

2016

# Special Education Teachers' Working Knowledge of the IDEA

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Special Education Teachers' Working Knowledge of the IDEA

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Submitted in Partial Fulfillment of the Requirements

For the Degree of Doctor of Philosophy in

Special Education

College of Education

University of South Carolina

2016

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## ABSTRACT

The Individuals with Disabilities Education Act (IDEA) is the law that governs special education policies, procedures and practices for school districts. Special education teachers are viewed as the experts in leading the Individual Education Program (IEP) team in IEP development and implementation. Researchers have shown that special education teachers perceive themselves as having a high level of knowledge and understanding of the IDEA. However, special education teachers' actual working and practical knowledge of the IDEA has not previously been assessed. This study, using hypothetical scenarios, examined whether special education teachers were able to determine if an action taken by the district was legally appropriate and if the teachers were then able to explain why the action was or was not appropriate. The findings of this study revealed that special education teachers actually possess a less than proficient level of knowledge and understanding of the IDEA, as well as some disturbing misconceptions of some legal requirements.

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## CHAPTER ONE

### DESCRIPTION AND IMPORTANCE OF THE PROBLEM

Children with disabilities ages three to 21 are entitled to a Free Appropriate Public Education (FAPE) according to the Individuals with Disabilities Education Act (IDEA) (IDEA Regulations, 34. C.F.R. § 300.117) (Yell, Thomas & Katsiyannis, 2012). A FAPE is defined as special education and related services that meet the following criteria: (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state; (c) include an appropriate preschool, elementary school, or secondary school education in the state; and (d) are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 C.F.R. §§ 300.320 through 300.324 (IDEA Regulations, 34.C.F.R. § 300.117). In 1982 in *Board of Education v. Rowley* (hereafter *Rowley*), the United States Supreme Court developed a two-part test to determine if a student has received a FAPE, using the following questions (a) Did the school district comply with the various applicable procedures? and (b) was the IEP “reasonably calculated to enable the child to receive educational benefits?” (p. 206-207). This continues to be the standard used today.

The IEP is the vehicle by which a school district provides a FAPE to eligible students with disabilities. The foundation of the IEP is a comprehensive description of the student’s present levels of academic achievement and functional performance. Measurable annual goals are developed based on these present levels of the student’s

performance. The IEP team uses the annual goals to determine the intensity and amount of special education and related services the student needs. A statement of these services must be included in the IEP document, along with a statement of the extent to which the student is removed from general education and the reason for the removal (IDEA Regulations, 34 C. F. R §§ 300.320-300.324). Special education placement decisions are made only after the IEP has been developed; the requirements for least restrictive environment (LRE) must be considered in the placement decision.

Special education teachers and other special education providers are responsible for preparing a draft IEP to be reviewed at an IEP meeting. They are responsible for gathering and explaining the data on which educational decisions are based. In order to draft a legally compliant and educational meaningful IEP, special education teachers and other IEP team members must understand the legal requirements of developing and implementing an IEP, be adept at creating an appropriate document, and be skillful in conducting a proper IEP meeting.

Because the majority of parent and school district disagreements begin at an IEP meeting, Zirkel (2015) suggested that special education teachers must have “legal literacy” in the foundational areas of child find, eligibility, and FAPE, as these are typically the major considerations in all facets of IEP development and implementation. Special education teachers should be knowledgeable and confident in these areas because they are the professionals who are with the children each day and who have the most contact with parents. FAPE is a fundamental part of the IDEA, linked to issues of LRE, tuition reimbursement, and compensatory education, and is the subject of most special



education litigation (Zirkel, 2015). Zirkel (2015) suggested special education teachers' knowledge in this area could make a significant difference in the outcome of litigation.

### **Rate of compliance**

An IEP that is legally correct and educationally meaningful will meet both the procedural and substantive requirements under the IDEA (Christle & Yell, 2010). Bateman and Herr (2006) suggested, however, that many special education teachers and other IEP team members are unequipped to write IEPs that are legally compliant. Errors committed by IEP teams can be described as either procedural or substantive (Christle & Yell, 2010). Procedural errors are errors mistakes educators make involving basic legal requirements of the IDEA, such as meeting timelines, including the mandated team members in IEP development and in the IEP meeting, in providing appropriate notice to parents, and including parents in IEP development. Substantive errors involve errors in the actual content requirements of the IEP and include failure to create an IEP that is designed to provide a meaningful educational program for a student, and enable the student to progress. Some examples of substantive requirements include identifying present levels of academic and functional performance that inform measurable annual goals, developing and implementing appropriate special education services, and monitoring a student's progress. Many IEPs do not include annual goals that are measurable, based on solid present levels of performance, or measured on a regular basis (Bateman & Herr, 2006). In addition to comprehensive present levels, measurable annual goals, and services provided to a student, IEPs must also include a description of how, and how frequently, progress must be monitored. It is essential the IEP document have all of the required components. It is also important the IEP meeting be conducted with

all required IEP team members present, and provides for an opportunity to include parents in the data based decision-making process.

Blackwell and Rosetti (2014) reviewed 51 studies that examined issues with IEP development from 1998 to 2014, and found many of the same concerns, regarding measurable annual goals, as those noted by Bateman and Herr (2006). For example, the authors found little connection between assessments conducted by special education teachers, IEP goals and objectives, and instructional preparation. They also noted the studies revealed issues of noncompliance due to school personnel's failure to (a) meet IDEA requirements; (b) include research based transition practices; (c) address behavior when students exhibit behavioral problems; (d) involve students with disabilities in the general education curriculum.

O'Dell and Schaefer (2005), identified areas that IEP team members seem to find the most difficult to implement. Results of their study indicated a key problem was completing required special education paperwork, specifically the time required to properly complete the "complicated and massive" IEP document. Respondents were also concerned about the lack of appropriate placement options for children was also a concern, with implementation of full inclusion believed to be inappropriate for many children. Parent participation, specifically working with very demanding parents to reach a reasonable agreement, was also an area of concern.

Rosas, Winterman, Kroeger, and Jones (2009) used a rubric to assess IEP compliance in one high school. Using the rubric, each of 33 teachers rated a randomly selected IEP to assess fulfillment of the requirements of IDEA. The rubric included nine areas mandated by the IDEA: (a) student's present levels of academic achievement and

functional performance, (b) measurable annual goals, (c) benchmarks and short term objectives for students who take alternate assessments, (d) periodic reports to parents (e) special education and related services, (f) least restrictive environment, (g) accommodations for district testing, (h) coordinated transition activities and services beginning at age of 16, and (i) appropriate technical information. Results indicated at least half of the IEPs reviewed were not compliant in all nine areas. The most prevalent issues across the board were the lack of explanation of impact of the student's disability in present levels, included in 56% of IEPs reviewed; lack of special education and related services based on peer reviewed research (27%); lack of accommodations based on student needs, as described in present levels (55%); and accommodations that do not follow local and federal guidelines (48%).

### **Issues of Noncompliance and Litigation**

As the requirements in the IDEA have increased, the IDEA has changed from a law created to provide educational access for students with disabilities, to a law which requires that students' special education programs confer meaningful benefit. Litigation in the field of special education has also increased significantly over the past four decades (Zirkel, 2014). Zirkel (2015) reported and discussed national issues of noncompliance in special education, from January, 2013 to March, 2015. He reviewed 207 cases from this time period, over half of which had noncompliance issues related to IEP development or implementation. O'Dell and Schafer (2005) reported IEP implementation as the most frequently cited area of noncompliance and the primary issue in litigation. The most common issues of noncompliance in South Carolina are also related to IEP development or implementation, with failure to fully implement the services in the IEP identified as

the most prevalent problem reported each year (Drayton, 2014; Ott, 2013). These are problems that might be lessened if IEP teams were diligent in following the procedural and substantive requirements of the IDEA.

In addition to the information provided by Drayton (2014) and Ott (2013), a search of legal cases in the state of South Carolina, via Special Ed Connection ®, revealed 41 Office for Civil Rights (OCR) rulings, 41 State Education Agency (SEA) decisions, and five court cases from 1983 to 2000. From 2000 to 2014, there were 89 OCR Rulings, 69 SEA Decisions, and five court cases. Thus, the incidence of OCR rulings and SEA decisions have increased over the past four decades, from 41 to 69, and 41 to 89, for OCR rulings and SEA decisions, respectively.

In a review of the OCR rulings and SEA decisions in South Carolina since 2000, at least half are related to IEP team decisions or IEP implementation (35 of 89 OCR rulings and 48 of 69 SEA decisions). These findings may reflect IEP teams' understanding and working knowledge of the requirements of the IDEA. The special education teacher is the front line educator regarding IEP development and implementation, and must be knowledgeable enough to guide an IEP team to make decisions within the scope of the law (Zirkel, 2014). It is his or her responsibility to ensure the provision of all special education and related services, and to assist general education teachers in understanding the general education accommodations and modifications, which are required for a student.

