

Nuts and Bolts: Special Education

Agenda

- I. Referral / Evaluation / Eligibility
 - * the role of interventions in making evaluation and eligibility decisions
 - * defining “adverse educational impact”
 - * defining “need for specially designed instruction”
 - * “hot” issues in evaluation and eligibility
- II. Individual Education Plans
 - * key components of PLAAFPs
 - * well-written and measurable academic and behavioral goals and objectives
 - * standards-based IEPs
 - * the importance of progress reports
 - * addressing accommodations in a narrowly focused, specific manner
 - * placement determinations
- III. Procedural Compliance
 - * IEP meetings
 - * parent consent issues
 - * notice requirements
- IV. Student Discipline
 - * working with building administrators on discipline of special ed / 504 students
 - * students not yet identified under IDEA or Section 504
 - * risk assessments and the involvement of outside agencies
- V. Working with General Education Staff
 - * the role of gen ed staff in IEP decisionmaking
 - * the role of gen ed staff in IEP implementation
 - * enforcement and compliance issues
- VI. FBAs and BIPs
 - * when are they required
 - * when are they useful and appropriate
- VII. Confidentiality and Use of E-mails
- VIII. Bullying and Harassment in Relation to Special Education

Hot spots in conducting evaluations and making eligibility determinations

A. What is “adverse educational impact?”

- * grades
- * test scores
- * academic, social, and behavioral performance in the classroom

B. What is “specially designed instruction” and how do you know if a student needs it?

- A. Definition: Adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability, and to ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children. OAR 581-015-0005(31)
- B. Questions for the team to consider:
 - * What accommodations have already been tried?
 - * What would IEP goals for this student look like?

C. Hot spots in evaluation and eligibility

- * Impact of gen ed interventions on child find obligation
- * Impact of a DSM-IV or medical diagnosis
- * Difference between ED and socially maladjusted – why does it matter?
- * Written consent for AT evaluations and FBAs. See *West Linn v. Student case*.
- * No written consent needed for screenings, observations to provide instructional strategies, informal testing that’s part of regular education process, or testing provided for in the IEP

The Well-Written IEP

I. PLAAFP

- Describe how the student's disability "looks" in the regular education setting – that is, describe the impact of the disability on the student in a general ed classroom
- Measureable baselines for each goal area – that is, specifically where/how the student is currently performing
- What does "measureable" mean? Does it have to be numerically quantifiable? (*Ashland, West Linn and Silver Falls* decisions)

II. Goals

- How is each goal educationally necessary?
- How is each goal measurable?
- Does each goal anticipate reasonable progress, based on the PLEP baseline?
- Are there goals in all areas of need, and how do you define "all areas of need"?

III. Service Levels

- Can you explain why, in your professional opinion, the amount of SDI is reasonably anticipated to allow the student to meet the goal in one calendar year?
- Is there a clear match-up between SDI and the goals pages?

IV. IEP Cover Sheet

- If there are related services, is it clear to what they are "related" and who will be providing those services (whether direct or indirect)?
- Are supplementary aids and services limited to those "necessary" for the student to access and make progress in the regular ed curriculum, and have you narrowed down how regular ed staff will know when/how to implement those accommodations / modifications?
- Have you carefully considered whether supports for school personnel are needed?

