



WHAT EVERY GENERAL EDUCATION TEACHER MUST KNOW ABOUT SPECIAL EDUCATION LAW

I) WHAT IS A GENERAL EDUCATION TEACHER'S LEGAL RESPONSIBILITY?

A) The Composition of the IEP Team

Effective July 1, 1998, every IEP (Individualized Education Program) team must include “at least one regular education teacher of the child.” 34 CFR §300.344(2). IEP teams must convene “not less than annually” to review and revise each eligible student’s IEP. 34 C.F.R. §300.343(c)(1).

The Individuals with Disabilities Education Act (IDEA) is the federal law that governs the provision of special education and related services to eligible students with disabilities. The IDEA supercedes any State law or local board policy that conflicts with the federal law. The IDEA defines an IEP team to include the following individuals:

- (1) the parents of the child;
- (2) at least one regular education teacher of the child (if the child is or may be participating in the general education environment);
- (3) at least one special education teacher of the child, or if appropriate, at least one special education provider of the child;
- (4) a representative of the school system who –
 - i is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
 - ii is knowledgeable about the general curriculum;
 - iii is knowledgeable about the availability of resources of the school system;
- (5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the IEP team;
- (6) at the discretion of the parent or the school system, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate, and;



(7) if appropriate, the child.

20 U.S.C. 1414(d)(1)(B) and 43 C.F.R. §300.344

B) What is the Role of the Special Education Teacher?

The IDEA specifically defines the legal responsibilities of the regular education teacher as a member of the IEP team:

The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate:

- (1) participate in the development of the IEP of the child;
- (2) assist in the determination of appropriate positive behavior interventions and strategies for the child; and
- (3) assist in the determination of supplementary aids and services, program modifications, or supports for school personnel that will be provided for the child.

34 C.F.R. §300.346(d)

C) Frequently Asked Questions

Question: Do I have to stay for the entire IEP meeting?

Answer: Not necessarily. Depending on the child's needs and the purpose for the IEP meeting, the regular education teacher does not have to be present for the entire meeting.



Question: Do I have to participate in every decision made by the IEP team?

Answer: No. Depending on the child's needs and the purpose of the IEP meeting, the regular education teacher does not have to participate in every decision made by the IEP team.

Question: Which one of the child's regular education teachers has to attend the IEP meeting?

Answer: The regular education teacher who is participating in the IEP meeting should be a teacher who is, or may be responsible for implementing a portion of the IEP so that the teacher may participate in discussions about how to teach the child. If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, the school system may designate which teacher or teachers will serve as IEP team member(s), taking into account the best interests of the child.

Concerning who must attend the IEP meeting, the U.S. Department of Education offers some guidance stating that, "In implementing the requirement for membership of a regular education teacher on the IEP team, the school system will determine which teacher or teachers of the child will fulfill that function to ensure participation of at least one regular education teacher in the development, review, and revision of the child's IEP, to the extent appropriate..."

In addition, it would be highly beneficial to the education of children with disabilities to ensure that those regular education teachers and other service providers of the child who are not members of the IEP team are informed about the contents of the child's IEP to ensure that the IEP is appropriately implemented.

Federal Register, Vol. 64, No. 48, p. 12583 (March 12, 1999).

Question: Does the IEP team have to get input from the regular education teachers who do not physically attend the IEP meeting?

Answer: The school system is "strongly encouraged" to seek input from the teachers who are not designated to attend. In addition, the school system must ensure that each regular education teacher:

- i Has access to the child's IEP and



- ii Is informed of his or her specific responsibilities related to implementing the IEP, and of the specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP.

Question: Can someone else substitute for the regular education teacher?

Answer: No. The U.S. Department of Education's Commentary states:

“It is important to point out that the statute specifies that at least one regular education teacher is a member of the IEP meeting. Therefore, the suggestion that other individuals could participate in lieu of the child's regular education teacher...should not be adopted.”

Federal Register, Vol. 64, No. 48, p12583 (March 12, 1999)

Question: Does the regular education teacher have to be physically present at the IEP meeting?

Answer: Maybe. The U.S. Department of Education's Commentary states:

“Whether the child's regular education teacher must be physically present at an IEP meeting, and to what extent that person must participate in all phases of the IEP process, are matters that must be determined on a case-by-case basis by the school system, the parents, and other members of the IEP team.

Federal Register, Vol. 64, No. 48, p12583 (March 12, 1999)

Question: Is it ever possible that an IEP team would not include a regular education teacher?

Answer: Yes, but rarely. The regulations require a regular education teacher to be present if the child “is, or may be, participating in regular education.” However, in some rare cases, a child may be placed in a separate school and no change in placement is anticipated for the next calendar year. In these cases, it would not be necessary for a regular education teacher to be a member of the child's IEP team.

Federal Register, Vol. 64, No. 48, p12583 (March 12, 1999)

Question: Who serves as the “regular education teacher” of a preschool child?



Answer: If the child is kindergarten-aged, then the kindergarten teacher may serve on the IEP team. If the child is a preschooler, the school system may designate an individual who, under State standards, is qualified to serve nondisabled children of the same age.

D) Five Questions Every Regular Education Teacher Must Ask

- (1) Which students in my class have an IEP or a 504 Plan?
- (2) Have I personally reviewed each IEP or 504 Plan?
- (3) Do I remember what these documents say?
- (4) Am I making “a good faith effort” at implementing each IEP or 504 Plan?
- (5) Do I have any proof that I am implementing the IEPs and 504 Plans?

If you answered “No” to any of these questions, you are at risk of being out of compliance with the federal law!

E) What is the risk to me if I fail to implement the law?

Regular education teachers who willfully fail to implement the a child’s IEP or 504 Plan may be at risk of personal liability, including money damages.

Doe v. Withers, 20 IDELR 422 (W. Va. Cir. Ct. 1993). A regular education history teacher was ordered to pay \$15,000 to the parents of a student with learning disabilities due to the teacher’s refusal to provide oral testing as required by the IEP.

F) What are the “Top Ten” Excuses Used by Regular Education Teachers for Failing to Comply with the IDEA?

- (1) “It’s not fair to my other students.”
- (2) “I don’t have time.”
- (3) “He doesn’t want my help anyway.”
- (4) “I didn’t sign on for this!”
- (5) “I don’t get paid enough for this!”
- (6) The parents are the real problem.”
- (7) “He’s just lazy.”
- (8) “No one told me I was supposed to do anything.”
- (9) “I’m ready to retire anyway.”
- (10) “I think this law is STUPID.”



G) Never Use the “F” Word!

One should never utter the word “fair” with regard to a student who receives special education services! Remember, it’s not a “fair and appropriate education” – we’re required to provide a “free and appropriate public education” to students with disabilities who are in need of special education and related services.