In a review of special education court cases in South Carolina, one case, *Florence County. v. Carter (1993)*, was heard by the United States Supreme Court. The case was first heard by the United States District Court for South Carolina, and then by the United

States Court of Appeals for the Fourth Circuit. The district had been found in denial of FAPE because the student's IEP was found to be inadequate to enable her to make progress. The Supreme Court ordered Florence County School District Four to reimburse the parents the costs of private school placement.

Another case was recently heard by the Fourth Circuit Court of Appeals, resulting in a ruling for the parents (*Sumter County v. Heffernan, 2011*). In this case, the Circuit Court of Appeals ruled that a Sumter County teacher and classroom aides did not understand how to implement the Applied Behavior Analysis (ABA) therapy required in a child's IEP, which resulted in a denial of FAPE for the school district, and reimbursement for the parents for the ABA home program. Several cases have been heard by the United States District Court for South Carolina. One, which resulted in a ruling for the parents, involved issues with the content of the student's IEP (*Lexington County v. Frazier, 2011*). In this case, the Lexington County school district continually failed to address the student's anxiety in his IEP. Although the student displayed significant anxiety in school, and the parents repeatedly asked for counseling to be included in the IEP, the District refused. This error in the process of developing an IEP resulted in an order for the school district to provide reimbursement, in part, for private school placement. Another case found in favor of a group of juveniles remanded to the Department of Juvenile Justice (*Alexander v. Department of Juvenile Justice, 1995*) for failure to identify students with disabilities, and failure to either implement the IEP or develop an appropriate IEP for the incarcerated juveniles. These errors in IEP implementation and development turned out to be costly for the districts.

Five cases were settled in United States District Court of South Carolina, with rulings in favor of the district. Four of these cases involved an alleged denial of FAPE and a request for district reimbursement for private placement (*Bridges v. Spartanburg County, 2011; J.B. & M.B. v. Horry County, 2001; Waddell v. Lexington/Richland School District 5, 1999; Horry County v. P.F., 1998*). The remaining case addressed a student's special education placement in a school which was not her home school, but in another school within the district (*Troutman v. Greenville County, 1983*). Another case was settled in the South Carolina Court of Appeals. In 2013, the Court revoked Midlands Math and Business Academy Charter School's charter because special education providers failed to provide required progress reports (*Midlands v. Richland County, 2013*). Many inconsistencies were reported regarding the special education program at Midlands, including failure to report progress every four and one half weeks as specifically required on some students' IEPs. This error in IEP implementation cost the school its charter.

### **Knowledge of IEP Teams**

Schools and districts may put themselves at risk legally when the educators on an IEP team, and specifically the special education teacher, come to an IEP meeting ill equipped to present or explain data, which should lead the IEP decision making process. O'Shea, Stoddard, and O'Shea (2000) used a survey to assess perceptions of preparedness of pre-service and experienced special education teachers in Florida and Pennsylvania. Both the more experienced and less experienced groups of special education teachers indicated they believed they were prepared to implement the requirements of IDEA, including procedures, assessment and IEP development, general

education curriculum, least restrictive environment, parent-educator interactions, related services, instructional methods, and behavioral support. The survey results indicated no significant differences in the perceptions of preparedness for each group, although actual knowledge was not assessed.

In contrast, Whitaker (2003) conducted a study with first year special education teachers in South Carolina and found different results for inexperienced teachers. She found beginning special education teachers reported a lack of understanding regarding district policy, procedures, and the requirements under the law that are specific to special education. According to the results of the study, the greatest areas of need included knowledge of special education policies, procedures, guidelines, paperwork, and specific special education district requirements. Interestingly, this specific guidance in special education policies and procedures was also an area where the teachers received the least assistance. Whitaker (2003) suggested that special education administrators should be more cognizant of this need and more thorough in providing procedural assistance to beginning special education teachers. She also suggested teacher preparation programs should include more activities specific to the legal requirements under the IDEA, such as role playing IEP meetings, drafting IEPs, studying policies and procedures from a variety of districts, and assisting with functional behavioral assessment (FBA) and behavior intervention plan (BIP) development.

Although Whitaker (2003) found new special education teachers lacked knowledge and understanding of legal requirements; special education teachers appear to feel competent in their knowledge of the requirements under the IDEA, talk more than any other team member in IEP meetings, and perceive themselves as understanding the

IEP process better than other team members (Martin, Marshall, & Sale, 2004). Their general education counterparts, however, reported feeling uncomfortable speaking up in an IEP meeting and participating in the decision making process. Whereas all IEP team members are responsible for appropriate educational decisions and full implementation of an IEP, principals generally regard special education teachers as legal experts, and will commonly defer to them in IEP recommendations and implementation (O'Laughlin & Lindle, 2014).

In a 2006 study of secondary principals' understanding of the IDEA (Wakeman, Browder, Flowers, & Ahlgrim-Delzell, 2006), researchers reported that administrators perceived themselves to have a good understanding of fundamental issues and basic understanding of the operation and function of special education, but reported limited knowledge in current issues such as self-determination practices, FBAs, and meeting students' individual needs through universally designed lessons. Principals who perceived that they had greater knowledge, also showed more day to day involvement in the special education programs in their schools. Although most principals agreed special education students should have access to general education, fewer principals noted that the special education students in their schools were actually getting that access to the general education curriculum. More recently, O'Laughlin and Lindle (2014) reported that although principals had intellectual knowledge of the IDEA's LRE requirement, this knowledge did not guide their decision making, or recommendations regarding students with IEPs. The principals did not understand how to appropriately implement this principle of the IDEA (O'Laughlin & Lindle, 2014). Although principals rated their own understanding and knowledge of the IDEA, specifically law and policy, as good and very



good, the special education directors in the same study rated the knowledge and understanding of these same principals as fair (Duncan, 2010). In addition, Jesteadt (2012) surveyed principals in Florida and found that principals' understanding of the six principles of the IDEA (Zero Reject, Evaluation, LRE, FAPE, Due Process, Parents) was substantially low.

### **Statement of the Need**

IEP teams can avoid conflict and errors in IEP development when they understand and follow the procedural and substantive requirements of the IDEA (Christle & Yell 2010). Effective IEP development requires that IEP team members possess the skills and knowledge to lead the team in the educational decision-making process. Without this knowledge base, special education teachers, principals, and other IEP team members could potentially put a district at risk with careless or inaccurate remarks or practices. Researchers have shown that general education teachers have an overall lack of comfort with the IEP process and foundational knowledge (Martin, et al. 2004). Other studies reviewed (Martin, et al., 2004; O'Laughlin & Lindle, 2014; Wakeman, et al., 2006) indicated both special education teachers' and principals' perception of their foundational knowledge of the IDEA is satisfactory, however other studies noted that principals were lacking in knowledge (Duncan, 2010; Jesteadt, 2012), and unable to use IDEA knowledge in program implementation (O'Laughlin & Lindle, 2014). Working knowledge of the IDEA has not been studied in the majority of research reviewed. One study which addressed practical knowledge through hypothetical scenarios revealed a significant lack of understanding for the principals who responded (Jesteadt, 2012). No evaluation of special education teachers' working knowledge of special education law

has been conducted. IEP team members must have not only basic knowledge of the requirements of the IDEA, but also be able to navigate difficult or unexpected situations that arise during an IEP meeting. When districts make mistakes, such as those noted earlier in South Carolina case law, it is important to investigate whether team members, especially special education teachers, have knowledge that can be applied when developing and implementing IEPs on a daily basis.

The number of case law decisions, and increased requirements in the IDEA demonstrate the need for special educators and other IEP team members to have a high level of practical knowledge of the IDEA. Because special education teachers are generally regarded as the experts in IEP development and implementation (O’Laughlin & Lindle, 2014), it is especially important that they are equipped to lead the team in decision making that is legally defensible. When these professionals are in an IEP meeting, sitting at the table with a parent who disagrees with the school’s recommendations, they must be confident in their knowledge of the legal and appropriate options available to the district. IEP teams who are not confident in their working knowledge of the IDEA allow for potential legal issues to develop when they might have otherwise been avoided.

### **Research Questions**

The current study is a microcosm in the larger picture of national issues of noncompliance, the largest of which is IEP development and implementation (O’Dell & Schafer, 2005; Zirkel, 2015). Although the total number of incidents of noncompliance across South Carolina has decreased over the years, the majority of state level complaints filed between the 2008-09 school year and the 2014-15 school year, have resulted in the

need for corrective action on the part of the district involved (Drayton, 2014; Ott, 2013). This, coupled with the increase in recent SEA and OCR decisions across the state, shows a need to investigate the working knowledge of the IDEA for IEP team members in South Carolina. The purpose of the study is to determine the working and practical knowledge of special education teachers within the state of South Carolina. In this study, the term “working knowledge” refers to the ability of the special education teacher to apply knowledge of special education law in real-life situations. Given scenarios that have the potential to create a legal problem for a district, will the special educator be able to determine if the decision is legally appropriate? The study will address the following research questions:

1. What is the working knowledge of the requirements of the IDEA among special education teachers in South Carolina, specifically related to IEP development and IEP implementation?
2. Is there a difference in the working knowledge of the IDEA and the special educators’ demographic characteristics, including areas of certification, years teaching in special education, degree held, and whether they have previously been involved in special education litigation?