IEP Compliance Checklist

- _____ Does all of the SDI on the IEP cover sheet match up with goals pages?
- _____ Are all services that are actually provided reflected somewhere in the IEP, including fine and gross motor, sensory diet, APE, etc?
- _____ If any of the special factors are checked “Yes,” are they addressed on an identifiable part of the IEP?
- _____ If behavior is checked “Yes” on the special factors page, is there a BIP or behavior goals, or the related service of counseling, or some other identifiable intervention, with positive behavioral interventions included?
- _____ If the student has a BIP, or a communication protocol, or a transition plan or safety plan, is this reflected under supplementary aids and services?
- _____ Does the PLEP reflect the impact of the student’s disability on his/her access to and performance in the regular education classroom?
* is the description of the behavior specific quantitative?
* can you “predict” the goals based on the PLEP – that is, does the PLEP help to provide a baseline on which to write the goals?
* are there goal areas that aren’t adequately described in the PLEP, or PLEP areas that don’t have corresponding goals?
- _____ Is there adequate evidence of consult by special ed staff if assistants and/or regular ed staff are providing SDI?
- _____ If ESY is checked “no”, was it actually discussed at the IEP meeting and is that discussion reflected in the meeting minutes?
- _____ Does the nonparticipation justification adequately define the (a) extent of removal, and (b) the justification for the removal?
- _____ If the student is receiving modified curriculum in regular ed classes, is this modification reflected on the IEP?
- _____ Are the social / emotional / behavioral goals measurable, linked to educational needs, and articulating skills that need to be learned (as opposed to desired outcomes)?
- _____ Is the placement in compliance with new ODE guidelines?
- _____ Are the progress reports: (a) In the file? (b) Issued as frequently as indicated on the IEP? (c) Measuring progress toward the IEP goals in the manner indicated under “criteria”?

PLAAFPs and Progress Monitoring

PLAAFPs and progress monitoring on a student's IEP are inextricably entwined – both are crucial components of an IEP, necessarily well written if the IEP is to satisfy the legal requirements of the IDEA and establish that the student has been provided with a FAPE. Further, it is difficult to write a legally adequate PLAAFP without legally adequate progress monitoring, and vice versa.

Present Levels of Academic Achievement and Functional Performance

Well-written and complete PLAAFPs are crucial to ensuring that an IEP is substantively and procedurally compliant under the IDEA. Why? Because the PLAAFP is the underpinning of the entire IEP – the starting point for all other IEP components. If a PLAAFP is inadequate or incomplete, it is almost impossible for annual goals and short-term objectives to be legally adequate and complete, because the goals are based on the information in the PLAAFP. If the goals aren't legally adequate, then the specially designed service levels are questionable. If goals and service levels aren't legally defensible, a placement determination can be called into question.

While the Oregon Department of Education's standard IEP form calls for many pieces of information to be included in the PLAAFP, two are most crucial to creating an IEP that constitutes an offer of FAPE:

1. Baseline data for all IEP goals. To the degree possible, the present levels information in the PLAAFP should correspond directly to each of the annual goals and/or short-term objectives that the IEP team will be proposing for the IEP. For instance, if a proposed reading goal is for the student to read at a 4th grade level at 120 wpm, the PLAAFP should state exactly what the student's current reading level and wpm are now. If a proposed goal is for the student to utilize specific organizational skills (e.g., write assignments in a planner, independently break down larger assignments into daily tasks, etc) at a certain percentage (e.g., 70% of assignments given by the gen ed teachers), then the PLAAFP should indicate what percentage of the time the student currently demonstrates this skill (even if right now, it's 0%).

Baseline data does not have to be generated by a standardized assessment, nor is there an absolute requirement that it be stated in numerical terms as opposed to more subjective ratings scales. If the goal is behaviorally related, the student's current behaviors should be described and described in the same manner in the PLAAFP.

In addition, to the degree possible, similar modes of measurement should be utilized from year to year. One of the best way to establish that IEP goals are adequately measurable, appropriate for a student, and demonstrate progress over time, is to be able to compare an IEP's present levels from year to year. However, this is only possible if the unit of measurement – that is, the way of describing the student's present levels – are largely the same from year to year.

2. A description of how the student's disability impacts the student's involvement and progress in the general education curriculum. Often times, IEP teams attempt to satisfy this requirement by writing "The student's disability impacts his involvement and progress in the general education curriculum" at the end of the PLAAFP. However, that statement, in and of

itself, doesn't satisfactorily address this component of the PLAAFP. It's a given that there is an impact, otherwise the student wouldn't have qualified under the IDEA. The question is **how** does the disability impact the student in regular ed. If the student is reading at a lower grade level, what does that look like in the gen ed classroom? Can he following along (grade-level comprehension) when instructions are read, but falls behind during independent reading? Does he attempt compensatory strategies, act out, fail to complete the assignment? **What does it look like?** This is a descriptive section of the PLAAFP, and it's not enough to just re-state the student's disability because two students with the exact same reading level, or writing deficits, or behavioral issues, can look very different when they're in general ed, depending on what they use for replacement strategies, how well they use other skills to compensate, etc.

