

IEP Basics: What you think you know can hurt you!

Karen Haase

karen@ksbschoollaw.com



[KSB School Law](#)



[@KarenHaase](#)



© Randy Glasbergen.
www.glasbergen.com



**“There are some things even God doesn’t understand.
That’s why He created lawyers.”**

What's the Plan?

- Participants in IEP Meeting
- Elements that Must Appear in Written Document
- Implementation Issues

Mandatory Participants

34 CFR 300.321 (a)

- Parents
- Regular education teacher
- Special education teacher
- Representative of the public agency
- Individual who can interpret the evaluation results
- Other individuals who have knowledge or expertise (at parents'/LEA's discretion)
- Whenever appropriate, the child with a disability.

Mandatory Participants

34 CFR 300.321 (a)

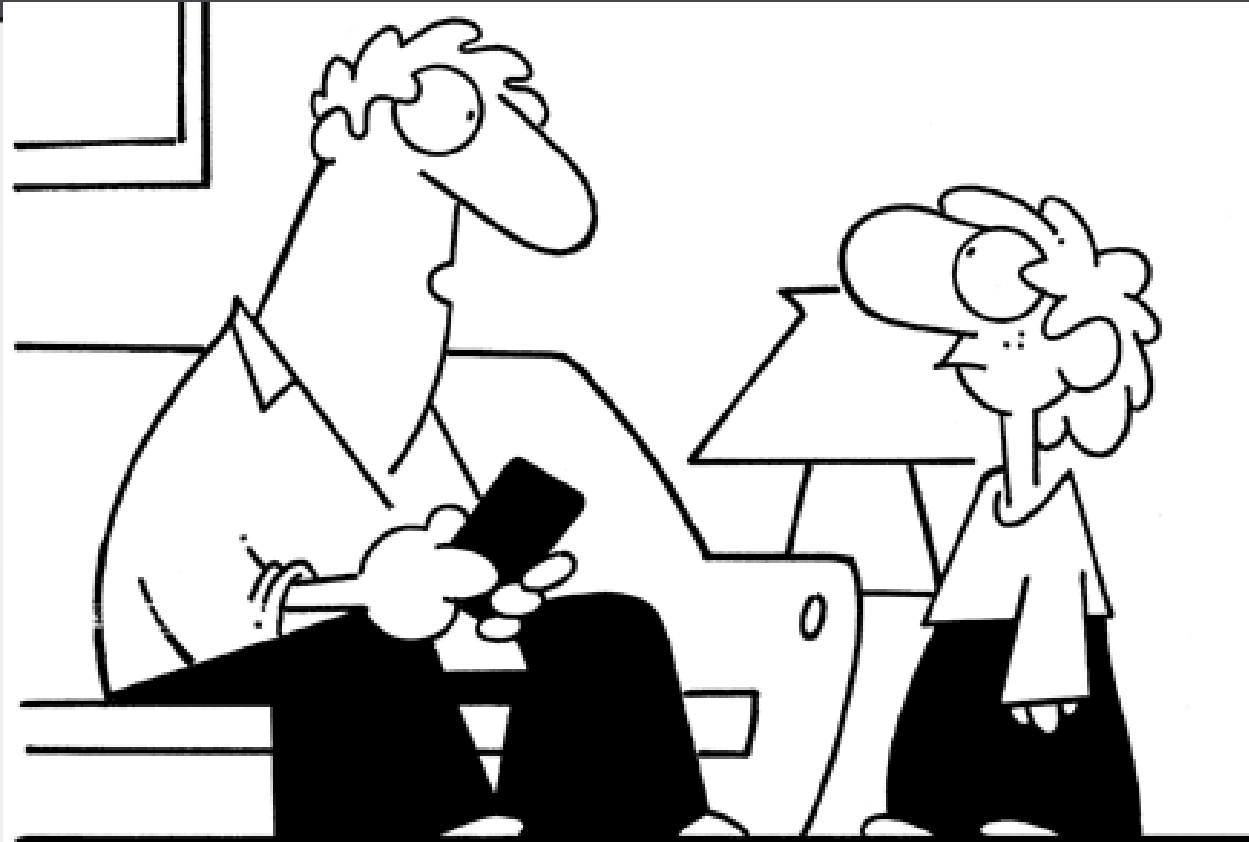
- Parents
- Regular education teacher
- Special education teacher
- Representative of the public agency
- Individual who can interpret the evaluation results
- Other individuals who have knowledge or expertise (at parents'/LEA's discretion)
- Whenever appropriate, the child with a disability.