This research addressed these questions by gathering and analyzing special education teachers’ practical knowledge of the IDEA. Teachers were asked to complete an online survey of hypothetical scenarios based on issues in special education that can potentially result in legal struggles for a school district. Results of this research may be used to determine strengths and weaknesses of special educators’ ability to apply knowledge of the IDEA in potentially difficult situations. In addition, the results of the

study will be used to recommend special education professional development for participating districts' special education teachers regarding IEP team recommendations and decisions. In turn, targeted professional development should result in a more inclusive working knowledge of the IDEA and will provide a measure of prevention regarding legal issues across the state.

### **Definitions**

**Due Process.** Due process hearings are court hearings that require an impartial hearing officer (IHO) to objectively consider both parties' facts of the case, and consequently render a decision. Due process requires testimony from relevant educators, expert eye witnesses, and the presentation of evidence (IDEA Regulations, 34 C.F.R. § 300.511) (Mueller, 2014, p. 3).

**Free Appropriate Public Education (FAPE).** Free appropriate public education refers to special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the State educational agency; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with the individualized education program required under this law [IDEA, 20 U.S.C. § 1401 (9)].

**Individuals with Disabilities Education Act (IDEA).** The Individuals with Disabilities Education Act is the federal special education law, codified at 20 U.S.C. § 1400 et seq.

**Individual Education Program (IEP).** The term individualized education program or IEP means a written statement for each child with a disability that is

developed, reviewed, and revised in a meeting in accordance with Sections 300.320 through 300.324, and that must include (a) a statement of the child's present levels of academic achievement and functional performance... (b) a statement of measurable annual goals... (c) a description of how the child's progress... will be measured... and when... (d) a statement of special education and related services ... [IDEA, 20 U.S.C. 1414(d)(1)(A) and (d)(6)].

**Least Restrictive Environment (LRE).** Least restrictive environment means that to the maximum extent appropriate, children with disabilities, including children in private or public institutions or other care facilities, are educated with children without disabilities. The removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in a regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily [IDEA, 20 U.S.C. § 1412(a)(5)(A)].

## CHAPTER TWO

### REVIEW OF THE LITERATURE

This chapter will include a review of the history of special education law, from the period prior to the enactment of the Education for All Handicapped Children Act (EAHCA) to the most recent reauthorization of the IDEA in 2004, including the landmark Rowley (1982) decision by the U. S. Supreme Court and its continuing impact on special education law. The FAPE standard and legal requirements for IDEA compliance will be reviewed, along with compliance issues that have historically been problematic, and continue to be challenging for schools and districts. IEP development and implementation, as it relates to national and local issues of noncompliance, will be examined. National and local procedural and substantive issues will be reviewed and relevant local special education case law will be discussed. Research regarding the perceived knowledge of some IEP team members (special education teachers, general education teachers, and school administrators) will be examined, along with the actual knowledge of principals, as well as how this knowledge may effect IEP team decisions.

#### **History of Special Education Law**

Before the EAHCA was signed into law in 1975, many children with disabilities had very limited access to educational opportunities. Many students were either purposefully excluded from school, or allowed to attend school, with sub-par educational opportunities (Yell, Katsiyannis, & Hazelkorn, 2007). Early federal legislation, the

Expansion of Teaching in the Education of Mentally Retarded Children Act of 1958, and the 1965 Elementary and Secondary Education Act, provided for educating students with disabilities (Yell, Rogers, & Rogers, 1998). However, it was not until 1975, when the EAHCA was signed into law by President Gerald Ford, that students with disabilities were guaranteed a FAPE. The EAHCA designated federal funding to assist states in providing an education for students with disabilities, and required that states receiving these federal funds develop laws and regulations to guarantee that children with disabilities within the state receive a FAPE.

Legislation since the EAHCA has expanded and clarified the original mandate (Yell et al., 1998). In 1986, the Handicapped Children's Protection Act was passed, adding the provision of attorney's fees for parents who prevail in due process. The EAHCA was renamed the Individuals with Disabilities Education Act (IDEA) in 1990, adding the categories of autism and traumatic brain injury, as well as transition planning for students 16 and above. The IDEA was amended in 1997 with a focus on, not only improved access to education, but also educational performance and achievement of students with disabilities. With this amendment, Congress added the requirement to include all students in state testing. IEP changes included adding measurable annual goals in each IEP, and regular reporting of progress. In recognition of an increase in IDEA litigation (school and parent disputes over IEP development and implementation), Congress also added the use of non-adversarial methods of conflict resolution (Mueller, 2014) and addressed the discipline of students with disabilities.

The most recent reauthorization of the IDEA occurred in 2004 when President George W. Bush signed into law the Individuals with Disabilities Improvement Act

(IDEIA), also called IDEA 2004 (henceforth referred to as IDEA), which included a strong emphasis on improving outcomes for students with disabilities. The purpose of the IDEA was to ensure that students with disabilities not only have equal access to educational opportunities, but also that students benefit from their educational program in a meaningful way. To further ensure the provision of FAPE under the IDEA, in 2004, Congress added the instructional requirement that special education services, related services and supplementary aids and services be based on peer reviewed programming (Yell, 2012).

### **Free Appropriate Public Education**

Children with disabilities, ages three to 21, are entitled to a FAPE according to the IDEA (Yell et al., 2012). A FAPE is defined as special education and related services that meet the following criteria: (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state; (c) include an appropriate preschool, elementary school, or secondary school education in the state; and (d) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 through 300.324 (IDEA Regulation, 34 C.F.R. § 300.117). In the early days of the EAHCA, a FAPE was not defined in terms of the content or substance of the IEP, but primarily in whether the appropriate procedures had been followed in IEP development (Yell et al., 2007). This changed when arguably the most significant decision in special education case law was made by the Supreme Court in 1982 in *Rowley*.

In 1978, Nancy and Clifford Rowley challenged the Hendrick Hudson Central School District's refusal to provide a sign language interpreter for their daughter Amy,



who was deaf, and requested a due process hearing. The Rowley's attorney argued that the school district had not provided Amy with an appropriate education that offered equal opportunity, although Amy was easily progressing from grade to grade in school. The Rowleys alleged a denial of FAPE, not because of procedural errors (there were none), but based on the premise that without a sign language interpreter, Amy was not able to reach her full potential. After the case had been heard by a hearing officer, United States District Court for the Southern District of New York, and United States Court of Appeals for the Second Circuit, the school district appealed to the United States Supreme Court. In 1982 the United States Supreme Court ruled in favor of the school district, declaring that a FAPE equated to the provision of an educational plan that enables a child to benefit educationally, not necessarily to reach his or her full potential.

As a part of the Rowley decision, the high court developed a two-part test to determine if a student has received a FAPE, using the following questions (a) Did the school district comply with the various applicable procedures? and (b) was the IEP "reasonably calculated to enable the child to receive educational benefits?". School districts are required to follow relevant procedures, and to provide an education that is meaningful and will enable the child to make progress. Although Rowley continues to be the standard used today, other decisions since Rowley have been used to further clarify the meaning of educational benefit (Yell et al., 2007). In 1988, the Third Circuit ruled that IEPs must provide more than "trivial" benefit, and should lead to learning outcomes that are meaningful for the individual student (*Polk v. Central Susquehanna Intermediate Unit 16, 1988*). This court also indicated that benefit should be considered in light of a student's ability to learn. For example, benefit for a student whose ability level is

significantly below his or her same age peers might consist of functional and self-help skills, whereas others in the same age group, but at a higher ability level, might be able to make academic gains. Similarly, in 1997, the Fifth Circuit Court (*Cypress-Fairbanks Independent School District v. Michael F.*) ruled that in order to provide a FAPE, an IEP must be designed to ensure a meaningful education. A meaningful education was defined as not only academic benefit, but also basic self-help and social skills when appropriate (Yell et al., 2007). However, meaningful benefit does not necessarily mean the “best”. The Sixth Circuit Court of Appeals ruled that districts are not required to provide the “Cadillac” of special education services when a “Chevrolet” will get the job done (*Doe v. Board of Education of Tullahoma City Schools , 1993*).

Given the results of case law since Rowley, we can gather that the standard for educational benefit has been clarified over time. In order to ensure the provision of FAPE, school districts should be sure they understand and follow the procedures that are applicable under the law. They should also be sure the IEP is designed to provide benefit that is relevant to the student and his or her individual needs, and be able to show the student has made progress on the goals and objectives in the IEP.

