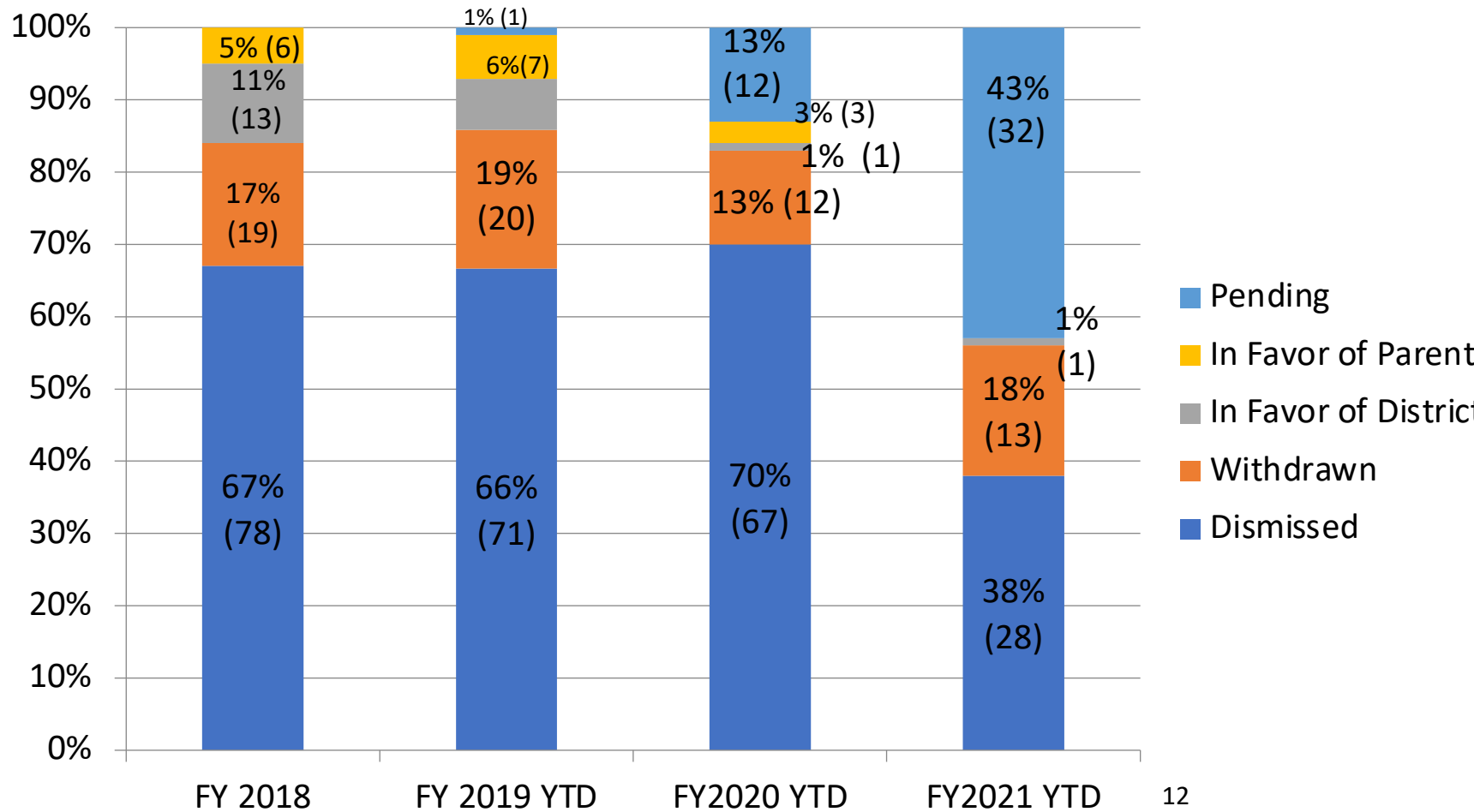
Formal Complaints- FY 2018 – 2021 YTD

Formal Complaints increased from **170** in FY 2018 to **204** in FY 2019. In FY 2020, **144** formal complaints were filed and FY 2021, **159** formal complaints have been filed.