Parents

definition in 34 CFR 300.30

- Definition of parent under 34 CFR 300.30:
 - biological or adoptive parent of a child
 - foster parent
 - individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives
 - Not the State even if the child is a ward of the State

Parent Participation Decisions



“Son, I’d like us to spend more quality time together. Would you accept me as a Facebook friend and let me follow you on Twitter?”

Parent Participation Decisions

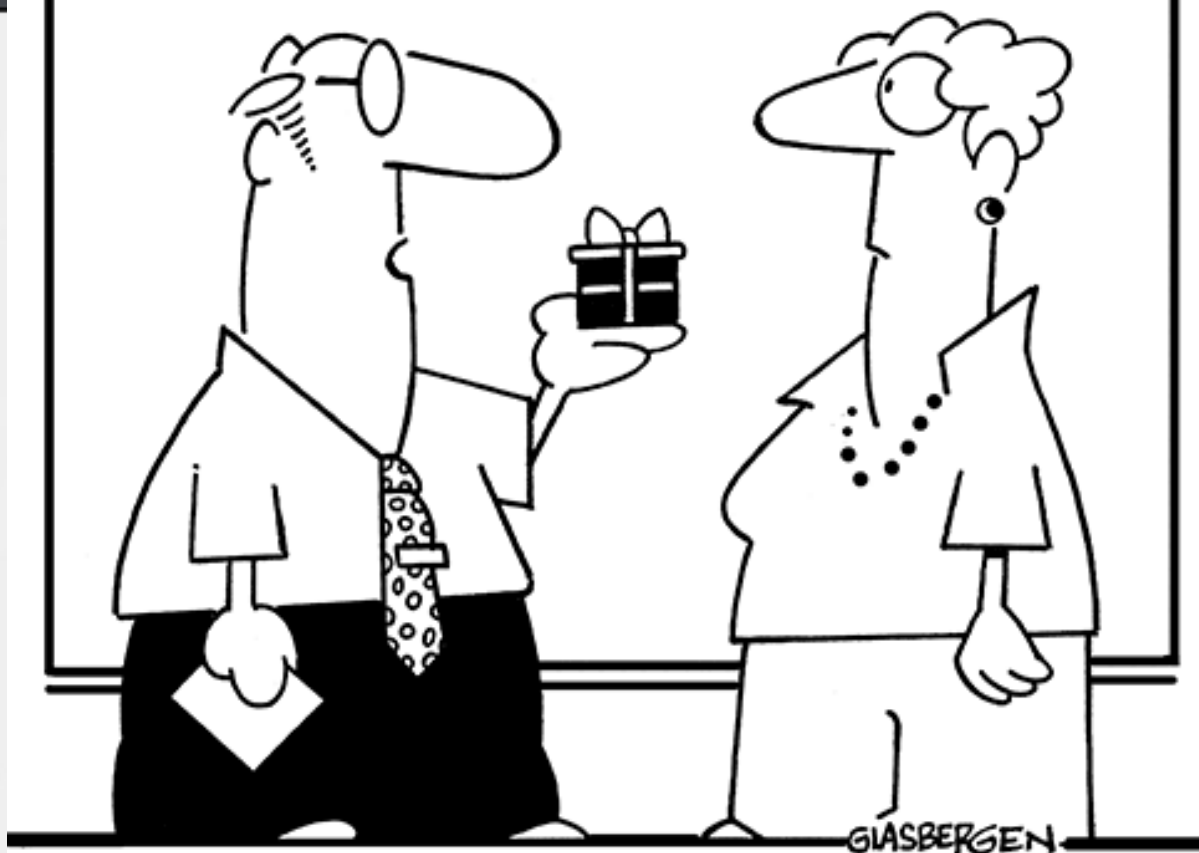
- *Doug C. v. Hawaii Dep't of Ed.*, 720 F.3d 1038 (9th Cir. 2013)
 - Request to reschedule due to illness not refusal to attend
 - Need to conduct annual review doesn't justify excluding parents
- *Toledo Sch. Dist. v. Horen*, 55 IDELR 102 (N.D. Ohio 2010)
 - Asking to reschedule is not refusing to attend
 - Schedule of large team doesn't justify excluding parents
- *T.S. v. Jerry D. Weast*, 54 IDELR 249 (D. Md. 2010)
 - Repeated rescheduling can constitute refusal to attend
- *B.H. v. Joliet Sch. Dist.*, 54 IDELR 121 (N.D. Ill. 2010)
 - School not required to schedule meetings after hours