Progress Monitoring

If PLAAFPs are well-written, with measurable baseline data for each annual goal, and if progress reports continue to measure the student's ongoing progress in this same "language," then the PLAAFP for the next annual IEP will practically write itself – by inserting the most recent progress report data into the PLAAFP. Further, this will ensure that the PLAAFPs from one year to the next are written in the same "language" – that is, utilizing the same units of measurement – which enables one to compare PLAAFPs from year to year to see how the student is progressing over time.

However, in order for this to work, progress monitoring must occur utilizing the units of measurement that the IEP goals reference. Progress reports are one of the components of FAPE that are most often raised by parents in complaints or due process hearings, because they are (a) crucial to both proving that a student is making adequate progress and proving that the parents were adequately informed (both critical components of providing a FAPE), and (b) so often poorly executed (if at all). Frequently, a district is unable to establish that it provided a FAPE because progress reports are missing altogether, or contain vague descriptors like "student making progress toward this goal" instead of utilizing the annual goal's measurement system. If the annual goal states that the student will demonstrate a particular skill 4 out of 5 times, the progress report should state how many out of 5 times he's currently demonstrating that skill. If the annual goal uses a percentage (for example, 75%), then the progress report should, as well. Further, the percentage needs to be measured consistent with the annual goal – for instance, if the annual goal is the ability to read 120 wpm at the 4th grade level, the progress report is incomplete if it only references how many words per minute the student is reading at the 3rd grade level. If the IEP states that the progress will be measured weekly, or monthly, the progress monitoring data must be able to establish the frequency of the measurement that occurred, as well.

Districts also need to strive to develop a reporting and archiving method for progress reports that isn't overly confusing. Often, the manner in which the progress is reported (e.g., written into the last column on the IEP goals page) and archived (e.g., each reporting period is written right below the previous reporting page) can impact how readable the progress reports are, and whether they're easily produced upon parent request. It's not unusual for a student's special education file to contain copies – and more copies – of the same year's progress reports, all looking slightly different, making it difficult to ascertain which is the complete and accurate record of the entire IEP year's progress reporting.

Standards-based IEPs and how to write them

1. Why write standards-based IEPs?
 - * Not explicitly required by the IDEA; however, may be required for FAPE (“appropriate” and “public”)
 - * To fulfill the IDEA’s charge of gen ed curriculum access
 - * To give sped students equal opportunity to access gen ed curriculum
 - * To prepare sped students for proficiency assessments

2. Necessary precursors
 - * Understanding the grade-level standards for a particular student’s grade
 - * Having sufficient data re: where the student is functioning in relation to those standards
 - * Understanding the specifics of an individual child’s disability
 - * Gen ed and special ed staff teaming together

Steps:

- 1: Gather evidence to determine student’s current skills in area
- 2: Review priority standards in student’s current grade level
- 3: Determine narrowed focus within each area
- 4: Review lower grades for connected standards
- 5: Determine skills needed to make progress
- 6: Develop annual goal

(Centennial S.D.

<http://www.ode.state.or.us/wma/teachlearn/conferencematerials/sped/2012/kwlastandardbasediempjourney.pdf>)

3. Questions / issues
 - * Can you use content standards from lower grades?
 - * Should you reference a particular grade level in the IEP annual goal?
 - * Present levels statement connects student’s current level of functioning to grade level standards
 - * Are standards-based IEPs appropriate for all students?
 - * Are standards-based IEPs appropriate for a student’s entire educational career?
 - * Is this really substantively different from how other IEP goals are written?

Step 1: Consider the grade-level content standards for the grade in which the student is enrolled or would be enrolled based on age.