Due Process Hearings FY 2016-2021 YTD

Due Process Hearing Requests **decreased steadily** from **141** in FY 2016 to **137** requests in FY 2017 to **116** requests in FY 2018 and **107** requests in FY2019 and **95** requests in FY 2020. There are **74** due process hearing requests in FY 2021.



Formal Complaint Findings



FY19 Findings of Non-Compliance in Formal Complaints (122 Findings against 33 districts)

- **Development, review, and revision of IEP (30)**
- **Implementation of IEP (23)**
- **Free, Appropriate Public Education (19)**
- **Evaluations and Reevaluations (13)**
- **Least Restrictive Environment (8)**
- Discipline Procedures (7)
- Independent Educational Evaluation (4)
- Related Services (3)
- Prior Written Notice (3)
- Parent Participation (2)
- Personnel Qualifications (2)
- IEP Team (2)
- When IEPs must be in effect (1)
- Child Find (1)
- Extended School Year (1)
- Assistive Technology Services (1)
- Mediation agreement (1)
- Complaint Process (1)

FY20 YTD Findings of Non-Compliance in Formal Complaints (100 Findings against 21 districts)

- **Implementation of IEP (21)**
- **Development, review, and revision of IEP (16)**
- **Free, Appropriate Public Education (14)**
- **Evaluations and Reevaluations (6)**
- **Parent Participation (6)**
- Personnel Qualifications (4)
- IEP Team (4)
- Access Rights (4)
- Least Restrictive Environment (3)
- Discipline Procedures (3)
- Child Find (3)
- Prior Written Notice (3)
- Mediation agreement (3)
- Special Education (2)
- When IEPs must be in effect (2)
- Extended School Year (2)
- Assistive Technology Services (1)
- Transition Services (1)
- State Monitoring (1)
- Class Size (1)

FY21 YTD Findings of Non-Compliance in Formal Complaints (54 Findings against 15 districts)

- **Implementation of IEP (10)**
- **Development, Review and Revision of IEP (10)**
- **Evaluations and Reevaluations (9)**
- **Free, Appropriate Public Education (7)**
- Prior Notice by Public Agency (4)
- Child Find (4)
- Placements (3)
- Procedural Safeguards Notice (2)
- Access Rights (2)
- IEP Team (1)
- Parent Participation (1)
- Parental Consent (1)



Implementation of IEP

Implementation of IEP (34 C.F.R. § 300.320)

- This regulation defines an IEP and details the required components of an IEP.
- “Each public agency must ensure that, **as soon as possible** following development of the IEP, special education and related services are made available to the child **in accordance with the child’s IEP.**” 34 C.F.R. § 300.323(c)(2)
- **Overarching issue: Students not receiving the special education and related services required in the IEP**

Implementation of IEP (34 C.F.R. § 300.320)

- Student's teachers not consistently implementing IEP accommodations, including completing daily sheet and sending study guides home.
- No documentation that student's physical education teacher was aware of the student's IEP and accommodations

Implementation of IEP (34 C.F.R. § 300.320)

- District failed to collect and report on progress for all annual goals and objectives, including speech, adaptive PE, and transition goals
- District failed to collect progress monitoring data for capitalization, punctuation and spelling goal across all classes as agreed upon in IEP Team meeting

Implementation of IEP (34 C.F.R. § 300.320)

- Student not receiving co-taught math instruction after Team agreed to modified day virtual schedule at parent request
- Student did not receive 15 minutes of occupational therapy (OT) and 90 minutes of speech-language therapy due to “individual as opposed to district-wide circumstances”. No speech-language progress monitoring data to show impact of missed services.

Missed IEP services

- When no students, general education or special education, receive direct instruction, this is not a denial of FAPE and there is no requirement to make up missed IEP services
 - E.g., state or district-wide testing, school holidays, early release days
- When the general education curriculum for all students is asynchronous learning (such as distance learning days), students with disabilities must receive the services and supports to allow them to be involved in and make progress in the asynchronous learning environment.

