

BETTER IEPS

Third
Edition

How to Develop
Legally Correct and
Educationally Useful Programs

BARBARA D. BATEMAN
MARY ANNE LINDEN

Better IEPs

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and Educationally Useful Programs

3rd Edition

by

Barbara D. Bateman, Ph.D., J.D.

&

Mary Anne Linden, M.S., J.D.

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Dedications and Acknowledgments

This book is dedicated to my parents who celebrated their 60th anniversary in August, 1992. Every day of my life they have modeled what caring about children really means. Perhaps this book will help other parents and teachers as they care about the more than four million children in this country who have IEPs.

The author's sincere thanks to David Chard, whose competence, caring, and energy immeasurably helped this book happen.

—Barbara Bateman

To Barb, without whose inspiration I would never have returned to law school.

and

To Jeremy, who encourages me always to hold tight to my ideals.

—Mary Anne Linden

About the Authors

Barbara D. Bateman, Ph.D., J.D., is a nationally recognized leader in special education law. Dr. Bateman, in collaboration with Dr. Samuel Kirk, helped to distinguish the category of learning disabilities in the 1960s and to develop the special services that would later serve this population. She has four decades of experience as an educator, author, and researcher, and has written more than 100 books, monographs, book chapters, and articles on special education and legal issues. Dr. Bateman has long been associated with the Learning Disabilities Association (LDA), and has served as an advocate for parents of children receiving special education services, representing them in due process hearings and as a consultant. Dr. Bateman is professor emeritus of special education at the University of Oregon, Eugene. Dr. Bateman has consulted with and assisted school districts, state departments, and individuals in all 50 states.

Mary Anne Linden, M.S., J.D., has been a special educator for ten years. She is currently completing a Ph.D. in educational policy and management at the University of Oregon, where she has also been involved in special education teacher training. Her research activities have focused on disability law, special education law, special education practice and reform, and parental involvement in schooling.

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Introduction

The purpose of this book is to give special educators, regular educators, and parents the confidence and know-how to develop Individualized Education Programs, or IEPs, which are both legally correct and educationally useful. Currently, many IEPs are neither.

The IEP process is the centerpiece, the heart and soul, of the Individuals with Disabilities Education Act (IDEA). It is the procedure for devising the “free appropriate public education” (FAPE) to which every eligible child who has a disability and needs special education is entitled. In this book, we explain the role of the IEP in the larger context of the IDEA, and we present a child-centered three-step IEP process.

Chapter One highlights the five main components of the IDEA (Part B). We explain the sequential and interdependent relationships of evaluation, IEP development, and placement. We also briefly review the IDEA’s funding and due process provisions, which protect the rights of children and their families and govern dispute resolution.

Chapter Two takes a close look at the law. We answer the most fundamental questions about how to prepare a squeaky clean, legally correct IEP: **Who** develops it? **How** does the IEP team operate? **When** must the IEP team convene? **Where** does the IEP meeting happen? **Why** must IEPs be written? **What** must the IEP contain?

Chapter Three explains how not to develop IEPs. We dissect real-world examples of flawed IEPs and identify several common errors in IEP process and content.

Chapter Four describes a better way. We present the “Non-Form” and explain how to create an educationally useful IEP. We focus particular attention on the three-step IEP development process, illustrating each step with examples.

Chapter Five tackles some troublesome issues that have plagued schools since the IDEA was first enacted. We look at judicial decisions and agency rulings that elaborate and clarify these issues.

Four appendices present reference materials to guide school personnel and parents and help them to create correct and useful IEPs: (A) the IDEA statute; (B) IDEA regulations; (C) an appendix to the regulations which interprets, in question and answer format, the requirements of IDEA; and (D) model notification to parents of their rights under the IDEA.

The IDEA Amendments of 1997 became law in July of that year, except for IEP requirements, which take effect July 1, 1998. In order to make this book available to readers as soon as possible, we have based the material on the statute and on the proposed regulations issued in October 1997. We believe the final regulations scheduled for release in April 1998 will not differ materially from the statute and proposed regulations. Therefore, the references to 34 CFR 300 point to the proposed regulations. We also assume the bulk of agency rulings, case law, and Appendix C of the old IDEA regulations continue to offer correct and valid interpretations of the law. Of course, we have excluded any material from cases and rulings and from earlier editions of this book that are inconsistent with the 1997 Amendments.

A well-designed IEP can change a child's schooling experience from one of repeated failure, loss of self-esteem, and limited options to one of achievement, direction, and productivity. Alas, our experiences persuade us that legally correct and educationally useful IEPs are all too rare. We devoutly hope and sincerely believe this book can help change that situation.

The IEP in Perspective

Overview

Since 1977, every child in the United States who has a disability and needs special education has been entitled to a free appropriate public education (FAPE) under a Federal law that is now called the Individuals with Disabilities Education Act (IDEA).