- What is the intent of the content standard?
- What is the content standard saying that the student must know and be able to do?

Step 2: Examine classroom and student data to determine where the student is functioning in relation to the grade-level standards.

- Has the student been taught content aligned with grade-level standards?
- Has the student been provided appropriate instructional scaffolding to attain grade-level expectations?
- Were the lessons and teaching materials used to teach the student aligned with state grade-level standards?
- Was the instruction evidence-based?

Step 3: Develop the present level of academic achievement and functional performance. Describe the individual strengths and needs of the student in relation to accessing and mastering the general curriculum.

- What do we know about the student's response to academic instruction (e.g., progress monitoring data)?
- What programs, accommodations (i.e., classroom and testing) and/or interventions have been successful with the student?
- What have we learned from previous IEPs and student data that can inform decision making?
- Are there assessment data (i.e., state, district and/or classroom) that can provide useful information for making decisions about the student's strengths and needs (e.g., patterns in the data)?

Consider the factors related to the student's disability and how they affect how the student learns and demonstrates what he or she knows.

- How does the student's disability affect participation and progress in the general curriculum?
- What supports does the student need to learn the knowledge and attain the skills to progress in the general curriculum?
- Is the student on track to achieve grade-level proficiency within the year?

Step 4: Develop measurable annual goals aligned with grade-level academic content standards.

- What are the student's needs as identified in the present level of performance?
- Does the goal have a specific timeframe?
- What can the student reasonably be expected to accomplish in one school year?
- Are the conditions for meeting the goal addressed?
- How will the outcome of the goal be measured?

Step 5: Assess and report the student's progress throughout the year.

- How does the student demonstrate what he/she knows on classroom, district and state assessments?
- Are a variety of assessments used to measure progress?
- How will progress be reported to parents?

Step 6: Identify specially designed instruction including accommodations and/or modifications needed to access and progress in the general education curriculum.

- What accommodations are needed to enable the student to access the knowledge in the general education curriculum?
- What accommodations have been used with the student and were they effective?
- Has the complexity of the material been changed in such a way that the content has been modified?

Step 7: Determine the most appropriate assessment option.

- What types of assessments are offered in my state?
- What types of responses do different state assessments require?
- What are the administrative conditions of the assessment? (i.e., setting, delivery of instructions, time allotted, etc.)
- What accommodations are allowed on the assessment(s)?
- Are the accommodations approved for the assessment also used in the classroom?
- Has the student received standards-based, grade-level instruction?
- Was the instruction evidence based?
- What is the student's instructional level?
- How different is the student's instructional level from the level of typical peers?
- Can the student make progress toward grade-level standards in the same timeframe as typical peers? (If no, consider modified academic achievement standards)
- What can be learned from the student's previous state assessment results?
- Can the student demonstrate what he/she knows on the assessment option under consideration?

(Excerpted from Alabama Dept. of Education resources)

The Well-Conducted IEP Meeting

- I. An accurate, timely IEP meeting notice**
 - listing meeting participants
 - providing the notice in advance of the meeting
 - carefully considering the purpose of the meeting

- II. The set-up**
 - agenda
 - ground rules
 - time limits
 - prep with team members

- III. Roles at the meeting**
 - everyone participates
 - the facilitator
 - the note taker
 - input needed from regular ed staff

- III. Being prepared to answer the “hard questions”**
 - why a goal isn’t necessary or isn’t an “area of need”
 - how you determine what is “reasonable progress”
 - how you determine service levels
 - why an accommodation isn’t “necessary”
 - what “least restrictive environment” means

- IV. How to process disagreement amongst team members and still complete the IEP meeting**
 - when you should – and shouldn’t – terminate the meeting
 - excluding a participant from the meeting
 - be prepared for a lack of consensus at IEP meetings
 - strategies to obtain and retain control of the meeting process

- V. After the meeting**
 - providing copies of the meeting minutes
 - providing a copy of the revised IEP
 - providing notice of special ed action
 - meeting applicable timelines

