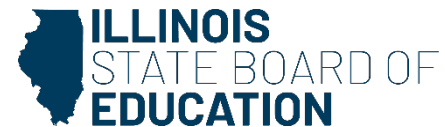


Legal Hot Topics 2025

William Hrabe

Assistant Legal Counsel, ISBE

June 10, 2025



When the Parties Disagree

© 1994 ANDRE TUCKER

WWW.ANDERSTUCKER.COM



"Since we can't agree to disagree, how about we disagree on agreeing."

When the Parties Disagree

- IEP Meetings and Consideration of Parental Input
- Staff Shortages / Teacher Vacancies
- Requests for Independent Educational Evaluations
- Avoiding Formal Complaint Proceedings

IEP Meetings and Consideration of Parental Input



IEP Meetings and Consideration of Parental Input

- Parental Participation
 - 34 CFR 300.321(a)(1): Parents are mandatory members of the IEP team.
 - 34 CFR 300.501(b): Districts must afford parents an opportunity to participate in meetings with respect to:
 - 1) The identification, evaluation, and educational placement of the child; and
 - 2) The provision of FAPE to the child.
 - Okay, so parents get a seat at the table...

IEP Meetings and Consideration of Parental Input

- But what constitutes “participation” in meetings?
 - Courts have held that the IDEA requires districts go beyond simply providing parents the opportunity to participate.
 - *Deal v. Hamilton County Bd. Of Educ.*, 42 IDELR 109 (6th Cir. 2004): presence and ability to speak ≠ participation.
 - *R.L. v. Miami-Dade County School Board*, 63 IDELR 182 (11th Cir. 2014): district must be receptive and responsive.
 - OSEP has stated that IDEA does not permit a public agency to establish criteria for parental participation.
 - *Letter to Northrop*, 61 IDELR 264 (OSEP 2013)

IEP Meetings and Consideration of Parental Input

- A couple additional updates regarding IEPs and IEP Meetings:
 - HB1366: Parental notice of right to be accompanied to meeting and of the IEP facilitation process.
 - 23 IAC 226.220 Update: “When an IEP has been developed or revised, the district shall provide notice in accordance with 34 CFR 300.503(b) and (c) immediately to the parents, unless a later date is agreed upon by the parent and documented in the IEP,”

Staff Shortages and Teacher Vacancies



Staff Shortages and Teacher Vacancies

- Impact of staff shortages on FAPE
 - Staffing shortages do not excuse a district's obligation under the IDEA to implement all of the services in a student's IEP.
 - Similarly, staff shortages do not excuse a district's obligation to comply with the IDEA's LRE mandate.
 - *Elmira City Sch. Dist. v. N.Y. State Educ. Dep't.*, 80 IDELR 294 (N.Y. Sup. Ct., App. Div. 2022)
 - This also does not excuse IDEA personnel qualification requirements.
 - *Memorandum to State Dirs. of Special Educ.*, 81 IDELR 287 (OSEP 2022)

Staff Shortages and Teacher Vacancies

- What can a district do when there is a vacancy?
 - Document
 - Document the vacancy: Notify the parent/guardian and provide updates; document attempts to fill the vacancies; document services provided and/or missed.
 - Mitigate
 - Attempt to mitigate the vacancy: utilize short-term replacements and/or private providers; consider alternative methods of delivery.
 - Compensate
 - Compensate for services missed: once the position is filled, the IEP team should meet to determine the need for additional supports and/or compensatory services.

Staff Shortages and Teacher Vacancies

- A note on virtual instruction:
 - [ISBE Guidance on Remote Learning](#)
 - ISBE recognizes the importance of in-person learning. Children learn best – and educators teach best – when they are physically present together in the same space.
 - Whether virtual instruction is appropriate for a student with an IEP is an IEP team decision.
 - Part 226 and 401 updates regarding virtual instruction
 - District remains responsible for the provision of FAPE

Request for Independent Educational Evaluations



Request for Independent Educational Evaluations

- 23 IAC 226.180(a) Update:
 - Parents may submit request for an IEE to the local school district superintendent or district special education administrator.
- SB1231
 - Changes the deadline for a school district to respond to an IEE request with a due process hearing request from 5 calendar days to 7 school days.
 - Changes the timeline for completing an IEE from 30 days to 60 school days.

Avoiding Formal Complaint Proceedings



Avoiding Formal Complaint Proceedings

- When there is disagreement, holding an IEP meeting is often a good first step.
- State-Sponsored IEP Facilitation
 - ISBE provides a trained facilitator to try to help facilitate communication, improve relationships, and find solutions.
 - Both parties need to agree to use facilitation.
 - HB1366: Parental notice of right to be accompanied to meeting and of the IEP facilitation process.

Avoiding Formal Complaint Proceedings

- A couple notes on mediation and settlements
- 23 IAC 226.560 Update
 - Clarifies language regarding request for mediation and the application of stay-put.
- HB2337
 - Places limitations on the inclusion of prospective waivers in mediation agreements, resolution agreements, and settlement agreements.

Questions?



Thank You!

William Hrabe
Assistant Legal Counsel, ISBE
whrabe@isbe.net