

### **Reminder: Develop IEPs based on young children's present needs**

Waiting for evaluation results to verify a young child's need for a service can hinder critical progress. Draft detailed IEPs, then amend them as data arrive. (July 15)

#### **Key points:**

- *Address student's present needs in IEP*
- *Write basic strategies while waiting for additional information*
- *Amend IEPs as evaluation data become available*

### **Reminder: Develop IEPs based on young children's present needs**

It is essential to develop IEPs based on young children's present needs rather than waiting for evaluation data to confirm the need for a particular service, attorneys say. Doing so can help you avoid mistakes similar to the one in *Dumont Board of Education v. J.T. ex rel. I.T.*, 54 IDELR 231 (D.N.J. 2010, unpublished).

The district in this case maintained that it might have offered sensory services and a BIP to a preschooler with autism after assessing her first month in her new placement. Reasoning that what mattered was the document's provisions, not what the district might offer, the District Court held that the IEP fell short by omitting a sensory diet and a behavior plan.

The child was preparing to transition to Part B and had a history of self-injury, tantrums and communication deficits. Her IEP stated her sensory education was limited to "sensory activities, tickles, hugging, deep pressure, physical touch."

IEP teams should develop IEPs using the information they have available to them at the time they develop the document, says Alisia St. Florian, a school attorney with Massachusetts-based Murphy, Hesse, Toomey & Lehane LLP. "That's what the IEP will be judged on," she says. "Hearing officers will ask, 'What information did the team have?' and, 'Did they offer services based on that information?' That's the principle you need to stick to."

For young children, it might be tempting to wait for evaluation results or a diagnosis before you address a student's need in the IEP, notes Kristen Williams, a school attorney with Brock Clay in Marietta, Ga.

"If you're writing an IEP for a student coming from preschool, you don't know how she acts in the educational environment. But if the IEP team agrees that she has a need for something, it should offer some service while the assessment is being conducted," she says.

If you wait for additional information to confirm a child's need for a service, there will likely be a period of time during which the services provided to the child are inadequate. This could hinder the child's progress, and the district may later have to provide compensatory services, St. Florian says.

"Younger students especially can suffer more consequences," Williams adds. "The early years are critical, and a month without some kind of service is a very long time."

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· Add detail to IEPs as more information becomes available (July 15)

Heidi Sfiligoj covers IEP teams and other special education issues for LRP Publications.

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### **Add detail to IEPs as more information becomes available**

If an IEP team agrees that a young child needs a particular service, it's a mistake to sit back and wait for evaluation data to confirm that need, experts say.

“You can't say, ‘We know this student has behavioral difficulties, but let's wait for evaluation results to verify that,’” says Alisia St. Florian, a school attorney with Massachusetts-based Murphy, Hesse, Toomey & Lehane LLP. Address the need now in the IEP, and then amend the document after you receive that additional information, she says.

For example, perhaps the IEP team determines a functional behavioral assessment is needed to find out why a kindergartener has difficulty transitioning throughout the school day. “You can still write a BIP while you're waiting for the FBA results,” St. Florian says. Start by listing the behaviors the child exhibits and strategies for reinforcing positive behavior.

“It will be more general until you get that specific data, but at least it shows you are doing something now to address the need,” St. Florian says. You can later tweak the BIP when the FBA provides additional information, such as what causes the behavior, she says.

Specialists can help devise some basic strategies to address the child's need while you wait for more detailed information, says Kristen Williams, a school attorney with Brock Clay in Marietta, Ga. So, make sure to invite someone to the IEP meeting who is knowledgeable about the need you are addressing.

“If you believe the student has a speech-language impairment, invite a speech-language pathologist to the meeting. If the team thinks a student with autism has behavioral difficulties, invite an ABA therapist to the meeting,” Williams says.

Imagine the IEP team determines the child needs a sensory diet. “An occupational therapist can help come up with different sensory activities,” Williams says. So, while you don't have a set sensory diet for that child yet, some strategies are in place, she says.

IEP teams must remember that the IEP process is a fluid one, St. Florian says. “You should always write IEPs based on the student's present needs,” she says. “Then you go back and fine-tune as more information becomes available.”

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