PLACEMENT

Relevant Legal Citations:

Requirement for LRE (OAR 581-015-0059):

School districts shall ensure that:

- (1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and
- (2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Placement (OAR 581-015-0061(5)):

A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

The *Holland* test:

1. **The educational benefits of placement in a regular ed classroom**
 - progress (or lack thereof) on IEP goals while in the regular ed class
 - academic benefits of being in the regular ed class
 - academic benefits of being in an instructional setting outside of regular ed (e.g., need for small group instruction, need for more intensive instruction, need to practice skills learned in SDI in a structured setting, goals that aren't amenable to implementation in the regular ed classroom, inability to focus in larger, more distracting setting)
 - extent to which accommodations/modifications have been attempted
2. **The non-academic benefits of placement in a regular ed classroom**
 - the student's ability to benefit from being around regular ed students in the areas of social skills, behavior, self-esteem (e.g., ability to model behaviors, self-consciousness when receiving SDI around other students)
 - the degree to which the student is able to interact and communicate with regular ed peers
3. **The effect that the student had on the teacher and students in the regular ed classroom**
 - whether the student disturbs or distracts the teacher or other students (e.g., behaviors, noises, grabbing/touching)
 - whether the student's educational services disturbs or distracts the teacher or other students (e.g., the impact of the aide implementing the student's program, the presence of additional equipment, the type of curriculum being implemented)
4. **The cost of mainstreaming the student**
 - the additional cost, as it is related to the total district budget

So many different placement options!
How eligibility, services, and placement determinations
change depending on the setting
(e.g., parentally placed private school, alternative
education, day treatment, online charter school,
homebound / tutoring, etc)

- I. The impact of placement on eligibility
 - * Is “adverse educational impact” present in the new placement?
 - * Is there a need for SDI in the new placement, or does the structure of the placement/program itself mean that SDI isn’t needed (e.g., small student-teacher ratio, self-paced learning, structured format, etc)
 - * How do you determine if there’s an adverse impact / need for SDI if the placement is new? When should eligibility be reconsidered?
 - * If initial eligibility is at issue, how do you factor in the alternative setting’s gen ed interventions (or lack thereof?)

- II. Special education services – how does the alternative setting:
 - * Impact where special ed services are provided?
 - * Impact the amount and type of special ed services?
 - * Impact the obligation of the resident district to provide a FAPE?

- III. How are charter schools different from private or alternative schools?
 - * Location of services / type of services / who is the service provider
 - * Impact of pending bills in the Oregon Legislature
 - * What if the charter is a virtual charter?
 - * What if the charter is located in another district?
 - * What transportation obligations apply to charter students?

- IV. Home tutoring / half-day placements
 - * When and under what circumstances can students be placed in home tutoring?
On a reduced day schedule?
 - * How long should such placements remain in effect?
 - * How can a district comply with FAPE and LRE in such placements?
 - * What safeguards / procedures should a district have in place?

Step-by-step procedures for special ed discipline, including manifestation determinations and the use of IAES, short-term placements, and risk assessments

1. Any removal, for whatever reason, “counts” as an exclusion

- * Exceptions: public health reasons (e.g., communicable disease), removals by other agencies, parent refusal to send student to school
- * Transportation exclusions count as a day of school exclusion if the student is unable to get to school
- * In-school suspensions do NOT count, so long as the student can access his educational program (even in the ISS room)

2. Steps for removals of less than ten cumulative school days in a school year:

- * Use the same procedures as for a regular ed student
- * Notify the case manager so that someone is tracking the number of days and determining if an IEP meeting is needed to discuss FBA, placement change, etc.