Regular education teacher

34 CFR 300.321(a)(2)

- “Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)”
- *R.G, v. New York City Dept. of Ed.*, 62 IDELR 84 (E.D.N.Y. 2013)
 - “...inclusion of a general education teacher . . . would not necessarily have led to the formulation of a different IEP. . . . But the teacher would have had the opportunity to provide his or her views about F.G.’s needs and to persuade the other members to consider a general education placement . . .

HAPPY RETIREMENT



**“In appreciation for 25 years of service
as a kindergarten teacher, we made you
this gold watch from macaroni and glitter.”**

WORLD of COW

By Stik



Representative of the public agency

34 CFR 300.321(a)(4)

- A representative of the public agency-
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - Is knowledgeable about the general education curriculum; and
 - Is knowledgeable about the availability of resources of the public agency

Representative of the public agency

34 CFR 300.321(a)(4)

- Can be superintendent, principal, special ed director
- *Pitchford v. Salem-Keizer Sch. Dist.*, 155 F. Supp. 2d 1213 (D. Ore. 2001)
 - First year, district's autism specialist served as district rep in principal's absence
 - Next year, failure of district representative to attend denied FAPE because no one could address parents' questions about resources

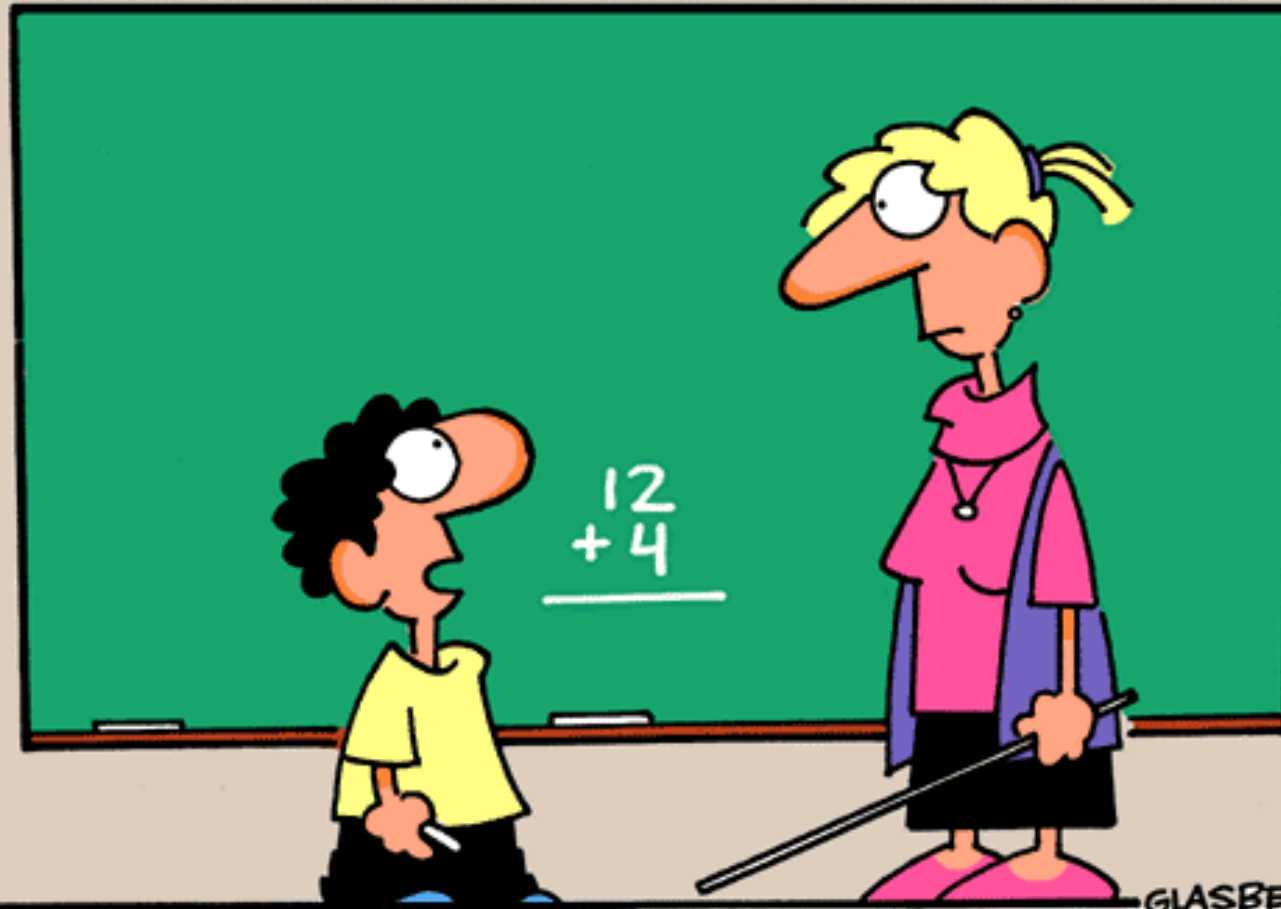


"Hold on, where's the forest again?"

Other Individuals

34 CFR 300.321(a)(6)

- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate
- *Blackman v. District of Columbia*, 64 IDELR 169 (D.D.C. 2014)
 - School found to have violated FAPE when it had student's attorney excluded from IEP meeting



“Do I get partial credit for simply having the courage to get out of bed and face the world again today?”

Excusing IEP Team Members

34 CFR 300.321(e)

- Team member may be excused if:
 - Parent and public agency agree, in writing, that the attendance of the member is not necessary because the member's area not being modified or discussed
 - Parent and public agency agree, in writing that member can be excused AND the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting
- Includes excusal in whole or in part

Team Members Leaving Early

- *Charlotte County Sch. Dist., 114 LRP 22660*
(SEA FLA. 2013)
 - Regular education teachers left early
 - Parents not informed and did not consent in writing
 - SEA issued finding on non-compliance

© Randy Glasbergen
www.glasbergen.com



“Larry never talks during meetings, doesn’t contribute any ideas or suggestions. I think we should make him Employee of the Year.”

Required Contents of IEP

34 CFR 300.320(a)



“Here are the minutes of our last meeting: We drank a lot of coffee and everybody disagreed about everything until Todd looked like he was going to cry and then everyone was really super nice.”

Required Contents of IEP

34 CFR 300.320(a)

- PLEP or PLOP
- Measurable annual goals
- How progress will be measured
- Statement of services and supplementary aids
- Extent child will not participate in mainstream
- accommodations on assessments
- Start date and duration of services
- Transition services
- Transfer of rights at age of majority

Required Contents of IEP

34 CFR 300.320(a)

- PLEP or PLOP
- Measurable annual goals
- How progress will be measured
- Statement of services and supplementary aids
- Extent child will not participate in mainstream
- accommodations on assessments
- Start date and duration of services
- Transition services
- Transfer of rights at age of majority

"PLEP" or "PLOP"

34 CFR 300.320(a)(1)

- A statement of the child's present levels of academic achievement and functional performance, including--
 - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

“PLEP” or “PLOP”

- *In re Child with a Disability*, 50 IDELR 236 (SEA NY 2008)
 - IEP noted that the child had gross motor coordination delays, not specific difficulties he faced as a result
 - Lack of detail about severity of motor skills impairment
- *Baltimore City Pub. Schs*, 113 LRP 14659 (SEA MD 2013)
 - PLEP did not identify need for functional life skills, so IEP goal to “improve functional life skills” improper



"I understand your concerns, but as class pet, Squeaky won't be moving on to 3rd grade."