### **Individualized Education Program**

The IEP is the vehicle by which a school district outlines the provision of a FAPE to the students with disabilities it serves (Yell, 2012). A specific process should be followed in IEP development, including assessment of the student’s functional and educational needs, development of the student’s educational program, and monitoring the student’s progress (Yell & Stecker, 2003). The foundation of the IEP is a comprehensive description of the student’s present levels of academic achievement and functional

performance. The IEP must include measurable annual goals, which are based on the student's present levels, as well as a statement of how and when progress toward these goals will be monitored. The IEP team uses the annual goals to determine the intensity and amount of special education and related services the student needs. A statement of these services must be included in the IEP document, along with a statement of the extent to which the student is removed from general education and the reason for the removal (IDEA Regulations, 34 C.F.R. §§ 300.320-300.324).

According to Yell, Katsiyannis, Drasgow, and Herbst (2003) there are three steps that must be followed in IEP development:

1. The IEP begins with a statement of the present levels of educational performance that is based on the data collected during the assessment.
2. The team develops a student's special education program. When developing the educational program, the IEP team determines the goals, benchmarks, and objectives that will drive the program and also be used to evaluate student progress. The IEP team decides what special education services, related services, and program modifications are necessary to provide a beneficial education to a student.
3. The IEP team adopts a means to monitor a student's progress in his or her educational program. The IEP must also include a statement of how the student's progress toward his or her annual goals will be measured and how his or her parents will be informed of (a) their child's progress toward annual goals and (b) the extent to which their child's progress is sufficient to enable him or her to achieve the IEP goals by the end of the year. (Yell, et al., 2003, p. 184)

The IEP not only describes the student's educational program but also serves as means to communicate with parents, manage a student's educational program, evaluate a student's progress on his or her annual goals, and provide a level of accountability for the school district (Yell, 2012). Schools can use the IEP to monitor and enforce the law within their own districts (Smith, 1990a).

Placement decisions are made after the IEP has been developed. Least restrictive environment (LRE) requirements must be considered in placement decisions. According to the IDEA, the LRE requires that "Each public agency must ensure that (i) 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 nondisabled; and (ii) 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" (IDEA Regulations, 34 C.F.R. §§ 300.114). An IEP team should consider the student's general education classroom as the first option, and make recommendations for special education placement, based on the special education services, related services, accommodations, and modifications that are required in the student's IEP.

An IEP team is a multidisciplinary team, that has specific knowledge of the student, and is charged with making educational decisions to meet the student's individual needs. Required IEP team members include a local education agency (LEA) representative (most often the school principal or assistant principal); a special education teacher of the child; a general education teacher of the child; a person who can interpret

assessment or evaluation information for instructional purposes; and the parents (Yell, 2012). Although districts cannot require parents to attend, they should make every effort to include parents in the IEP process. Other IEP team members include the student (when appropriate), related service providers (when appropriate), and any other persons that either the parents or the school district choose to include for a specific purpose. Members of the IEP team, usually the special education teacher and other special education providers, are responsible for preparing the draft IEP to be reviewed at an IEP meeting. They are responsible for gathering and explaining the data which lead the team to relevant educational decisions. In the IEP process, current data (present levels of both academic and functional performance) drive the development of goals and objectives. In turn, the goals and objectives drive the special education and related services to be provided for the student. As services are provided, data continue to be collected on the IEP annual goals. These data then inform the updated present levels of performance in order for the team to update the IEP as appropriate. In order to draft a legally compliant and educationally meaningful IEP, special education teachers and other IEP team members must understand the legal requirements, be adept at creating an appropriate document, and be skillful in conducting a proper IEP meeting (Yell, Katsiyannis, Ennis, & Losinski, 2013; Zirkel, 2015).

School officials can feel more confident in IEP teams' ability to develop legal and educationally meaningful documents by becoming familiar with the IEP process and the requirements of the IDEA. Much work has been done at both the federal and state level since the EAHCA was passed in 1975, yet IEP teams have continued to struggle with developing legally correct IEPs (Drasgow, Yell, & Robinson, 2001). Much work is still

needed to ensure appropriate IEP development and implementation (Christle & Yell, 2010).

### **Legal Literacy**

Because the majority of parent and school district disagreements begin at an IEP meeting, Zirkel (2015) suggested special education teachers must have “legal literacy” in the foundational areas of child find, eligibility, and FAPE, as they are typically the major players in all facets of IEP development and implementation. Special education teachers should be fluent in these areas because they are the professionals who are with the children each day and who have the most contact with parents. FAPE is a fundamental part of the IDEA, and is the subject of most special education litigation (Zirkel, 2015). FAPE is also linked with least restrictive environment (LRE), tuition reimbursement, and compensatory education (Zirkel, 2015). Drasgow et al. (2001) explained that procedural mistakes in IEP development can be avoided when teachers and school administrators, are well versed in the requirements of the IDEA and related state laws. Zirkel (2015) suggested special education teachers’ knowledge in this area could mean the difference in whether school districts prevail or fail in legal struggles.

### **Procedural and Substantive Compliance**

An IEP that is legally correct and educationally meaningful will meet both procedural and substantive requirements under the IDEA (Christle & Yell, 2010). Bateman and Herr (2006) suggest many special education teachers and other IEP team members are unequipped to write IEPs that are legally compliant. Errors committed by IEP teams are either procedural or substantive (Christle & Yell, 2010). Procedural errors are mistakes made in legal requirements, such as meeting timelines, including the correct

team members in IEP development and in the IEP meeting, including all required sections in the IEP document, providing appropriate notice to parents and including parents in IEP development. Procedural errors that interfere with a student's access to education, a student's ability to benefit from education, or a parent's participation in the IEP process, might be considered a violation under the IDEA which results in denial of FAPE. Most rulings made by hearing officers are based primarily on substantive elements (Yell, 2012). Substantive errors include failure to create an IEP which is designed to provide a meaningful educational program for a student, and enable the student to progress. Substantive requirements include present levels of academic achievement and functional performance, which describe a student's current level of functioning and inform the development of measurable annual goals that are meaningful and relevant for the student. Other substantive elements include appropriate accommodations and modifications to general education, the use of positive behavioral supports for social and behavioral needs, the provision of appropriate special education services, and the assurance of regular monitoring of a student's progress.

School districts that are able to follow both procedural and substantive requirements might avoid legal issues with IEP compliance, and be held in good standing with their State Education Agency (SEA), the agency responsible for monitoring districts' procedural and substantive compliance under the IDEA. For example, the South Carolina State Performance Plan (SCSPP) includes the monitoring of districts throughout the state in procedural items such as timelines and accurate data collection; and in substantive items such as academic performance on state tests, appropriate evaluations, and parent participation/relationships/conflict resolution (SCSPP, 2013).

Also, as part of the SEA's monitoring process, IEPs from each district are evaluated for both procedural and substantive compliance. The state must evaluate districts in these and other required areas of compliance to help ensure the provision of FAPE in the LRE for students with disabilities.

### **Legally Correct IEPs**

It is essential the IEP document has all of the required components, including present levels, measurable annual goals, accommodations and modifications, a statement of special education and related services, a plan for monitoring progress on the annual goals, and justification of removal from general education. However, according to Bateman and Herr (2006), many IEPs do not meet basic compliance requirements, including annual goals that are measurable, are based on solid present levels of performance, and are actually monitored on a regular basis. Even when districts meet procedural compliance with a correctly written document, if substantive requirements are not met, the intent of the law is also not met (Deno & Mirkin, 1980). The IEP must be designed to meet the unique needs of the student with a disability, and classroom activities should adequately reflect the goals and services provided for in the IEP document. It is clear in the law that a direct relationship should be found between the IEP document and the delivery of specialized instruction described in the IEP (Smith, 1990b). If the IEP is not designed specifically with the student's individual needs in mind, it is doubtful it will be used as intended to drive programmatic and instructional decisions for the student.

Rosas et al. (2009) used a rubric to assess compliance of IEPs in one high school. In this descriptive single case study, each of 33 teachers used a rubric to rate a randomly



selected IEP to assess whether the IEP was in compliance with the requirements of IDEA 2004. The rubric included nine areas mandated by the IDEA: (a) student's present levels of academic achievement and functional performance, (b) measurable annual goals, (c) benchmarks and short term objectives for students who take alternate assessments, (d) periodic reports to parents (e) special education and related services, (f) least restrictive environment, (g) accommodations for district testing, (h) coordinated transition activities and services beginning at age 16, and (i) appropriate technical information. Teachers used a four point Likert scale to rate each area as Standard Not Met; Standard Partially Met; Standard Met; or Standard Exceeds. Results indicated that teacher participants found evidence of overall compliance in seven of the nine areas, with two areas only partially meeting the standard (special education and related services and accommodations for district testing). However, they also found that at least half of the IEPs reviewed were not compliant in all nine areas. The most prevalent issues across the board included the lack of explanation of the impact of the student's disability (a required part of the student's present levels of academic achievement and functional performance), included in 56% of IEPs reviewed; special education and related services based on peer reviewed research (27%); accommodations based on student needs, as described in present levels (55%); and accommodations that follow local and federal guidelines (48%).

