

The Task Force’s Mission

Senate Concurrent Resolution 63 established an IEP Improvement Task Force in order “To Examine Means to Improve the Individualized Education Program (IEP) Process for Students in Delaware Public Schools.” The resolution noted that the process of developing IEPs “is, at best, difficult for parents to understand and navigate, and at worst in some instances, unfair and intimidating to parents,” and that it “does not always result in the best outcome for students with disabilities.” Most significantly, the task force was tasked with recommending to the General Assembly and Governor “potential legislative, regulatory, funding, or other improvements to Delaware’s IEP process.” The task force was also charged with informing the General Assembly and Governor about practices being used in other states that are different from Delaware’s, different IEP practices used within Delaware, research and other academic evidence regarding best practices in IEP development, and federal and state law restrictions on changes to the Delaware IEP process.

Members of the IEP Improvement Task Force

The Hon. Matthew Denn	Chair
Dr. Pam Atchison	Delaware Association of School Administrators
Marissa L. Band, Esq.	Delaware State Bar Association
Tracy Bombara	School service provider
Dafne Carnright	Governor’s Advisory Council on Exceptional Citizens
Tricia Dallas	Special education teacher
Bill Doolittle	Governor’s Advisory Council on Exceptional Citizens
Diane Eastburn	Kent County Parent Representative
Rep. Debra Heffernan	House Majority Caucus
Mike Hoffmann	Delaware State Education Association
Seth Kopp	Special education teacher
Ruth Lavelle	New Castle County Parent Representative
Sen. Dave Lawson	Senate Minority Caucus
Laura Manges	Delaware Association of School Administrators
Maryann Mieczkowski	Department of Education
Rep. Joe Miro	House Minority Caucus
Sen. Nicole Poore	Senate Majority Caucus
Shawn Rohe	Developmental Disabilities Council
Howard Shiber	Governor’s Advisory Council on Exceptional Citizens
Meedra Surratte	Parent advocate
Jossette Threatts	School service provider
Liz Toney	Delaware PTA
Brian Touchette	Governor’s designee
Karen Wagamon	Sussex County Parent Representative

Federal Statutory Law Governing Delaware's IEP Process

Because Delaware receives federal funds under the Individuals with Disabilities Education Act, it is required to submit a plan to the United States Secretary of Education showing that the state has in effect policies and procedures to ensure that an individualized education program meeting the requirements of federal statute is developed, reviewed, and revised for each child with a disability.¹

The federal IDEA statute has a number of very specific requirements as to what must be included in a student's IEP.² The IEP must include:

- (I) a statement of the child's present level of academic achievement and functional performance (including how the child's disability affects the child's involvement and progress in the general education curriculum, for preschool children as appropriate how the disability affects the student's participation in appropriate activities, and for children who take alternate assessments aligned to alternate standards, a description of benchmarks or short-term objectives)³;
- (II) a statement of measurable annual goals, including academic and functional goals, designed to meet the child's need resulting from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs arising from the child's disability⁴;
- (III) a description of how the child's progress towards meeting annual goals will be measured and when periodic progress reports will be provided⁵;
- (IV) a statement of the special education and related services and supplementary aids and services to be provided to the child and a statement of the program modifications or supports for school personnel that will be provided for the child⁶;
- (V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes and activities⁷;
- (VI) a statement of accommodations necessary for the student to take the state's student assessment or explanation of why the student must take an alternate assessment and why that alternate assessment is appropriate⁸;
- (VII) the projected date for the start of services and the anticipated frequency and duration of services⁹; and
- (VIII) for IEPs that will affect students 16 and older, measurable post-secondary goals and transition services needed to assist the student in reaching those goals.¹⁰

These required elements of an IEP are minimum standards set by federal statute, but there is no reason that a state cannot add additional required elements.

¹ 20 U.S.C. § 1412(a)(4)

² The recitation of statutes and regulations in this report is not intended to be an exhaustive list of the laws and regulations applicable to students with disabilities, but rather a summary of those that are specifically applicable to the IEP process which is the focus of the task force's work.

³ 20 U.S.C. § 1414(d)(1)(A)(i)(I)

⁴ 20 U.S.C. § 1414(d)(1)(A)(i)(II)

⁵ 20 U.S.C. § 1414(d)(1)(A)(i)(III)

⁶ 20 U.S.C. § 1414(d)(1)(A)(i)(IV)

⁷ 20 U.S.C. § 1414(d)(1)(A)(i)(V)

⁸ 20 U.S.C. § 1414(d)(1)(A)(i)(VI)

⁹ 20 U.S.C. § 1414(d)(1)(A)(i)(VII)

¹⁰ 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)

