



HOW I ADVISE MY CLIENTS: Can districts set time limits for IEP development without impeding parental participation?

In a recent ruling in the 10th Circuit, a Colorado school district held five IEP meetings between April 19, 2016 and Dec. 13, 2016, each of which lasted at least 2.5 hours. Although those team meetings resulted in 15 hours of discussion, the parent still alleged that the district predetermined the student's IEP and excluded her from the process. *Nathan M. v. Harrison Sch. Dist. No. 2*, [75 IDELR 179](#) (10th Cir. 2019).

So, can a district set reasonable time limits for IEP development without impeding the parents' participation rights?

Special Ed Connection® asked four experts in the field how a school should respond in this situation. Their responses, edited for length and clarity, are below:

□ ***Katherine Beenken & Elizabeth Heffernan, school attorneys, [Ahlers & Cooney P.C.](#), Des Moines, Iowa:***

Parents are entitled to the opportunity for "meaningful parent participation" under the IDEA. However, the IDEA's primary purpose is to ensure FAPE is available to the child; when the team fails to timely develop or update an IEP, the child's needs could be hurt by the delay. Public agencies may set reasonable time limits for IEP development without impeding parent participation rights so long as the opportunity for meaningful parent participation was provided, and so long as the reason for setting the time limit is to finalize the development of an IEP reasonably calculated to provide the child with FAPE. We advise our clients to follow the following guidelines:

1. Ensure that all parents are invited and encouraged to participate in the development of the IEP. During IEP meetings, parents must be given the opportunity to share their thoughts or concerns on proposed supports and services, as well as to propose their own recommendations for IEP development. When a meeting agenda is used, we often recommend including "parent concerns" as a specific agenda item.

2. Document efforts to include the parent in discussions and what input, if any, they provided. In some cases, a prior written notice could specifically state a proposed change is made "per parent request." The PWN should also describe options considered, but rejected, by the team regardless of which IEP team member raised the option considered. If an option was considered but rejected "due to parent concern," such a notation could also be made in the PWN.

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3. Stick to established time for meetings and hold multiple meetings if necessary. Set aside a reasonable time frame for the meeting. Remind all team members at the start of the meeting that the meeting must conclude by the end time and that if additional information needs to be addressed, the team can set a "part two" or follow-up meeting in the near future. Document in the PWN or elsewhere when a meeting is divided into multiple parts due to time constraints.

4. Do not participate in repetitive discussion; use the PWN to propose or refuse an action. If the team is stuck in circular discussion and unable to move forward, it is probably time for a member of a public agency to make a proposal; and, if there is not a consensus with the parent, explain that a PWN will be issued describing the proposal or refusal and that the parent may exercise her procedural safeguards if she believes the proposed or refused action is a violation of the IDEA. Schools rarely want to invite disputes, but the IDEA is structured in a way that puts the initial onus of implementing an IEP reasonably calculated to provide a FAPE on the public agencies. The PWN is a procedural safeguard that protects the parents' rights to dispute proposals with which they disagree.

☐ **Christina M. Stephanos, school attorney, [Sweet, Stevens, Katz & Williams LLP, New Britain, Pa.:](#)**

With reasonable time limits, parents can be provided with a full and meaningful opportunity for parent participation and to provide input, ask questions, express concerns, and otherwise receive explanations in IEP meetings.

In matters where a number of concerns are raised, whether by the school district or the parents, it is helpful to draft an agenda with input from the family. The time scheduled for the meeting can be established after consideration of the agenda items. The local educational agency representative or other chosen school district IEP team member can establish from the start that she will monitor the agenda and the time to ensure items are addressed.

It is advisable to take meeting notes, documenting the agenda items with the parent and school district responses. If necessary, at the conclusion of the IEP meeting, schedule a follow-up meeting in order to address any new topics, to review prior areas of concern, or to discuss agenda items where the team did not reach consensus. The priority should be for the IEP team to move through all agenda items as scheduled, so only schedule the follow-up meeting if necessary.

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Finally, depending on the issues at hand, there is also the option of utilizing your state's office of dispute resolution resources, including IEP facilitation.

☐ **Mary S. Gerbig, school attorney, [Buelow Vetter Buikema Olson & Vliet LLC](#), Waukesha, Wis.:**

Balancing rights under the IDEA can be a difficult task. However, remember that the ultimate goal is to develop an IEP that meets the FAPE requirements in a reasonable amount of time so the student actually receives instruction to meet his disability-related needs in a timely manner. Providing a meaningful opportunity for parents to participate in the IEP development is critical to avoiding claims of predetermination.

In order to avoid predetermination claims, I advise clients to ensure they take the following steps:

1. Identify all of the necessary IEP participants under [34 CFR 300.321](#) and ensure that the meeting is scheduled for their participation.
2. Seek and include individuals (or information) from other agencies that is necessary for the IEP team discussion to determine the student's disability-related needs and services.
3. Contact parents as early as possible to obtain information for scheduling the IEP meeting. Document communications with parents and options for meetings. Use more than one mode of communication if parents don't respond. Offer at least three options for meeting dates and times.
4. Ask parents and staff members well ahead of the meeting what their concerns are specifically regarding the educational services and placement. Determine the information or people that are needed to discuss those concerns at the meeting. Gather current data to determine the student's present levels for academic and behavioral functioning and data to support whether the student is making progress toward the annual goals.
5. Prepare notices for meetings that do more than just check boxes. Ensure that the notices provide enough information so that parents understand who will be at the meeting, what will be discussed, and if any major changes are being considered related to the services and placement.

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6. Developing a draft of the IEP may be helpful in terms of a starting point for the discussion, but be prepared to modify the draft based on the IEP discussion. If a draft is prepared in advance of the meeting, share the draft with parents but advise that all draft language is subject to change at the meeting.

7. Given the concerns from both parents and staff, set reasonable time frame expectations for meetings and prepare an agenda that clearly advises all IEP team members of the topics and approximate times for discussions.

8. Consider the use of a facilitator to ensure that all IEP participants have the opportunity to provide information and ask questions. Guide participants in discussions that refrain from posturing. If there is disagreement, consider obtaining additional information to address gaps in current information or using mediation to resolve disagreements.

In the end, the planning and communication prior to the IEP meeting is critical in terms of providing a truly meaningful opportunity for parents to participate in the IEP discussion. It is the best way to avoid predetermination claims.

For more stories and guidance related to this topic, see the [IEP Team Issues Roundup](#).

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