Missed IEP services

- See [OSEP Letter to Kane](#), April 18, 2018 (specifically addressing required scheduled state assessment testing)
- See [Q/A on Providing Services to Children with Disabilities during COVID-19](#), March 12, 2020 (Longstanding policy that when a local educational agency (LEA) does not provide any educational services to the general student population, an LEA is not required to provide services to students with disabilities during the same period of time)

Missed IEP services

- When a special education student does not receive IEP services due to individual as opposed to district-wide circumstances, whether the interruption in services constitutes a denial of FAPE and services must be made up is an individualized determination that must be made on a case-by-case basis.
 - E.g., teacher/provider absence, child absence, cancellation for class or school activity

Missed IEP Services

- See [OSEP Letter to Clarke](#), March 8, 2007 (stating that the public agency must consider the “impact” of those missed services on the student’s progress and performance and determine how to ensure the continued provision of FAPE so the child can continue to progress and meet the annual goals in their IEP)

What do you need to think about....

Procedures for checking IEP service pages before start of school year (especially the transition years from elementary to middle and middle to high)

Procedures when special education teachers and related service providers are absent and when there is a vacancy (also, missed IEP services)

How to document services and accommodations

Ensuring all teachers are aware of students' IEPs

Collecting sufficient progress monitoring data

Providing timely progress reports

Procedures for transfer students with IEPs



Development, Review, and Revision of IEP

Development, Review, Revision of IEP (34 C.F.R. § 300.324)

- This regulation details, among other things, the factors that must be considered when developing an IEP, when an IEP can be amended without an IEP Team meeting, the annual review requirement, and when an IEP must be revised.
- 34 C.F.R. § 300.324(b)(1)(ii) says that “Each **public agency must ensure** that. . . the IEP Team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals. . . .”

Development, Review, Revision of IEP (34 C.F.R. § 300.324)

- Parent provided medical evaluation form to district as documentation of student's depression and resulting absences in January 2020; no IEP Team meeting held to review and revise IEP, as appropriate.
- Parent provided private psychological evaluation to district in August 2019, but the evaluation was not reviewed at the October 2019 IEP Team meeting because “a psychologist was not present at the meeting to interpret the results.” District did not review the private evaluation until November 11, 2020 re-eligibility meeting.

Development, Review, Revision of IEP (34 C.F.R. § 300.324)

- District did not convene timely annual review IEP Team meeting and IEP said student had no interfering behaviors, yet included a behavior goal and objective
- Parent expressed concern to district about student consistently failing English Language Arts assessments but passing the class. No IEP Team meeting held until annual review.

What do you need to think about. .

The procedures for amending an IEP outside of an IEP Team meeting (Distance Learning Plan)

Making sure that IEP Teams consider parent information in a timely manner

Not waiting for the parent to ask for an IEP Team meeting (the burden is on the public agency)

Honoring parent's right to request an IEP Team meeting

Ensuring timely annual review IEP Team meetings (start scheduling early!!!)



Evaluations and Reevaluations

Evaluations and Reevaluations (34 C.F.R. §§ 300.301-300.306)

- These regulations address initial evaluations (request, timelines, procedures), reevaluations, and eligibility.
- For additional information on timelines, refer to State Board of Education Rule 160-4-7-.04(1), which provides exceptions for holiday periods, summer vacations, and when consent is received with less than 30 days remaining in the school year.

Evaluations and Reevaluations (34 C.F.R. §§ 300.301-300.306)

- Parent requested a comprehensive evaluation, but district only conducted speech-language evaluation and informal assessments and observations
- After independent educational evaluation (IEE) completed, district failed to convene IEP Team for reevaluation consideration based on new information. Parent's refusal to provide consent for further district evaluation was not valid reason to stop reevaluation process.