The federal IDEA statute also contains minimum requirements for who must be on a student's IEP team. Required team members include parents, at least one regular education teacher if the student has one, at least one special education teacher, at least one district or charter representative who is qualified to supervise the provision of specially designed instruction to meet the needs of children with disabilities, an individual who can interpret the instructional implications of evaluation results (who may be a member already required by another provision of the statute), any individuals who have knowledge or special expertise regarding the child who the parents wish to have present, and whenever appropriate the child in question.¹¹ The statute also enumerates the factors that must be considered in developing the IEP, and requires consideration of positive behavioral interventions and supports for students whose behavior impedes learning and other special factors for students with other specified disabilities.¹²

The federal IDEA statute requires that the student's IEP be reviewed at least annually to determine whether annual goals are being met, to be revised to address lack of expected progress, the results of any re-evaluations, information provided by parents, or other matters.¹³

Finally, the federal IDEA statute contains a number of detailed formal procedural safeguards in addition to those described above. They include provisions governing parents' access to records, designation of educational surrogates for students whose parents cannot be located, written notice to parents of proposed changes (or refusals to change) an IEP, opportunities for mediation, the contents of required notifications to parents of complaints relating to due process and other procedural irregularities, and the specific procedures that must be followed by the state when a parent files a due process or administrative appeal of a school district or charter school's decision.¹⁴

Enhancements to the IEP Process Under Delaware State Law

In 2010, the Delaware General Assembly amended the Delaware Code to provide for a substantially more detailed definition of the "Free and Appropriate Public Education" that is required by the IDEA statute (and therefore required to form the basis for an IEP), and to incorporate specific terminology from case law in the Third Circuit Court of Appeals that was more favorable to students with disabilities than the standard that was being applied by some school districts prior to the 2010 amendments. Under House Bill 328, IEPs must provide for an education that is individualized to meet the unique needs of the student, provides significant learning to the student, and confers meaningful benefit on the student that is gauged to the student's potential.

Delaware law also contains new provisions requiring that certain elements be included in the IEP of a student 7 years or older who is not yet reading¹⁵ and a student who is deaf or has a hearing deficiency¹⁶, and a relatively new provision requiring that that local school boards be kept better apprised of appeals of IEP decisions.¹⁷

¹¹ 20 U.S.C. § 1414(d)(1)(B)

¹² 20 U.S.C. § 1414(d)(3)

¹³ 20 U.S.C. § 1414(d)(4)

¹⁴ 20 U.S.C. § 1415

¹⁵ 14 Del.C. § 3110(e)

¹⁶ 14 Del.C. § 3112

¹⁷ 14 Del.C. § 3110(d)

Although there are lengthy federal and state regulations that also govern the IEP process, they do not affect the facets of the IEP process addressed in this report in a way that differs from the statutory framework described above.

Best Practices With Respect to the IEP Process

There does not appear to be any national or academic consensus on what constitutes best practices with respect to the preparation of IEPs. Although the National Center for Learning Disabilities and the National Association of State Directors of Special Education have endorsed “standards-based IEPs” as a best practice, there has been controversy both in Delaware and nationally as to what that term means and how it is actually used with respect to the preparation of individual IEPs. For that reason, the task force takes no stance at this time with respect to using standards-based IEPs. With respect to the specific issue of the preparation of IEPs for students age 14 and older, there does appear to be a consensus -- including a recommendation from Delaware’s State Transition Task Force – that IEPs for children age 14 and older should be student-led when possible.

TASK FORCE FINDINGS AND RECOMMENDATIONS

The task force met eight times, and at each meeting also allowed members of the public to speak. Early in the tenure of the task force it became apparent that the list of issues that task force members and members of the public wished to address relating to the IEP process was longer than the task force would have time to thoughtfully discuss in the time permitted by its enabling legislation. Therefore, the task force members settled upon a number of priority recommendations, which are reflected below. However, the task force also recommends that it be reconstituted by the General Assembly so that it may return to some of the important issues that were raised but could not be discussed due to time restrictions, including district and charter school determinations of eligibility for services, and the use of standards-based IEPs.

The task force recommends that the state take the following steps as soon as reasonably possible in order to improve the IEP process for students and their parents. The task force’s recommendations apply to all public schools, both traditional public schools and charter schools. The task force recognizes that there are time commitments and costs associated with some of its recommendations, to the extent that those could be specifically calculated they are reflected in the recommendations.