3. Steps for removals of less than ten consecutive school days, but more than ten cumulative school days in a school year:

- * Determine if the removal constitutes a “pattern” of removals – look at the prior removals and consider whether this newest removal is close in time, is for the same type of misconduct, etc.
- * If it is not a “pattern,” proceed using the same procedures as with regular ed students (but services must be provided during days of suspension)
- * If it is a “pattern,” a manifestation determination will be required (see below)

4. Steps for removals of more than ten consecutive school days (i.e., expulsion) or more than ten cumulative school days constituting a “pattern” within the school year:

- * Manifestation determination must be noticed via a meeting notice and held within ten school days
- * If no manifestation, proceed with the suspension or expulsion hearing (which also must be held within ten school days)
- * If manifestation, do not proceed with exclusion, but IEP meeting can be held to consider add'l evaluations, change in services, change in placement, etc.
- * Manifestation inquiry: (a) Was the conduct in question caused by, or have a direct and substantial relationship to, the student’s disability; and (b) Was the conduct in question the direct result of the district’s failure to implement the student’s IEP
- * Do “unidentified” disabilities come into play in a manifestation determination?

5. When is the 45-day IAES (interim alternative educational setting) used?

- * Not needed if the student is expelled (in that case, the IEP team determines the expulsion placement)

* Not needed if the IEP team changes placement instead of proceeding with expulsion UNLESS the parent files for due process

If no manifestation is found and the student is expelled – parent files for due process – stay put is the expulsion placement (e.g., home tutoring, alt ed, etc)

If a manifestation is found and the student's placement is changed – parent files for due process – if the misconduct was related to weapons, drugs, or serious bodily harm, the student can be placed in 45-day IAES while the due process hearing is pending

If a manifestation is found and the student's placement is changed – parent files for due process – if the student presents a substantial risk of harm – district can file for expedited hearing to obtain an order for placing the student in IAES while the parents' due process is pending

If a manifestation is found and the student's placement is changed – parent files for due process – misconduct is something other than those issues discussed above – stay-put is the placement in effect when the misconduct occurred

6. How does a risk assessment factor into disciplinary procedures?

- * Concurrent but separate track
- * Could be the basis for a short-term change in placement (e.g., to home tutoring)
- * Used like any other evaluation that the IEP team determines is necessary to obtain sufficient information to provide the student with an appropriate educational program
- * Like any other evaluation, the parent has the right to refuse and the district cannot pursue via dispute resolution, but this could be the basis for a long-term more restrictive placement (and could be pursued via other, non-IDEA avenues)

7. How can a short-term placement be properly used?

If the team finds a manifestation, but the student's educational program is clearly not benefiting him and/or is causing disruption to others, the IEP team may decide to place the student in a more restrictive placement for an interim or short term period while:

- * Further evaluation or risk assessment is conducted
- * Placement options are investigated
- * Student is placed on a program wait list and/or the district works to train staff, create/refine a program, etc
- * Staff work with student to obtain baseline info on behavior and attempt to develop a minimum level of compliance prior to student's return (use of an objectively-defined "step-up" plan is recommended)

The IEP team must ensure that the IEP either can be implemented as written in the interim placement, OR is revised in a properly convened IEP meeting

ROLE OF REGULAR EDUCATION STAFF IN MEETING SPECIAL EDUCATION REQUIREMENTS

I. Referral / Evaluation / Eligibility

Childfind: The regular education teacher is part of the “child find” team of the school, referring students who may have disabilities and may be in need of special education and related services. Use of the building pre-referral or referral process by regular education staff is crucial.

Evaluation: Part of the information to be gathered in the evaluation process is information related to the child’s involvement in and progress in the general curriculum, such as report card and test scores, review of current classroom work in math, writing, etc.

Re-Evaluation: During a re-evaluation process, existing information about the child, including current classroom-based assessments and observations by the teacher(s) is used, along with input from the child’s parent, to identify what additional data, if any, is needed to determine (a) continued eligibility, (b) present levels of performance and educational needs of the child, and (c) any additions or changes to the special education needed for the child to meet his IEP goals and participate in the general education curriculum.

II. Developing the IEP

IEP Team Members: At least one regular education teacher must be part of the IEP team that develops the IEP if the child is, or may be, participating in regular education.

Under IDEA 04, a member of the IEP team may be excused with the parent’s written consent if:

- * The team member’s area(s) of curriculum/services is not being discussed at the meeting; or
- * The team member provides written input to the parent and district prior to the meeting.