Measurable Annual Goals

34 CFR 300.320(a)(2)

- A statement of measurable annual goals, including academic and functional goals designed to—
 - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child's other educational needs that result from the child's disability;

Measurable Annual Goals

34 CFR 300.320(a)(2)

- *Jefferson County Bd. v. Lolita S.*, 64 IDELR 34 (11th Cir. 2014) (unpublished)
 - High school student reading at 1st grade level, but IEP reading goal based on state standard for 9th grade
- *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006)
 - "stranger" test: Could a stranger to the IEP goal be able to implement the goal, be able to implement the assessment of student's progress on the goal, and be able to determine whether the student's progress was satisfactory.



"I'm not sure you understand what I mean
by career goals."

Progress Measures and Reports

34 CFR 300.320(a)(3)

- A description of--
 - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

Progress Measures and Reports

34 CFR 300.320(a)(4)

- *Jaccari J. v. Board of Ed. of City of Chicago*, 54 IDELR 53 (N.D. Ill. 2010)
 - Not required to use standardized tests as a measure of progress
- *Eastland Cmty. Unit Sch. Dist. #308*, 10 ECLPR 54 (SEA IL 2012)
 - goals for student to "increase" and "improve" specific skills have no provide criteria for measurement

© MARK ANDERSON

WWW.ANDERTOONS.COM



"If he's doing so bad, why is it called a progress report?"

Implementation Issues



“To get what you want, first create a list of compelling and meaningful goals. Next, draft a dynamic plan of action, then follow through with consistent maximum effort. If that doesn’t work, just cry and point.”

Informing Teachers of IEP

34 CFR 300.323(d)(1)

- The child's IEP must be "accessible" to each teacher, related services provider, or any other service provider responsible for its implementation.
- *In re Student with a Disability*, 111 LRP 8947 (SEA Montana 2011)
 - School failed to show that teachers received copies of the IEP they were responsible for implementing

More than De Minimis Failures

- *Santa Fe Ind. Sch. Dist.*, 63 IDELR 207 (SEA Texas 2013),
 - a parent's allegations that the school did not always notify her of missing assignments on the day they came due deemed de minimis
- *MS v. Utah Sch. for the Deaf and Blind*, 64 IDELR 11 (D. Utah 2014)
 - teacher discontinued use of FM transmitter
 - Court: "the . . . classroom teacher [is required] to implement the components, even the ones that the teacher may not agree with or care to implement"

Staffing Barriers

- *Letter to Fox*, 211 IDELR 26 (OSEP 1978)
 - Objections or lack of cooperation from school staff must be addressed by schools internally, in the same manner as other staff-agency disagreements
- *Letter to Anonymous*, 17 IDELR 391 (OSERS 1990)
 - Collective bargaining agreement to the contrary cannot excuse failure to implement IEP

Lack of Resources

- *Modoc County (CA) Office of Educ.* (OCR 1996)
 - IEP called for adaptive PE
 - School could not find certified teacher
 - Ordered to hire private consultant too expensive
 - Waiver for teacher provisionally cert
 - \$40,000.00 per year vs. \$1200.00



"Due to recent cutbacks you'll be visited three times by the same ghost."

Check the Culture

- Antioch (CA) Unified Sch. Dist., 110 LRP 49063 (OCR 2010)
 - OCR found “a pattern and practice of individual staff members unilaterally changing, altering, reducing, or deleting accommodations or services from IEPs that have already been written without authorization and doing so without notice to the parent or the team of persons who made and documented the placement decision.”



"No good deed goes unpunished around here."

Paraprofessional Assistance in IEP

- *Manalansan v. Bd. of Educ. of Baltimore City*, 35 IDELR 122 (D. Md. 2001)
 - School district could not hire aides who were punctual and consistent
 - Court: “school’s good faith efforts did not discharge its duty to implement that important aspect of the student’s IEP”
- *Slama v. Independent Sch. Dist. No. 2580*, 39 IDELR 3 (D. Minn. 2003)
 - Changing aide not a failure to implement the IEP

Questions?



"OK, I have time for just one more question.
Anyone have anything other than why
I'm not extinct?"

Karen Haase

(402) 804-8000
karen@ksbschoollaw.com

 KSB School Law
 @KarenHaase