Landmark and Zhang (2012) created an instrument to measure compliance in 212 IEPs reviewed specifically for required transition components. The instrument included three parts. The first part (descriptive) was used to collect information about the content of the transition information in the IEP and student demographics. The next part

(compliance) contained questions about the transition components required under the IDEA. The last part of the instrument (practices) was designed to assess evidence of appropriate transition practices. Results showed that 57% of the IEPs included the required team members; 41.5% met all transition timelines outlined in the IDEA; 44.8% included appropriate and measurable postsecondary goals; and 77.4% had measurable independent living postsecondary goals. Interestingly, some IEPs did not include any required measurable annual goals, and some had up to 50 annual goals. Similar to the Rosas et al. (2009) study, full compliance was found in less than half of the IEPs reviewed.

Blackwell and Rosetti (2014) reviewed 51 studies that examined issues with IEP development from 1998 to 2014. For the purpose of analysis, they divided the studies into four general categories: assessment information considerations (three studies); dynamics of IEP meeting (11 studies); IEP content (24 studies); and student participation in IEP development (13 studies). In all 24 of the IEP content studies, the authors noted that substantive requirements were an area of difficulty for IEP teams, specifically in linking present levels with annual goals and objectives, and with instructional supports and related services. Even basic procedural requirements proved challenging for IEP teams. They also found little connection between assessments conducted by special education teachers, IEP goals and objectives, and instructional preparation. The authors noted there was limited research related to how assessment information is used in IEP development. The authors also reported little relationship between student performance and the determination of accommodations for both instruction and for testing. They found that special education teachers and administrators appear to be in control of most

IEP meetings and have the largest influence on IEP development, with parents and students sometimes acting as very passive participants. Blackwell and Rosetti (2014) also noted issues of noncompliance due to failure to meet IDEA requirements; failure to include research based transition practices, specifically with IEPs of students with behavioral problems; and concerns with the quality of IEPs as a means of including students with disabilities in the general education curriculum.

A 2005 qualitative study, by O'Dell and Schaefer, explored the areas of IEP compliance viewed as the most problematic or difficult to implement, in rural areas of Oregon, Washington, Wyoming, Pennsylvania, and Ohio. IEP team members were interviewed and questioned (prior to the 2004 reauthorization of the IDEA) regarding the areas of the 1997 IDEA policy that the IEP team members seem to find the most challenging to implement. The authors interviewed 20 special education teachers, seven speech/language pathologists, and five school psychologists about their views on paperwork, placement, evaluation/eligibility, the IEP, and parent participation. Problems were noted with paperwork, specifically the time required to properly complete the “complicated and massive” IEP document and other related paperwork. One special education teacher commented that the time required for completing compliant paperwork greatly interfered with time that should be spent teaching. Results also indicated a concern with having appropriate placement options for children, with implementation of full inclusion for all or most children seen as particularly problematic. The school psychologists complained about the lack of time to adequately evaluate students for IDEA eligibility. The concern with the IEP was not only the large amount of related paperwork, but also ensuring that annual goals are clear and measurable. There was no

concern related to getting parents to attend IEP meetings. However, parent participation, specifically the ability of the IEP team to work with parents to reach agreement, was an area of concern.

Based on the research reviewed, there are widespread problems with the IEP document. Many IEPs do not contain the required components, such as measurable annual goals (Bateman & Herr, 2006; Landmark & Zhang, 2012)). In many cases, annual goals are not linked with special education services or required accommodations found in the IEP document (Bateman & Herr, 2006; Blackwell & Rosetti, 2014; Landmark & Zhang, 2012; Rosas, et al., 2009). In other studies, IEPs were missing essential components such as transition components (Landmark & Zhang, 2012), appropriate special education services (Rosas, et al., 2009; Blackwell & Rosetti, 2014), or necessary classroom and testing accommodations (Blackwell & Rosetti, 2014; Rosas, et al., 2009). Additionally, time to complete the IEP document was seen as an ordeal (O'Dell & Schaefer, 2005).

### **IEP Implementation**

The IEP document should be treated like a living document that guides all instructional planning and decisions. Unfortunately, this is not always the case (Smith, 1990a). In a 1990 study conducted by Smith (1990b), 120 IEPs for fourth, fifth, and sixth grade male students with either behavioral disorders or learning disabilities were studied for procedural and substantive compliance, and the relationship of the document to the instruction provided. Researchers used an instrument called Program Evaluation for Procedural and Substantive Efficacy (PEPSE) to study procedural compliance, substantive content, and congruence. Results indicated procedural problems with IEPs

for students with behavioral issues, in the failure to identify physical education instruction in the IEP document, and failure to include IEP initiation date and duration of special education services. Substantively, the annual goals appeared to support the planning of appropriate instruction, however, the IEP was not implemented appropriately, as the written goals and objectives matched the observed instruction in this study only 62% of the time. Smith's (1990b) research indicated a lack of specially designed instruction in IEP development. Even when the IEP is written correctly, but does not positively affect a student's achievement, it may be considered a procedural error, which may result in a denial of FAPE (Yell, et al., 2013).

Similarly, an IEP analysis form was used to rate the appropriateness of IEP objectives for 48 elementary and secondary students with mild behavioral and intellectual disabilities (Lynch & Beare, 1990). The objectives were judged based on age appropriateness, relationship to the general education curriculum, transition, relevance for the student, inclusion with non-disabled peers, appropriateness of the instructional settings, opportunity for generalization of skills, specificity of criteria, and evidence of parent involvement. The overall results of the written document are as follows: age appropriate materials, 48%; relates to general education, 90%; transition, 51%; relevance, 96%; interacts with peers, 15%; taught across settings, 97%; taught in natural setting, 92%; generalize to other settings, 90%; specificity, 5%; parental involvement, 51%. Overall, objectives appeared to be based on the students' categorical placements, and minimally met all indicators with the exception of specific measurement criteria. Following the written analysis of the IEP objectives, students were observed in instructional activities to determine the instructional relevance to the IEP document.

Although the written documents appeared to be adequate in many ways, there was a problem with appropriate implementation of the IEPs with little relationship noted between the stated instructional objectives and the actual observed instructional activities.

Bugaj (2000) described issues observed in his school district, with IEP implementation, especially at the secondary level, specifically for students who receive services in both special education and general education classes. The author explained problems he has witnessed with the provision of special education services because of scheduling conflicts, insufficient delivery of specialized instruction, and improper implementation of behavior intervention plans. He provided the following three reasons why there is a problem with teachers following the IEP: a) “teachers may not be aware of what is required”; b) “teachers may not be knowledgeable about how to make accommodations”; and c) “teachers may refuse to follow what has been outlined” (Bugaj, 2000, p. 45).

These research studies indicate that even when IEPs are written correctly and meet the basic legal standard, appropriate IEP implementation may be problematic if the issue of FAPE is at stake (Deno & Mirkin, 1980; Smith, 1990b; Yell, et al., 2013). Research indicates that specialized instruction does not always line up with the content of the written document (Lynch & Beare, 1990; Smith, 1990a). In addition, teachers may not follow the IEP because of lack of knowledge or possibly a lack of desire to adhere to the document.

### **Noncompliance and Litigation**

Over time, the requirements of the IDEA have increased, and the intent of the law has changed from one created to provide educational access for students with disabilities,

to a law which now requires that school districts not only allow and provide equal access, but also create educational programs which provide meaningful benefit for students with disabilities. As the law has changed over the past four decades to benefit students and provide more involvement for parents; parents have become more aware of their rights, and litigation in the field of special education has increased significantly (Zirkel, 2014).

### **Legal Options for Parents and Districts**

When parents and districts disagree, either during IEP development or when determining if the IEP has been properly implemented, there are several options that parents may pursue. Mueller (2014) discussed the three IDEA resolution procedures offered to parents: mediation, state complaint procedures, and due process. Mediation is a voluntary process which results in a written mediation agreement that is legally binding. The mediator is a person trained and assigned by the state department of education, whose role is to facilitate information sharing and help the parents and district reach an agreement. The mediator is impartial and does not function as a member of the IEP team.

In some states, including South Carolina, the facilitated IEP process is an additional option for resolution, prior to mediation (Mueller, 2014). Either the parents or the school district can request a facilitated IEP meeting, but both parties must agree to facilitation. A facilitated IEP meeting involves a facilitator who has been trained and assigned by the SEA, and whose role is much like the role of a mediator. The goal of the facilitated IEP meeting is not a mediation agreement, but an IEP, which is agreed upon by both the parents and district.

Parents may file a formal complaint with the SEA if they feel a violation of the IDEA has occurred. Each state has specific procedures for parents to follow in order to

file a complaint. When a complaint is filed, both the parents and the school district have the opportunity to submit documentation regarding the complaint. The SEA has 60 days to investigate and issue a decision about the complaint. If appropriate, the SEA might encourage the parent and the district to seek mediation to resolve the dispute (Mueller, 2014).