Input of Classroom Teachers: The regular education teacher’s input is necessary in order to:

- * Draft present levels of educational performance;
- * Determine what accommodations and modifications, of any, are necessary for the student to access the regular education curriculum;
- * Determine the student’s placement and what percentage of his day, if any, he will spend in the regular classroom.

Regular education teacher input is also valuable when determining:

- * Whether a behavior plan and/or behavior goals are needed;
- * Whether the student will take the state and district assessments (with or without accommodations) or an alternate assessment;
- * Whether a regular or modified diploma track is appropriate.

In order to provide valuable input, regular education staff should be prepared to discuss:

- * How well existing accommodations / modifications have worked
- * Whether existing accommodations / modifications are necessary in order for the student to access the general curriculum
- * Whether any other accommodations / modifications are necessary

III. **Implementing the IEP**

Information: A copy of the IEP must be accessible to each regular education teacher and all other service providers responsible for its implementation. Each staff member must be informed of his/her specific responsibilities related to the implementation of the IEP.

Implementation: Regular education teachers are primarily responsible for implementation of the IEP's accommodations and modifications. Regular education staff may also be given responsibility to deliver part of the special education services on the IEP, under the direction and supervision of a licensed special education teacher. DO NOT modify curriculum for a student unless it is called for on the student's IEP.

Data Collection: Regular education teachers may need to assist in gathering data to be used to determine progress toward IEP goals. Staff should also consider how they would substantiate that they had implemented a student's accommodations / modifications should a complaint investigation or due process hearing be initiated.

Modifications: Once an IEP is drafted, it must be implemented as written. Failure to implement may result in the imposition of remedies such as compensatory education or reimbursement for private services, even if the student has continued to make progress. If classroom staff believe that a portion of the IEP for which they're responsible is not working or is no longer needed, they should contact the case manager and request that the IEP team be convened. It is crucial that classroom staff do not fail to implement the accommodations or implement additional accommodations without first notifying the case manager. It is also crucial that staff alert the case manager if the accommodations are not working or the student is not making progress.

- Under IDEA 04, IEPs can now be modified after the annual review without convening an IEP team meeting, so long as the parents agree in writing.

REGULAR EDUCATION TEACHERS: THE TEN COMMANDMENTS (PLUS ONE)

1. Revisions in the special education laws are designed to better connect regular and special education staff, services, and curriculum.
2. At least one regular education teacher of the student must be involved in every IEP meeting. Your input is essential to assisting the IEP team in determining the extent to which the student is capable of participating in the general education curriculum, and those accommodations and modifications that are necessary for the student's participation.
3. You are required to implement the accommodations and modifications on a student's IEP or Section 504 plan. If you willfully refuse to implement accommodations and modifications, you may be found personally liable.
4. Your classroom observations and records of academic progress are important to the IEP and evaluation teams. Please bring records with you to IEP meetings, and pass on to the special education teacher for placement in the student's file at the end of the school year.
5. Be aware that any notes you keep regarding a student may be subpoenaed in litigation. Your notes must be accurate, objective records (i.e., "court-ready").
6. Positive behavioral supports and strategies are required to be implemented to assist behaviorally challenged students in reducing their negative behaviors. Follow all IEP or Section 504 behavior guidelines.
7. You may be asked to participate in a functional behavioral assessment for one of your special education or Section 504 students, by completing a behavior rating scale or questionnaire. Your prompt return of fully completed materials is essential to meeting the tight legal timelines related to evaluations and student discipline.
8. In matters of discipline of IEP students, you may receive short notice of need to attend a manifestation determination or placement meeting. Your presence is required in order to meet the strict timelines for disciplinary action.
9. Manifestation determinations involve an examination of staff compliance with the specific services and accommodations and modifications of a student's IEP or Section 504 plan. If any educator has failed to implement a student's IEP or Section 504 plan, and the direct result is the misconduct at question, the school district may be unable to take disciplinary action.
10. Some non-identified students may be protected by the IDEA, if communication between the parents and the staff indicates that the student was in need of special education services but was not evaluated or identified by the school district.
11. A regular education teacher's four essential roles in the area of special education: (a) **Use the referral process**; (b) **Attend IEP meetings**; (c) **Implement accommodations and modifications**; and (d) **Keep records of the student's academic and behavioral progress**.

