

My Child's Teacher is Ignoring the IEP. What Can I Do?



By Diane Wiscarson and Taylor Vajda

You finally have an IEP drafted. Your child is on the right path. You can breathe a sigh of relief. This year, school is going to be better. Then, lo and behold, your child comes home from school. You open their backpack and find... nothing. No notes from the teacher. No modified homework. With a sinking feeling, you ask your child if they went to speech today; no such luck. With frustration, you realize that, despite your hard work, your child's IEP is not being implemented at school. It's an all too common experience for parents of children with disabilities. Fortunately, there are things you can do to remedy this.

What does the law say?

The Individuals with Disabilities Education Act (IDEA) is the main law regarding special education for students attending public school. The IDEA requires public schools to provide a free appropriate public education (FAPE) to children with disabilities, and make sure those students receive special education and related services. FAPE is provided through an Individualized Education Program (IEP), a legal document developed for public school students eligible for special education services.



Once a child is determined eligible for special education, an IEP team, including the parents, writes an IEP, which must be reviewed at least once a year. The IEP states how much time a student will be removed from general education, and the services, supports, accommodations, and modifications needed for the child. The school must follow all of the IEP provisions and services.

If a school is not following the IEP or services are provided inconsistently, then the school is likely not complying with

the law. For instance, if a student is supposed to receive 30 minutes of speech therapy each week, but is only receiving speech services every other week, the school is not following the IEP. If this is the case, what can a parent do?

Steps to Take, Informally:

If your child's IEP is not being followed, first notify the school in writing (email is fine) in case something has just been overlooked. Try contacting the special education teacher first. If that doesn't work, you can also reach out to the principal, your child's case manager, the special education administrator, and the superintendent.

Getting administration involved can sometimes help, as they might not know of the concern, and a conversation may remedy the problem. Remind the school district that it is required to follow modifications and/or accommodations and services set forth in your child's IEP. Lack of resources is not a valid reason to not implement an IEP. While a genuine concern, a school district cannot refuse to provide a student services for lack of money.

If an email to your child's teacher or the school administration does not work, you should ask for an IEP meeting. Keep records of what isn't being provided to your child, and bring that information with you to the IEP meeting. During the IEP meeting, express your concerns about following your child's IEP. If you're unsure, you can request more information. For instance, you can request service logs, a detailed schedule of what is being provided, or work examples. Sometimes, a reminder about the IEP is enough to get school districts back on track providing services.

Unfortunately, even with a parent's best efforts, occasionally school districts simply can't or won't implement the student's IEP. In that case, parents have other ways to resolve issues.

Legal Processes:

- **Mediation:** A parent can request mediation with the school district. The mediator is a neutral third party, who cannot make decisions but can facilitate a discussion between the parents and the school to help resolve concerns. Mediation focuses less on who is right or wrong but gives everyone the chance to talk about concerns and come to an agreement. Mediation does not require a lawyer, and can be a cost-effective option for families.

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• **State Complaint:** A parent can file a complaint with either the State Department of Education or the Office of Civil Rights (OCR). A parent can make a state complaint if the school district is violating the IDEA, such as by failing to implement the IEP. Sometimes, hiring an attorney can be helpful for this process, but it is not required. Parents would need to write a description of the issue and then file the complaint with the State Department of Education.

Once a State Complaint is filed, a neutral complaint investigator is assigned who will investigate the complaint by conducting interviews, reviewing student records, gathering any other information needed, and then writing a Complaint Order. That decision will include the complaints, what the complaint investigator found, and any corrective actions the school needs to take to fix the problems.

• **OCR Complaint:** On the other hand, if parents file an OCR complaint, the agency will then review the complaint and decide whether to investigate. If OCR chooses to investigate, it will likely request more information from the school district before making a decision. Some compensation parents might receive includes teacher training, make-up time for services that weren't being provided ("compensatory services" or "compensatory education"), and more. These complaints are also a cost-effective option for many families. However, the process can take upwards of a year to resolve, and frequently, districts offer a remedy before OCR concludes its investigation.

• **Due Process Complaint:** A parent also has the option of filing a due process complaint. A due process hearing is a formal administrative hearing. An Administrative Law Judge (ALJ) conducts the hearing, which is held much like a traditional trial. The school district and the parents have the opportunity to question witnesses, enter evidence, and have a record of the hearing. Witnesses can be subpoenaed and all testimony is given under oath. Parents and the school district can also have experts provide testimony. Once the hearing is over, the ALJ writes an Order, which



declares whether the school district is at fault, and if so, what remedies the child is owed by the school. A due process hearing can be a lengthy and expensive process. While an attorney is not required, parents will likely need an attorney or legal advocate to help navigate this process.

Summary:

It's both a frustrating and demoralizing experience for parents and children alike when a child's IEP is not being followed at school. While the school district is required to comply with the provisions in a student's IEP, sometimes it simply falls short. A parent should first attempt to talk to teachers and administrators about how to properly follow the IEP provisions. However, if that doesn't work, parents may file one of a few different types of complaints. The options vary drastically in time, money, and potential remedies. A lawyer or legal advocate may be best situated to help families sort out the legal intricacies involved.

Wiscarson Law was founded in 2001 by **Diane Wiscarson**, who earned her J.D. at Lewis & Clark Law School in 1996. *Wiscarson Law* has since shepherded thousands of Oregon and Washington families through the region's public schools and educational service districts on behalf of their special needs children. **Taylor Vajda** is currently a clerk with *Wiscarson Law* and is pursuing her J.D. at the University of Oregon School of Law. For more information call 503.727.0202, or go to wiscarsonlawpc.com.