Parents may request a due process hearing to resolve a disagreement. A due process hearing is a court-like hearing in which an impartial hearing officer (IHO) listens to the facts of the case, weighs the evidence, applies the law to the facts, and issues a ruling. In the United States, there are two systems of due process procedures, a one tier system and a two tier system. In a one tier system, the hearing goes directly to the SEA. Officials at the SEA will determine the verdict of the case. In a two tier system (such as in South Carolina), the hearing is tried initially at the local education agency (LEA) level. An IHO will make a ruling at the local level, and if the parents or the district disagrees with the ruling, either party has the right to appeal the decision to the SEA level. Due process hearings, at both the local and state level, can be costly and time consuming. A change in the dispute resolution process was made in the 2004 IDEA reauthorization regarding due process hearings (Mueller, 2014). Within 15 days following a request for a due process hearing, the parents and the district must meet, without legal counsel, in an effort to resolve the disagreement in a meeting called the resolution session. If the school district and the parents cannot reach an agreement during this meeting, they will move forward with a formal due process hearing.

Parents who believe their child's civil rights under Section 504 of the Rehabilitation Act have been violated may file a complaint with the Office for Civil



Rights (OCR). OCR is the government office that enforces section 504; and will respond to complaints regarding alleged IDEA violations, as well as 504, ADA, and discrimination issues (the Center for Appropriate Dispute Resolution in Education: CADRE, 2014).

### **National and Local Trends**

Special Education has historically been the most litigated segment in all of K-12 education, and although much litigation in public education has leveled off, special education litigation continues to increase (Zirkel, 2014). According to CADRE (2014), the number of due process complaints both nationally and in the state of South Carolina declined slightly from the 2004-05 school year (national = 15,496; SC = 19) to the 2010-11 school year (national = 13,914; SC = 12). However, considering the data for the 2013-14 school year, the number of due process complaints filed appears to be in an upward trend (national = 14,940; SC = 17) (CADRE, 2014). O'Dell and Schafer (2005) reported IEP implementation as the most frequently cited area of noncompliance and the primary issue in litigation. Zirkel (2015) reviewed 207 adjudicated cases across the country, from January 2013 to March 2015, over half of which involved noncompliance issues related to IEP development or implementation.

The most common issues of noncompliance in South Carolina are related to IEP development or implementation, as well, with failure to fully implement the services in the IEP identified as the most prevalent problem reported each year (Drayton, 2014; Ott, 2013). These are problems that might be reduced if IEP teams were diligent in following the procedural and substantive requirements of the IDEA. Additionally, a search of legal cases in the state of South Carolina, via Special Ed Connection ®, revealed 41 Office for

Civil Rights (OCR) rulings, 41 State Education Agency (SEA) decisions (due process hearings), and five court cases from 1983 to 2000. From 2000 to 2014, 89 OCR rulings, 69 SEA decisions, and five court cases were found. Thus, the incidence of OCR rulings and SEA decisions have increased over the past four decades, from 41 to 69, and 41 to 89, for OCR rulings and SEA decisions, respectively.

In a review of the OCR rulings and SEA decisions in South Carolina since 2000, at least half are related to IEP team decisions or IEP implementation (35 of 89 OCR rulings and 48 of 69 SEA decisions). These findings may reflect IEP teams' understanding and working knowledge of the requirements of the IDEA, or as Bugaj (2000) presumed, a lack of understanding of the requirements, how to provide accommodations, or possible refusal to comply. The special education teacher is the front-line educator regarding IEP development and implementation, and must be knowledgeable enough to guide an IEP team to make decisions within the scope of the law (Zirkel, 2014). Given the special education teacher's critical role in IEP development and implementation, it is his or her responsibility to ensure the provision of all special education and related services, and to assist general education teachers in understanding the general education accommodations and modifications, which are required for a student (Zirkel, 2015). Legal disagreements might be avoided if district personnel (and parents) are knowledgeable enough to work together in conflict resolution (Mueller, 2014).

### **Review of Court Cases in South Carolina**

The question of FAPE in IEP development and/or implementation is at the center of most IDEA litigation (Zirkel, 2015). To consider whether a violation might result in

denial of FAPE, hearing officers and judges will refer back to the Rowley (1982) standard, and ask (a) Did the school district comply with the various applicable procedures? and (b) Is the IEP reasonably calculated to enable the child to receive educational benefits? The outcome of a due process complaint may be appealed at a higher level if either the parents or the district disagrees with the hearing officer's ruling. In South Carolina, there have been a number of decisions made by local and state hearing officers over the years regarding issues with IEP development or implementation, however, just ten of these complaints have moved up the ladder to a higher court.

Of the ten cases that have moved beyond a hearing officer's decision, one was settled in South Carolina Court of Appeals (*Midlands v. Richland County School District One*). Seven cases were heard by the United States District Court, South Carolina (*Alexander v. Department of Juvenile Justice, 1995; Bridges v. Spartanburg County School District Two, 2011; Horry County School District v. P. F., 1998; J.B. & M.B. v. Horry County, 2001; Lexington County School District One v. Frazier, 2011; Troutman v. School District of Greenville County, 1983; Waddell v. Lexington/Richland School District 5, 1999*). One judgment was made by the U. S. Court of Appeals, Fourth Circuit (*Sumter County School District v. Heffernan, 2011*). One case in South Carolina made it to the Supreme Court (*Florence County School District Four v. Carter, 1993*).

**Procedural Issues.** Courts have noted that procedural errors in IEP development do not automatically equate to a denial of FAPE. The primary purpose of the procedural requirements under the IDEA is to ensure parent involvement in the IEP process (Yell et al., 2003). When procedural mistakes are made, courts take into account the effect of the mistake on either the student's ability to benefit from his or her education, or the ability

of the parent to participate in IEP development (Yell, 2012). In the IEP that was challenged in *Bridges v. Spartanburg County (2011)*, the special education teacher used percentages in the criteria specified to measure goal progress. The parents alleged the percentages were inappropriate and unmeasurable, and requested reimbursement for two private reading programs. The court ruled that the use of percentages did not automatically invalidate the goals. This procedural error, if an error at all, did not result in either a negative impact on the student's ability to benefit from his educational program or in the parent's ability to participate in IEP development. The judge ruled that even if the goals had not been written in the most appropriate manner, the district was able to show significant improvement in reading, and had therefore provided a FAPE. Procedural issues that result in "harmless error" (*Bridges v. Spartanburg County, 2011*), do not equate to a violation for a district.

Another case heard by the United States District Court, SC found in favor of a group of juveniles, who were remanded to the Department of Juvenile Justice (*Alexander v. Department of Juvenile Justice, 1995*), for failure to identify or locate students with disabilities within their facilities, and failure to either implement the current IEP or develop an appropriate IEP for the incarcerated juveniles. These procedural errors were committed by school administration, who should have ensured that special education services were appropriately provided.

When procedural errors impact the substantive quality of a student's educational program, however, districts may be found in violation (Yell, 2012). Failure to fully implement an IEP may result in a loss for a school district (*Alexander v. Department of Juvenile Justice, 1995*).

**Substantive Issues.** Most judicial decisions are made based on substantive issues (Yell, 2012). Substantive problems include issues that interfere with a child's ability to progress in his or her educational program. Substantive errors include failure to develop an IEP that is calculated to provide educational benefit, or to meet the unique needs of the student. In a review of special education court cases in South Carolina, one case has been heard by the United States Supreme Court (*Florence County v. Carter, 1993*), after being heard by the United States District Court, South Carolina, and then the United States Court of Appeals, Fourth Circuit. In this case, the parents withdrew their child from public school and put her in a private school. They claimed the school district's IEP, which included annual goals providing for four months progress in reading and math, was not appropriate and did not provide the student a FAPE. Using the Rowley standard (*Board of Education v. Rowley, 1982*), the Fourth Circuit Court of Appeals upheld a denial of FAPE ruling, for the parents of Shannon Carter, a student in Florence, South Carolina, and deemed her IEP inadequate to enable her to make progress. Although the school district had followed the applicable procedures, the special education teacher had not included goals and objectives on the IEP that were ambitious enough to ensure educational benefit for the student. As a result of this substantive error in IEP development, Florence County School District Four was ordered by the Supreme Court to reimburse the parents the costs of private school placement, room and board, and mileage for trips to and from school, for three years, for a total of \$35, 716.11, plus prejudgment interest.

Another case was heard by the Fourth Circuit Court of Appeals, resulting in a ruling for the parents (*Sumter County v. Heffernan, 2011*). In this case, the Fourth Circuit

Court of Appeals ruled in favor of the parents, who claimed the district's IEP did not provide a FAPE and requested approval for home-based placement. The district did not approve the home-based placement and held that the IEP was appropriate. The parents withdrew the student from public school and further claimed the IEP had not been implemented in full. The school district's IEP called for the use of a specific teaching methodology, Applied Behavior Analysis (ABA) Therapy, to be implemented for a specified number of hours each week. The court ruled that the Sumter County special education teacher and classroom aides did not provide the required number of hours of ABA therapy, and further, did not even understand how to implement the ABA therapy required in the child's IEP. In this case, the 2005-06 IEP indicated the student needed 15 hours per week of ABA therapy, and the 2006-07 IEP required 27.5 hours per week of ABA therapy. The district failed to provide the number of hours of ABA therapy outlined in the IEP, and district staff members were not properly trained and able to provide ABA therapy appropriately. This substantive error, committed by the school district, had a negative impact on the student's ability to benefit from his educational program; and subsequently resulted in a denial of FAPE, and reimbursement for the parents for the student's ABA home program.

