

CLIENT NEWS BRIEF

Back to School Reminder: IEP Edition

It's that time of year! The beginning of the school year can be one of the busiest times of year in special education, densely packed with assessments and IEP team meetings. With that in mind, the Lozano Smith Special Education Practice Group offers some guidance to ensure a smooth and successful school year. Many of the reminders below stem from a recent case from the Office of Administrative Hearings (OAH), *Aspire Public Schools* (2013) OAH No. 2013040872.

Parent Participation

A paramount consideration in the IEP process is parent participation. In *Aspire*, the Administrative Law Judge (ALJ) found that the District's procedural violation of convening an IEP team meeting without the parent present constituted a substantive violation of the student's right to a free appropriate public education (FAPE).

In this case, due to a claimed auditory processing disorder, the parent requested that the District provide her with any written documents at least five days in advance of any meeting. Despite the parent's alleged obstruction of scheduling IEP team meetings, the ALJ held that the District should have done more to include the parent in the IEP process. This included providing any written documents *at least five days* in advance of any meeting as an accommodation for the parent due to her claimed auditory processing disorder. The District argued that it was avoiding the appearance of having "predetermined" any outcomes of the IEP. The ALJ, however, focused on the parent's repeated communications to the District that she would audio-record IEP team meetings, could not follow along easily when information was presented orally, and had emailed the District about her need for such an accommodation.

Though this situation may be an anomaly, and the ALJ acknowledged that there is nothing in the law specifically requiring that documents be provided in advance of a meeting, this decision may make such requests a common occurrence.

Pay Attention to Communication

In *Aspire*, two situations involving District communications negatively affected the parent's trust in the District. One was an unfortunately worded email from a staff member that included insulting statements regarding the parent that was mistakenly sent to the parent. The other was the District's apparent "refusal" to respond to, or perhaps an inadvertent lack of attention to, repeated questions from the parent, including a detail of the student's behavior plan, and an indication that without this information, the parent did not know if she needed to retain legal counsel.

It is a good rule of thumb to be mindful of all communications with parents. The beginning of the school year is also a good opportunity for a fresh start on any issues of trust or communication with parents.

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Paperwork

In the *Aspire* case, the parent did not receive a final hard copy of her child's IEP with all signatures. While it is appropriate to use your district's computerized IEP system, any changes made during the meeting should be reflected on a hard copy of the IEP document (including signatures and any relevant handwriting). Ultimately, the IEP should not appear only in the district's computerized IEP system; a hard copy must be given to the parents and a signed hard copy placed in the student's file.

Many school districts throughout the state recently converted to a new computerized IEP system. As staff members receive training and any glitches in the system are being worked out, consider handwriting or using a word processing program to write the IEP, or edit a hard copy of the previous IEP. Explaining to parents, their attorneys and advocates how the new paperwork looks different than the previous forms may minimize any confusion or questions.

Districts should also maintain service logs documenting that the student received the specialized academic services and instruction on his/her IEP. Typically, service providers, such as speech pathologists, maintain such logs. However, do not forget to document the instruction, services and accommodations provided by others. For example, the teachers who provide push-in or pull-out support, proctors who provide testing accommodations and health technicians who monitor a student's medical issues should also be trained to collect and maintain proof of the services or supports they provide.

Districts should also maintain documents supporting a student's progress towards his/her goals. For reasons explained below, teachers and service providers should at least maintain tests, quizzes, writing samples, observation notes and other data used to demonstrate a student's progress.

Progress

Documenting a student's progress can be the deciding factor in an IEP team meeting or due process hearing. If a district can show that it addressed a lack of progress, amended goals when appropriate with parent consent, or that the student made measurable progress on his/her existing goals, it can be instrumental in proving that the student's placement and/or services are appropriate. Similarly, ensuring that parents have received written updates on progress (and placing a copy in the student's file) vastly improves a district's odds of prevailing at a due process hearing and maintaining a parent's trust with the district's staff members and programs.

The beginning of the school year is also a good time to measure and document how quickly a student regains skills that may have been lost over the summer. If the student is able to quickly start making progress at the beginning of the school year, then perhaps, the student does not require extended school year services.

We hope that these practice pointers can help your district experience a pleasant and positive spin to your IEP processes.

Lozano Smith offers training in these and other areas, including at our Special Education Legal Consortium, offered each spring and fall. Our next sessions are coming soon. See <http://www.lozanosmith.com/SELC> for more information. Please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).