Evaluations and Reevaluations (34 C.F.R. §§ 300.301-300.306)

- District only obtained consent for speech evaluation, but conducted psychological and classroom observations of the student as part of initial evaluation
- Parent requested evaluation on February 23, 2020; district held meeting with parent a week later; district told parent that 4 weeks of intervention data must be collected before consent provided; no parental consent for evaluation provided until April 9, 2021;

OSEP 11-07, Response to Intervention (RTI) Memo, January 21, 2011

- “The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 C.F.R. §§ 300.304-300.311, to a child suspected of having a disability under 34 C.F.R. § 300.8. If the [local educational agency (LEA)] **agrees** with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the **LEA must evaluate the child** ... If, however, the LEA **does not suspect that the child has a disability, and denies the request** for an initial evaluation, the LEA **must provide written notice** to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision.” (emphasis added)

OSEP 11-07, Response to Intervention (RTI) Memo, January 21, 2011

- “Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department’s longstanding policy that the LEA must seek parental consent within a **reasonable period of time** after the referral for evaluation, if the LEA agrees that an initial evaluation is needed.” (emphasis added).
- Also, the IDEA states that “[t]he public agency must **promptly** request parental consent to evaluate the child to determine if the child needs special education and related services. . .” 34 C.F.R. § 300.309(c) (emphasis added).

**What do
you need
to think
about . . .**

Procedures when a parent requests a special education evaluation

Disseminating those procedures to all staff, including those participating in SST/RTI and Section 504 meetings

Procedures for requests for reevaluations

Conducting and documenting comprehensive evaluations and reevaluations



Free Appropriate Public Education (FAPE)

Free Appropriate Public Education

- District determined that student was subjected to bullying on at least 5 occasions, but failed to hold an IEP Team meeting until the last incident

OSEP Dear Colleague Letter, August 20, 2013

- States that “bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a [FAPE] under the IDEA that must be remedied.”
- States that “[w]hether or not the bullying is **related to the student’s disability**, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied.”

OSEP Dear Colleague Letter, August 20, 2013

- Additionally, the letter indicates **“The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student’s needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student’s individual needs; and revise the IEP accordingly.”**



Prior Written Notice (PWN)

Prior notice by the public agency; content of notice ([34 C.F.R. § 300.503\(a\)](#))

- Written notice
- Meets requirements of 34 C.F.R. § 300.503(b)
- Given to parents of a child with a disability
- A reasonable time before the public agency:
 - Proposes or Refuses to initiate or change:
 - the identification of the child
 - the evaluation of the child
 - the educational placement of the child
 - the provision of a free appropriate public education (FAPE) to the child

Content of Notice (34 C.F.R. § 300.503(b))

1. A description of the action proposed or refused by the agency;
2. An explanation of why the agency proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

Content of Notice (34 C.F.R. § 300.503(b))

4. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;

Content of Notice (34 C.F.R. § 300.503(b))

6. A description of other options that the IEP Team considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the agency's proposal or refusal.

PWN Required

- Parent requested executive functioning annual goal for student
 - IEP, IEP minutes, and Parent Rights served as PWN
- District agreed with parent's request for compensatory services for failure to report progress on spelling goals
 - District agreed to provide PWN, but never provided

PWN Not Required

- Refusal to provide a specific program to a child unless such program is required for the student to receive a FAPE (e.g., Wilson Reading Program)
 - HOWEVER, if the request is for clarification on the specially designed instruction (SDI) the student needs, this would require PWN.
- Remember, SDI is defined as adapting as appropriate to the needs of the student, the content, methodology, and/or delivery of instruction to address the unique needs of the student that result from his disability. 34 C.F.R. § 300.39(b)(3).

PWN Reminders

- Electronic PWN is only allowed if parent elects to receive such notices by email. 34 C.F.R. § 300.505.
- PWN is required a reasonable time before the LEA actually implements or refuses to implement the action.
- PWN must be provided “irrespective of whether or not the proposal or refusal is made during the course of an IEP Team meeting. . .” [OSEP Letter to Chandler](#), April 26, 2012.