One case that was heard by the United States District Court, South Carolina involved issues with the substantive content of the student's IEP (*Lexington County v. Frazier, 2011*). The student had a history of anxiety related behaviors such as feeling socially overwhelmed, "shutting down" in school, and refusing to participate in class. Because of his high level of anxiety, he eventually stopped attending school completely. While the student was still enrolled in the Fort Mill School District, the IEP team

attempted to address the anxiety and attendance issue by adding counseling as a related service five times per week. In 2007, shortly after counseling was added to the IEP, the family moved to Lexington and enrolled the student at Lexington High School. Following conversation with the Fort Mill School District, Lexington County Schools developed an IEP which did not address the attendance issue, nor did it include the counseling services which had been provided in the previous IEP. An outside evaluation by a psychiatrist, in 2007, resulted in a recommendation for private placement. The parents requested the district provide the private placement, but the district refused. The parents unilaterally placed the student in a private placement and sought reimbursement, claiming the Lexington County school district had repeatedly failed to address the student's anxiety in his IEP. This mistake in IEP development resulted in an order that the district pay for one year of private placement, but not subsequent years because they agreed to amend the IEP to add additional services to address attendance and anxiety.

Errors such as these in IEP implementation and development, can turn out to be costly for districts in the way of tuition reimbursement which can be tens of thousands of dollars. In the case of *J.B. & M.B. v. Horry County (2001)*, parents asked the district to fund a home program using the Lovaas methodology. When the district declined, the parents removed the student from public school, and then pursued reimbursement for the home Lovaas program. The district made every effort to work with the parents, providing both speech therapy and ABA therapy in the home, even though the student had not re-enrolled in public school. Multiple IEP meetings were held in an attempt to come to an agreement. Although the parents pursued reimbursement for their home program, the court ruled the Horry County IEP was sufficient, and that the home program

was not appropriate and further did not represent the student's least restrictive environment. Parents were not entitled to reimbursement in this case.

Parents in *Horry County v. P.F. (1998)* also requested reimbursement for private placement. In this case, the district recommended placement for the student in a residential treatment facility where she would be able to receive 24-hour behavior management to address the violent assaults on herself and others. The district developed an IEP and recommended it be implemented in the residential facility. Parents disagreed with the IEP team's decision, removed the student from public school, placed her in a day school program the parent set up in her office, and requested reimbursement for their private program. The district disagreed with the parents' private placement and initiated due process for residential placement. The U.S. District Court of South Carolina determined the district had met the procedural requirements of the IDEA and developed an IEP that was designed to ensure progress and provide FAPE. The parents did not agree to the residential placement, and did not place their child in the residential facility. Because the district's IEP was designed to provide a FAPE, parents were not entitled to any reimbursement costs associated with the private placement they chose to provide for the student.

In *Waddell v. Lexington/Richland Five (1999)*, the parents withdrew their daughter, who was hearing impaired, from public school, placed her in a private school, and requested tuition reimbursement. The parents were unhappy with their daughter's progress in the public school setting, and filed for due process. The school district's IEP called for sign language interpreting services throughout the day, and the parents requested the district also provide sign language interpreting at the private school



placement. Before the due process hearing was scheduled, parents filed suit in District Court seeking the same relief. In this case, although parents stated they were not happy with the student's progress, they did not allow the school district a chance to attempt mediation or other resolution procedures. The district prevailed in this case because the parents had not exhausted administrative remedies before filing suit; and they were unable to prove that the IEP proposed by the school district was inadequate. Although the original complaint was substantive in nature, this was not examined because the parents failed to follow procedures to appropriately file suit against the district.

In 2013, the South Carolina Court of Appeals revoked the charter for Midlands Math and Business Academy Charter School because special education teachers and other service providers failed to provide required progress reports (*Midlands v. Richland County, 2013*). Even after several warnings by the Richland County School District, many inconsistencies were reported regarding the special education program at Midlands, including failure to implement IEPs completely. The most glaring error was a failure to report progress every four and one half weeks as specifically required on the IEPs for numerous students. Without regular reporting of progress, neither schools nor parents could be informed of students' progress toward their annual goals and neither were teachers able to make appropriate instructional recommendations or decisions. This error in IEP implementation cost the school its charter.

The remaining case involved a student's special education placement in a school within the district that was not her home school, but in another school within the district (*Troutman v. Greenville County, 1983*). In this case, the content of the IEP was deemed appropriate to ensure progress for the student, who was blind. The school district

provided the services that were appropriate for the visually impaired student at a school within the district, but not at her home school. The court held for the district, stating the district was not required to provide for the student at her home school location, as long as it provided the appropriate programming.

Substantive judgments are made based on the effect of an error on either a student's ability to progress in his/her educational program or in the parents' ability to participate in IEP development. A review of these South Carolina cases shows that parents prevailed when districts did not develop an IEP ambitious enough to ensure progress (*Florence County v. Carter, 1993*); did not adhere to methodology specifically outlined in an IEP (*Sumter County v. Heffernan, 2011*); did not report progress on a regular basis (*Midlands v. Richland County, 2013*); and did not fully address the unique needs of a student (*Lexington County v. Frazier, 2011*). Districts prevailed when they successfully created an appropriate IEP which was designed to confer educational benefit (*J.B. & M.B. v. Horry County, 2001*).

### **Knowledge of IEP Teams**

Although a review of case law serves to inform school districts of what other districts may have done incorrectly, it is of the utmost importance for school districts to understand what the law says and how to follow it (Yell et al., 2003). Because special education is the most litigated segment of public education, it is imperative that districts, and especially special education teachers, understand their legal obligations (Zirkel, 2015). Schools and districts may put themselves at risk legally when they come to an IEP meeting with an inadequate draft IEP document, and are ill equipped to present or explain the data which should lead the IEP decision making process. This section is a

review of research studies of the perceived and/or actual knowledge of the professionals who serve on most IEP teams, including school principals, general education teachers, and special education teachers, who typically lead the IEP team meeting.

### **Principals**

Building level administrators are responsible for all students who are taught within their school, and should have a good understanding of all relevant legal requirements including special education law (Davidson, & Algozzine, 2002). Researchers have demonstrated, however, that many principals lack the foundational knowledge required (Wakeman et al., 2006). In a 2006 study of secondary principals' perceptions of their own understanding of the IDEA, researchers surveyed 362 principals asking them to rate agreement with practices by choosing: agree, disagree, or no opinion; and rate their level of knowledge by choosing: limited, basic, or comprehensive. The administrators perceived themselves to have a good understanding of fundamental issues and a basic understanding of the operation and function of special education; but reported limited knowledge in current issues such as self-determination practices, functional behavioral assessments, and meeting students' individual needs through universally designed lessons (Wakeman, et al., 2006). Most principals agreed they were responsible for the students with disabilities housed in their buildings (98.6%), but did not agree with the test scores of these students counting in their school accountability totals (30.8%). Although most principals agreed special education students should have access to general education (92.9%), fewer principals noted that the special education students in their schools were actually getting that access to the general education curriculum (81.5%).

Principals who perceived themselves as having more knowledge also showed more day to day involvement in the special education programs in their schools.

Jesteadt (2012) studied principals' actual knowledge and understanding of the six principles of the IDEA (i.e., zero reject, evaluation, LRE, FAPE, due process, parental involvement), and found it was substantially low. Using 12 hypothetical scenarios, in an online survey tool, the author surveyed all principals in the state of Florida (176 responded) and found an average of 48% correct answers to questions regarding special education policies and procedures. When disaggregated by each of the six principles of the IDEA, the highest scores were in nondiscriminatory evaluation with an average of 55% correct, and the lowest was in due process policy with an average of 41% correct. The other IDEA principles, zero reject, LRE, FAPE, and parent participation had mean scores of 50%, 52%, 41%, and 53%, respectively.

Davidson and Algozzine (2002) surveyed 264 new principals and assistant principals in the North Carolina Principal Fellows Program. The authors asked participants to complete a questionnaire that was used to gather information regarding the administrators' perceptions of their own understanding of special education law and procedural safeguards that dictate the provision of services and programming for students with disabilities. In this study, 10.8% of the administrators rated their own level of knowledge in special education law as "significant"; 41.7% as "moderate"; 34.2% as "basic"; and 13.3% as "limited". Interestingly, although 41.7% rated themselves as having "moderate" knowledge, 81.6% of the participants indicated a need for more training in special education law. Additionally, most of the participants rated their

previous administrative training in special education law as “below” or “well below” standard.