FUNCTIONAL BEHAVIORAL ASSESSMENTS (FBAs) and BEHAVIOR INTERVENTION PLANS (BIPs)

When an FBA may be appropriate:

- in evaluating a student for eligibility under the category of ED
- before writing social/emotional/behavioral IEP goals for an ED student
- before writing a behavior management plan / behavior intervention plan
- when determining whether to add services or accommodations for a non-ED special ed student who has behavior issues that are interfering with his/her ability to obtain educational benefit

When an FBA is required:

- after a student has been removed for more than ten consecutive school days in a school year or the cumulative days of removal constitute a “pattern” and the IEP team determines that the behavior *is* a manifestation of the disability (unless the FBA was conducted prior to the behavior at issue)
- after a student has been removed for more than ten consecutive school days in a school year or the cumulative days of removal constitute a “pattern” and the IEP team determines that the behavior *is not* a manifestation of the disability (if the IEP team concludes that an FBA is necessary to address the behavior)
- if the student is placed in a 45-day alternative interim educational placement for misconduct related to drugs, weapons, or inflicting serious bodily injury (and the IEP team determines that an FBA is necessary to address the behavior)

When a BIP may be appropriate:

- for an ED student
- for a special ed student who’s not ED but whose behavior interferes with his/her ability to obtain educational benefit
- for a special education student with a record of referrals or disciplinary action
- for any other student (special or regular ed) who would benefit from greater structure or more definitive expectations spelled out by a behavior plan/behavior contract

When a BIP is required:

- if the IEP team deems a BIP necessary for the student to obtain educational benefit
- after a student has been removed for more than ten consecutive school days in a school year or the cumulative days of removal constitute a “pattern” and the IEP team determines that the behavior is a manifestation of the disability (or review/revise the BIP if one already exists)

- after a student has been removed for more than ten consecutive school days in a school year or the cumulative days of removal constitute a “pattern” and the IEP team determines that the behavior *is not* a manifestation of the disability (if the IEP team concludes that a BIP is necessary)
- if the student is placed in a 45-day alternative interim educational placement for misconduct related to drugs, weapons, or inflicting serious bodily injury (and the IEP team determines that a BIP is necessary to address the behavior)

Confidentiality and the Use of E-Mails to Send Student Information

1. E-mail use

* Confidential student information can be sent between staff and to parents via e-mail

* There is no legal requirement that student names not be used in the subject matter line or body of the e-mail, or that student initials only be used

* The same confidentiality rules apply to e-mails as to sending information via mail or fax – ensure that only the intended recipient receive the information, and that the information not be shared (purposefully or inadvertently) with others

* Legal documents (e.g., IEP, PWN, meeting notice) can be sent to parents via e-mail, so long as the parents have the ability to access the information electronically

* Individual districts may choose to create standardized and/or more restrictive policies regarding the use of e-mail

* If a staff member is not legally required to attend an IEP meeting, or is properly excused via a written agreement, then the staff member's input can be submitted via e-mail

2. E-mail cautions:

* Anything sent via e-mail becomes an education record if it is “maintained,” so staff should be cautious about (a) tone (e.g., comments about the student, about the parent, about the staff member's subjective feelings about either student or parent, etc); and (b) content (e.g., comments about how/whether services/accommodations are being implemented, about any problems the student is experiencing, etc)

* Staff are not required to retain e-mails, and if they are deleted, they no longer “exist” as an education record, but remember that the other party (sender/recipient) may have retained the e-mail, even if you deleted it on your end

* If a parent uses e-mail excessively, the school has the right to set reasonable limits on how often staff will review/respond to e-mails