PWN Reminders

- PWN must be provided even when the district is not proposing the change, but instead is agreeing with a change the parent proposed. [OSEP Letter to Leiberman](#), August 15, 2008.
- Robust discussions during IEP Team meetings where issues and reasons were discussed at length CANNOT substitute for the written requirements of PWN.
- If the district is using the IEP and other documents to serve as PWN, all required sections of PWN must be addressed.



Child Find

What is Child Find?

- **Affirmative requirement** that local educational agencies (LEAs) **locate, identify, and evaluate** all children with disabilities who are in need of special education and related services residing in their jurisdiction, including homeless children, children who are wards of the State, and children in private schools.
- This includes a child who is **suspected** of being a child with a disability and in need of special education, even though they are advancing from grade to grade and highly mobile children, including migrant children. 34 C.F.R. § 300.111.

Child Find Analysis

- Does the LEA have **reasonable suspicion** that the child might be eligible under the IDEA?
 - “Red flags”
- If so, then did the LEA initiate the evaluation of the child within a **reasonable period of time**?
 - LEA initiation starts with providing parental consent for evaluation

Child Find (34 C.F.R. § 300.111)

- Parent provided district with private evaluations and diagnoses and asked for evaluation; district said student was doing well academically, but Child Find applies even if a student is progressing from grade to grade.
- District did not provide PWN to deny evaluation and waited 6 months before providing parent with consent to evaluate form.

Child Find (34 C.F.R. § 300.111)

- Student's teacher emailed parent about concerns in August 2020; student begins participation in Early Intervention program and receipt of tiered interventions in September 2020; Not meeting any kindergarten standards and making little progress with interventions; parent provides private evaluation report with Autism diagnosis; Consent to evaluate provided in December 2020

Child Find (34 C.F.R. § 300.111)

- Parent asserts that she has asked for an evaluation on multiple occasions, but staff deny that she ever requested a special education evaluation.
- Nevertheless, student consistently scored at beginning level on state and districtwide assessments, teachers reported that student was not functioning at grade level expectations, and student received interventions for 8 months with little to no data to indicate student was making adequate progress.



Placements

Placements (34 C.F.R. § 300.116(a))

- In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—
 - (a) The placement decision—
 - (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
 - (2) Is made in conformity with the [least restrictive environment (LRE)] provisions of this subpart, including §§ 300.114 through 300.118;

Placements (34 C.F.R. § 300.116(b)-(e))

- (b) The child's placement—
 - (1) Is determined at least annually;
 - (2) Is based on the child's IEP; and
 - (3) Is as close as possible to the child's home;
- (c) Unless the IEP of a child with a disability requires some other arrangement, the child is **educated in the school that he or she would attend if nondisabled**;
- (d) In selecting the LRE, consideration is given to **any potential harmful effect** on the child or on the **quality of services** that he or she needs
- (e) A child with a disability is **not removed** from education in age-appropriate regular classrooms **solely** because of needed modifications in the general education curriculum.

Placements (34 C.F.R. § 300.116)

- District admitted that IEP Teams were not empowered to consider placements other than virtual learning. All instruction in the district was virtual/distance and IEP Teams did not have authority to override administrative closure of schools or approve staff to enter student homes.

Role of the IEP Team

- While an IEP Team may be unable to “override” an LEA decision regarding a specific instructional delivery model, the IEP Team **must** be able to **discuss and consider** a student’s educational placement, which includes discussion and consideration of the location of those services and any potential harmful effect on the student or on the quality of services that the student needs, in accordance with IDEA. See 34 C.F.R. § 300.116(b)-(d).

Role of the IEP Team

- While health and safety restrictions may prevent an LEA from sending LEA staff into a student's home to provide in-person services, the IEP Team must be able to discuss and consider **whether in-person services are required for the student to receive a free appropriate public education (FAPE)** and if so, how those services will be provided **now** (e.g., use of private contractors or outside agencies) or how those services will be provided in the **future** (e.g., provision of compensatory services).