Structural Support for Parents and Students in the IEP Process

1. Ensuring Representation at IEP Meetings for Parents Who Need Assistance. Several task force members and members of the public noted the complexity and potentially intimidating nature of IEP meetings, and thought it necessary (a) for parents to clearly understand that there were organizations that could either prepare them to better handle IEP meetings or attend those meetings with them, and (b) for those organizations to have adequate resources to be able to assist parents who might reasonably require their assistance. The task force focused on two options currently available to some Delaware

parents requiring assistance with the IEP process. One is the Parent Information Center, which provides training and advice to parents and, in some instances, has non-attorneys attend IEP meetings with parents. The second is Community Legal Aid Society of Delaware, which provides free legal representation to a limited number of parents with specific legal issues in the IEP process. Therefore, the task force makes the following recommendations:

- a. The state should require schools to provide specific, clear guidance to parents as soon as (a) the school has notice that their child has a disability, (b) a child is identified by the parent or school as needing evaluation for a potential disability, or (c) a child transitions as he/she approaches age three from the state's Child Development Watch program, that the parents may be able to receive assistance through the Parent Information Center, Community Legal Aid Society, or private legal counsel.
 - b. The state should ensure that the resources necessary to meet the anticipated demand for legal services are made available to the Parent Information Center and Community Legal Aid. Specifically, the task force urges the General Assembly to grant the request of CLASI's Disabilities Law Program for \$100,000 in funds to continue its special education advocacy project, which would allow it to train or assist 250 families in the IEP process, and to make \$88,500 available to the Parent Information Center in order to allow it to hire two additional full-time parent consultants to meet anticipated increases in its demand for its services.
2. Parent Councils. The task force saw great value in schools facilitating communication between parents of students with special needs new to the IEP process and parents who have more experience with the process. Therefore, the task force recommends that the state require school districts and charter schools to facilitate the creation of parent councils for the parents of students with disabilities. These parent councils would have two purposes: first, to advocate generally for children with disabilities within their school districts, and second, to provide person-to-person support for individual parents and children attempting to navigate the IEP process.

Procedural Changes to the IEP Process

1. Eliciting Input From Parents Prior to IEP Meetings. The task force believes that a more open-ended effort to solicit parents' input about their children's needs prior to an IEP meeting would result in IEPs that better reflect the viewpoints of parents and children about the unique educational needs of that child. For that reason, the task force recommends that Delaware statute require school districts and charter schools to formally elicit, through the use of a voluntary questionnaire, the viewpoints of parents and (where age appropriate) children in advance of the preparation of a draft IEP or holding of an IEP meeting. The questionnaire should elicit the parent and child's views on the child's progress to date and additional steps that should be taken to adjust the child's goals, curriculum, services, aids, modifications or other elements of the student's IEP.

2. Providing Parents With Information Prior to IEP Meetings. One problem that was repeatedly identified by task force members was the fact that in some IEP meetings, parents were presented for the first time at an IEP meeting with a draft IEP report and expected to comprehend, consider, and approve the draft IEP in a single sitting. One proposal made by the task force to improve this process was to amend Delaware statute to require that a draft IEP be offered to parents prior to an IEP meeting if one is to be considered at the meeting itself, so that the parent has the option of carefully reviewing the draft IEP before the meeting and better participating in the meeting. Any draft document provided to the parent prior to the IEP meeting should be clearly and prominently labelled as a draft document that is for discussion purposes at the impending IEP meeting. The draft IEP would be offered to parents only if such a document had been created prior to the IEP meeting, and would be accompanied by a letter clearly indicating to parents that the document is a draft for discussion and possible revision rather than a final document. In addition to a draft IEP, parents should also be able to request prior to the IEP meeting data pertaining to their child's needs and/or disability. With respect to this recommendation and the prior recommendation relating to eliciting input from parents, information should either be provided to parents in their native language where required by law or assistance should be offered to parents to translate the information.

3. Providing Protections to Teachers and Staff To Ensure Free Discussion During IEP Meetings. Some task force members noted that teachers, staff, and contractors of school districts and charter schools can feel constrained from freely engaging in discussion at a child's IEP meeting for fear of later repercussions for their comments. The task force recommends that the General Assembly amend the Delaware Code to prohibit School Districts, Charter Schools, and/or the Department of Education from retaliating or causing teachers, staff, or contractors to face other negative repercussions as a result of their expression of a student's needs and/or rights in connection to the IEP process.

4. Discouraging the Use of Acronyms and Technical Terminology in the Preparation of IEPs. The task force noted that the use of acronyms and technical terms in IEPs can be confusing to parents and children and discourage those parents and children from understanding the IEP and participating in its preparation and revision. The task force recommends that the state, in its training and instructional materials for school districts and charter schools, discourage the use of acronyms and technical terms where they need not be used, and provide a glossary to parents and children so that they can comprehend those terms where they must be used.

5. Enhanced Discussion of Transition Planning. Although funding challenges make it unlikely in the short term that individual representatives from relevant state agencies can participate in IEP meetings at an earlier stage than they presently enter the process, the task force strongly recommends that schools and school districts hold informational meetings for parents of students who are approaching transition age where parents and children can receive information from relevant state agencies and incorporate that

information into the IEP process. The task force also recommends that each school district and charter school have an employee who serves as a designated transition coordinator.