In 1997, Congress amended the IDEA with the intention of:

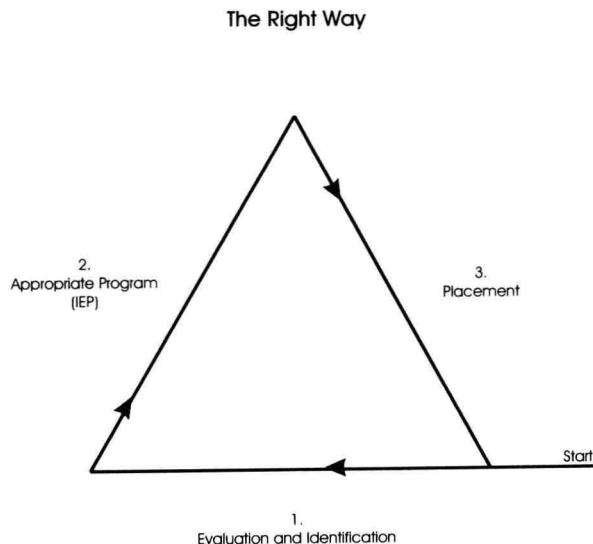
- Strengthening the role of parents;
- Ensuring access to the general education curriculum and reforms;
- Focusing on teaching and learning while reducing unnecessary paperwork requirements;
- Assisting educational agencies in reducing the costs of improving special education and related services to children with disabilities;
- Increasing accommodation of racial, ethnic, and linguistic diversity to prevent inappropriate identification and labeling;
- Ensuring schools are safe and conducive to learning; and
- Encouraging parents and educators to work out their differences by using nonadversarial dispute resolution (Senate Committee on Labor and Human Resources, 1997).

The IDEA (Part B) has five major components: (1) Evaluation and Identification, (2) Individualized Education Program and Related Services, (3) Placement, (4) Funding, and (5) Procedural Safeguards.

The heart of the IDEA is the Individualized Education Program (IEP). The centrality of the IEP is apparent in many ways. The **Evaluation and Identification** provisions determine who is eligible to have an IEP and contribute to understanding the unique needs of each child, which form the basis of the IEP. The **Placement** component calls for case-by-case placement decisions, based on a child's completed IEP. The **Funding** requirements guarantee a **free** appropriate public education, placing squarely upon school districts (or states) the financial burden of determining eligibility and providing IEPs to children with disabilities. Finally, the **Procedural Safeguards** create a safety net for children and their parents. They are designed to ensure the development and provision of appropriate IEPs, to place parents and the school districts on a level playing field, and to facilitate dispute avoidance or resolution.

In order to appreciate the role of the IEP, it is helpful to diagram the primary components in the sequence in which they affect a student (see Figure 1).

Figure 1



The first step of the process involves evaluation of a child and a decision on eligibility for FAPE. The second step is the development of an IEP based upon the child's unique needs. The third step is the determination of an appropriate placement based upon the IEP. Reordering of this sequence violates the letter and intent of the IDEA.

The following sections of this chapter include brief descriptions of the five components of the IDEA. Each section ends with “Do’s and Don’ts” in the form of advice to those wanting to employ practices that are both legally correct and educationally sound.

Evaluation and Identification

The purposes of the evaluation and identification provisions of the law are to gather functional and developmental information necessary to determine whether a child has one of the disabilities defined in the IDEA, whether the child needs special education and related services, and the child's present levels of performance and individual educational needs (20 U.S.C. §1414).

Evaluation must cover all areas related to a child's suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communication needs, and motor abilities.

The IDEA specifies who participates in the evaluation process. First, the child's IEP team, including the parents, and “other qualified professionals” review existing evaluation data and decide what additional data are needed. The district then administers any needed tests and conducts other evaluation procedures. Finally, “a team of qualified professionals and the parent” makes an eligibility determination. The IDEA regulations explain that “qualified professionals” take part:

... to ensure that the teams making these determinations include individuals with the knowledge and skills necessary to interpret the evaluation data and make an informed determination as to whether the child is a child with a disability ... and to determine whether the child needs special education and related services. The composition of the team will vary depending upon the nature of the child's disability and other relevant factors. For example, if a student is suspected of having a learning disability, a professional whose sole expertise is visual impairments would be an inappropriate choice (34 CFR §300.533 note).

When the suspected disability is specific learning disability (SLD), the eligibility decision is made by:

... the child's parents and a team of qualified professionals which must include—
(a)(1) The child's regular teacher; or (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher (34 CFR 300.540).

The requirements of the law related to evaluation and identification are many (see Figure 2). Some fit well with common school practices, and some do not.

Figure 2

Evaluation and Identification