Change of Placement vs. Change of Location

- When an LEA chooses an instructional delivery model to provide instruction to all students that is different from the instructional delivery model provided in a student's IEP, whether this change will result in a “change of placement” or a “change of location” is an **individualized determination**.
- Specifically, the change in instructional delivery model is only a “change of placement” if the **effect of the change in instructional delivery model “substantially or materially alter[s] the student’s education program”** See Letter to Fisher, 21 IDELR 992, OSEP (July 6, 1994).

Change of Placement vs. Change of Location

- This determination would be based on:
 - **(1) whether the new instructional delivery model revised the educational program set out in the student's current IEP**, which could include the following considerations:
 - the student's ability to access instruction;
 - whether and to what extent progress on IEP goals and objectives will be monitored;
 - the provision of necessary supports for the student, caregiver, and teacher;
 - the type of instruction provided to the student inside and outside the general education classroom; and
 - the amount of instruction provided to the student inside and outside the general education classroom (i.e., as compared to the amount of instruction in the student's IEP and the amount of instruction provided to non-disabled peers)

Change of Placement vs. Change of Location

- (2) whether the student will be able to be educated with nondisabled children to the same extent in the new instructional delivery model;
- (3) whether the student will have the same opportunities to participate in nonacademic and extracurricular services in the new instructional delivery model; and
- (4) whether the new instructional delivery model is the same option on the continuum of alternative placements.

-Adapted from *Letter to Fisher*

Placements (34 C.F.R. § 300.116)

- Based on a review of the IEPs, DLPs, and relevant documents for 57 students, the effect of distance/remote learning substantially or materially altered the educational program of 7 students. Thus, the move from in-person to distance/remote learning for those individual students was a change of placement.
- District refused to discuss and consider the parent's concern with the location of the student's services; District informed parent that if in-person services resulted in the denial of FAPE to the student, then compensatory services would be discussed.

Placements (34 C.F.R. § 300.116)

- District dismissed the student early from school on several occasions and then transitioned student from in-person instruction to full distance/remote instruction without an IEP Team meeting, citing behavior concerns.



Parental Consent

Consent (34 C.F.R. § 300.9)

- *Consent* means that—
 - (a) The parent has been **fully informed of all information relevant to the activity for which consent is sought**, in his or her native language, or through another mode of communication;
 - (b) The parent **understands and agrees in writing to the carrying out of the activity** for which his or her consent is sought, and **the consent describes that activity** and lists the records (if any) that will be released and to whom; and
 - (c)(1) The parent understands that the granting of consent is **voluntary** on the part of the parent and may be revoked at any time.

Parental Consent (34 C.F.R. § 300.300)

- Parental consent is required for:
 - Initial evaluations (34 C.F.R. § 300.300(a))
 - Initial provision of special education and related services (34 C.F.R. § 300.300(b))
 - Reevaluations (34 C.F.R. § 300.300(c))
 - EXCEPT parental consent is NOT required before **reviewing existing data** as part of an evaluation or reevaluation (34 C.F.R. § 300.300(d)(1)(i))

Is parental consent required?

- Parent signs consent to evaluate, and district conducts initial evaluation of student. Eligibility Team determines the student is not eligible for special education services.
- Parent provides the district with a private evaluation, and district decides that it will not conduct any further evaluations or observations of the student. District has continued to provide interventions to the student.
- Eligibility Team wants to meet and determine whether the student is eligible for special education services.

Parental Consent (34 C.F.R. § 300.300)

- However, parental consent IS required if district wants to conduct additional evaluations.
- Classroom observations are considered part of a comprehensive evaluation for initial eligibility. While some observations may be conducted as part of other routine processes that are not related to the special education evaluation process, an observation that is part of the initial evaluation process requires parental consent.

Can you hit the “bullseye”?



- Can you discuss some techniques and strategies to possibly prevent special education disputes?
- Can you discuss some IDEA issues that are frequently raised in formal complaints and due process hearings?
- Can you locate some resources to assist in analyzing certain special education issues?



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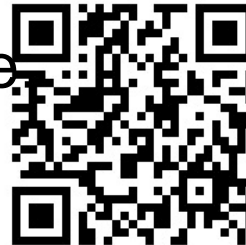
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Feedback

Please complete our workshop survey:

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