6. Prioritizing Competitive and Integrated Employment Options. Competitive and integrated employment settings should be thoroughly discussed during the IEP process as the top priority employment option for students with disabilities. This is consistent with HB319 signed into law July 2012 which declares that it is the policy of this state that competitive employment (including compensation at or above minimum wage) in an integrated setting shall be considered the first and priority option when offering or providing services to persons with disabilities who are of working age (14 years of age or older).

Format and Structure of the IEP Meeting Itself

1. Participation of Relevant Faculty and Staff. Several task force members and members of the public noted that in some cases, paraprofessionals and other staff who may work with a child more extensively than anyone else at the school are not included in IEP meetings. The task force did recognize the logistical challenges presented by having multiple staff people present at IEP meetings, at the same time that all other students in the school need to be supervised and educated. In an effort to balance these realities, the task force recommends (a) that parents be explicitly invited prior to each IEP meeting to recommend any staff members who they believe should be present at the meeting, and (b) that schools be required to ensure that those staff members be present for at least a portion of the IEP meeting, even if their schedule does not permit them to participate in the entire meeting. This recommendation reflects not only what the task force believes to be a good practice, but also applicable federal law.
2. Preparation Time for Teachers and Staff. Teachers and staff members on the task force who participate in the preparation of IEPs expressed concern with the absence of sufficient time to adequately prepare for IEP meetings. The task force recommends that school districts and charter schools develop a mechanism by which the scheduling demands on teachers and staff specifically allow for preparation time for IEP meetings.
3. Use of Computer Programs for Preparation of IEPs. A number of task force members involved in the preparation of IEPs expressed strong concern with the computer program whose use the state has mandated for preparation of IEPs. Specifically, task force members stated that the computer system frequently does not work – that it shuts down or freezes during preparation of the IEP or the IEP meeting itself, not only inconveniencing parents, students, teachers, and staff, but also causing valuable instructional and therapeutic time to be lost. The task force believes that there is real value to the use of a working computerized IEP preparation program, but the current program often does not work and is an impediment to the preparation of IEPs and the overall instruction of students with disabilities. Therefore, the task force recommends that the state legislature

direct that the Department of Education make a formal report to the General Assembly and Governor by March 1, 2015 on (a) the functionality of IEP Plus, (b) specific plans that are in place to remedy any problems with IEP Plus, and (c) available alternatives to IEP Plus which would provide a more usable computerized system for preparation of IEPs.

Reporting to Parents on Student Progress

1. Improving Reporting to Parents on Students' IEP Progress. Task force members noted that the current manner in which some school districts and charter schools report student progress on their IEPs is not helpful or, in some cases, coherent. The task force recommends that the state adopt specific standards for districts and charters to report to parents on IEP progress, which should include a clear and simple manner of communicating whether a student is meeting his or her stated IEP goals and specific information reflecting the degree to which a student has received related services that are required by his or her IEP (e.g. speech therapy, occupational therapy, physical therapy). Progress reporting for students with transition IEPs should include progress toward activities and services leading toward all post-secondary goals.

Random Auditing of District and Charter School Compliance With State and Federal Law

1. The Need for Random, Open-Ended Examinations of School Districts and Charter Schools to Ensure Compliance with State and Federal Law Governing IEPs. In the course of discussing other recommendations, it became clear to the task force that although the state reviews the written records of school districts and charter schools to ensure compliance with the law, and surveys parents anonymously to gather statistical information about the IEP process, there is no current effort to make inquiries with parents about the IEP process that would reveal concerns with that process which might not be evident from a review of written records. The task force recommends that the state directly inquire of a material number of parents from each school district and charter school each year who have participated in the IEP process as to their satisfaction with the process, and use the information gathered in the course of that inquiry to conduct follow-up examinations with school districts and charter schools as to their good faith compliance with IEP laws and regulations.

Specific Needs of Charter Schools

1. Technical Assistance and Professional Development for Charter Schools. The task force noted that there is a deficiency among charter schools, often because of their limited size compared to school districts, in training and expertise relating to the development of IEPs and knowledge of statewide programs that are available to assist with the education of students with disabilities. The task force recommends that charter schools be required to have responsible persons at their schools receive appropriate training from the Department of Education designed to ensure that they are aware of their legal responsibilities relating to IEP preparation and aware of the resources available to them to comply with those responsibilities.

Visually Impaired Students

1. Separate Task Force Recommendation. A number of public members and task force members believed that the unique educational needs of students with visual impairments were not being met through the existing IEP process, but that the number of changes necessary to remedy this problem exceeded the time or scope of this task force. Therefore, those members suggested – and this task force recommends – that the state set up a separate task force assigned to specifically address the needs of visually impaired students.