Although principals in a 2010 study rated their own understanding and knowledge of the IDEA, specifically law and policy, as “good” and “very good”, the special education directors in the same study rated the knowledge and understanding of these principals as “fair” (Duncan, 2010). Only 9% of the principals rated their own understanding as “fair”, with the special education directors rating 59% of the principals’ understanding as “fair”. The special education directors rated no principals as having an “excellent” understanding of special education law and policy, however, 10% of principals rated themselves as having “excellent” understanding. This could prove to be problematic, and possibly lead to legal issues if these principals are incorrect and operating under a false sense of understanding of the IDEA.

More recently, O’Laughlin and Lindle (2014) interviewed five elementary principals regarding their perceptions of their role in the implementation of LRE. The authors reported that although principals had intellectual knowledge of the IDEA’s LRE requirement, this knowledge did not guide their decision making, or recommendations regarding students with IEPs. One principal implied that students would have to “earn” their way back into general education through improved academic achievement. Another had difficulty distinguishing the meaning of LRE from inclusion. There was no indication that any of the principals surveyed made any individual efforts to meet the needs of the children with disabilities within the general education classroom with the use of accommodations or modifications. These principals had no understanding of a plan or

guideline in mind to help them appropriately implement this foundational tenet of the IDEA (O'Laughlin & Lindle, 2014).

Woods (2004) administered a survey, consisting of 35 multiple choice knowledge level questions, of principals' awareness of disciplinary requirements under the IDEA. Woods found a total actual knowledge score of 60%; and 56% of the principals' perceived their own knowledge level as "poor". All principals indicated they needed additional training in the disciplinary requirements under the IDEA. Power (2007) used 24 hypothetical scenarios (with answer choices Yes, No, or Don't Know) to assess special education knowledge of principals in the state of Virginia. Questions were broken down into the following areas: FAPE, IEP, LRE, discipline, related services, due process, and liability for reimbursement of parents. The author analyzed the number of correct vs. incorrect responses and identified areas of need as those with a mean score of less than 64%. Two areas were less than 64%: FAPE with a total mean score of 62% and Related Services with a mean score of 50%. However, all areas assessed showed a need for additional training: IEP questions, 66% correct; LRE, 68%; discipline, 71%; due process, 66%; and liability for reimbursement, 66%.

Overall, principals seem to have a relatively high opinion of their own foundational knowledge and understanding of the IDEA (Davidson & Algozzine, 2002; Duncan, 2010; Wakeman, et al., 2006). However, when presented questions and scenarios involving practical knowledge of the law, principals were not as confident in their responses. Studies of both actual knowledge and application of knowledge indicated an overall low level of competency (Jesteadt, 2012; O'Laughlin & Lindle, 2014; Power, 2007; Woods, 2004). In one study where principals rated their own

knowledge at a high level, their special education directors rated them much lower (Duncan, 2010). Although many principals appear to perceive themselves as being well versed in special education law, they do not appear to demonstrate the same level of knowledge in practical matters of IEP development, implementation, and decision-making. Observational data collected in a series of IEP meetings indicate principals participate just 9% of the time during an IEP meeting (Martin, Van Dycke, Greene, Gardner, Christensen, Woods, & Lovett, 2006). Additionally, principals reported they routinely defer to their special education teachers in matters of IEP development and implementation, and generally regard the special education teacher as the legal expert (Martin et al., 2004; O'Laughlin & Lindle, 2014).

### **General Education Teachers**

General education teachers also look to the special educator as the lead decision maker in an IEP meeting. They reported feeling uncomfortable speaking up in IEP meetings and participating in the decision making process (Martin et al., 2004). In a review of observations in 109 IEP meetings, general education teachers spoke an average of 9% of the time in each meeting (Martin, et al., 2006). In this study, the authors observed 109 IEP meetings and used momentary 10-second time sampling to determine the percentage of time that different IEP team members talked during the meeting. In the three-year study by Martin et al. (2004) general education teachers indicated they understood what was said (mean = 3.81), but did not talk very much about the student's interests (mean = 2.46) and did not really help with decision making (mean = 2.60). Special education teachers also view the general education teacher as having less knowledge of special education law, and therefore less decision making ability (O'Shea

et al., 2000). This is not surprising; as general education teachers have typically played a less than active role in IEP development for the students with disabilities in their classroom, and generally feel IEP development is the exclusive responsibility of a special education teacher (Rosas, et al., 2009).

Although general education teachers have not necessarily played a paramount role in IEP development, they are explicitly responsible for implementation of many IEPs and are clearly involved in the education of students with disabilities (Nevin, McCann, & Semmel, 1983). In addition, although special education teachers indicated the perspective of a general educator is essential in IEP development (O'Shea et al., 2000), general education teachers defer many IEP related decisions to their special education colleagues (Rosas et al., 2009).

### **Special Education Teachers**

Principals and general educators view their special education teachers as the experts and the leaders in IEP development and implementation. Because of this, it is important that special education teachers have the knowledge and skills to effectively lead teams through the IEP process. Flannery and Hellemn (2015) suggested that specific professional development is needed to ensure special education teachers have the knowledge and skills to create IEPs that are both procedurally and substantively compliant. The authors conducted a qualitative study on teachers' understanding of the purpose and requirements of specific IEP components, as well as the relationship of the components. Sixteen special education teachers were interviewed before and after they participated in professional development which focused on the alignment of present levels of performance, postsecondary goals, annual goals, and course of study. The



professional development consisted of a two-day training with six follow-up meetings. Interview results indicated that prior to professional development, teachers were somewhat unclear about the relationship of these IEP components. However, following the professional development, all of the teachers interviewed indicated a clearer understanding, and the ability to accurately describe the connectivity of the IEP components. For example, before the training, just half of the teachers stated there is a connection between the postsecondary goal and the course of study, but only one-third could articulate the connection. Following the professional development, 14 of the 16 were able to describe the relationship. Prior to the training, no teachers mentioned a relationship between annual goals and the postsecondary goal, but after the training, 11 of 16 teachers appropriately described the relationship. Teachers commented that they changed their approach to IEP development following the professional development.

O'Shea et al. (2000) used a survey to assess perceptions of preparedness of 78 pre-service and experienced special education teachers in Florida and Pennsylvania. The survey consisted of statements which involved understanding and skill level for implementation of IDEA '97 procedures, assessment and IEP development, general education curriculum, LRE, parent-educator interactions, related services, instructional methods and behavioral support. For example, "I have adequate or better skills in ..." and "The general educators in my school have adequate or better understanding of ...". Participants were to choose the response which most closely corresponded with their level of agreement with each statement (strongly agree, agree, disagree, strongly disagree). Both the more experienced and less experienced groups of special education teachers indicated they felt prepared in each area assessed, and that their general

education counterparts have less understanding of the areas assessed. The survey results indicated no significant differences in the perceptions of preparedness for each group, although actual knowledge was not assessed. The authors noted it was surprising the novice educators rated themselves so highly, and attributed this to possible naivety and over-confidence in their own abilities.

Like Flannery and Hellemn (2015), Whitaker (2003) suggested that in order to develop IEPs that are legally correct and meaningful, special education teachers should be specifically taught the requirements of compliant and relevant IEPs. The perception of preparedness for 156 first year special education teachers in South Carolina was examined by Whitaker (2003). In contrast to O'Shea et al. (2000), Whitaker found that beginning special education teachers reported a lack of understanding regarding district policy, procedures, and the requirements under the law that are specific to special education. Participants were asked to complete a survey rating the level of assistance needed in eight areas (system information-special education, emotional support, system information-school, materials, curriculum/instruction, discipline, interactions with others, and management) during their first year teaching. A modified Likert scale was used and included eight choices ranging from 1 (no assistance) to 8 (a great deal of assistance). According to the results of the study, the greatest area of need included knowledge of special education policies, procedures, guidelines, paperwork requirements, and specific special education district requirements (mean = 6.97). Many of the new special education teachers reported they had never written an IEP or even attended an IEP meeting, therefore had no basis of experience regarding application of special education

policy and procedures. Interestingly, this was also noted as the area in which the teachers received the least assistance (mean = 5.17).

Whitaker (2003) suggested that special education administrators should be more cognizant of the need for professional development in special education policies, procedures, and paperwork requirements, and more purposeful in providing this type of assistance to beginning special education teachers. She also suggested teacher preparation programs should include more activities specific to the legal requirements under the IDEA, such as role playing IEP meetings, drafting IEPs, studying policies and procedures from a variety of districts, and assisting with FBA and BIP development.

Although Whitaker (2003) found new special education teachers believed they lacked knowledge and understanding of legal requirements; overall, many special education teachers appear to feel competent in their knowledge of the requirements under the IDEA, talk more than any other team member in IEP meetings, and perceive themselves as understanding the IEP process better than other team members (Martin et al., 2004; Martin, et al., 2006). In a three-year study of middle, junior high, and high school IEP meetings (Martin et al., 2004), the authors questioned a total of 1689 IEP team members (282 students, 336 parents, 130 school administrators, 310 special education teachers, 160 general education teachers, 257 related service providers, and 198 others). The 10-item questionnaire used a 4 point Likert scale with the choices: not at all, a little, some, and a lot. The statements included (a) I knew the reason for the meeting; (b) I knew what I needed to do at the meeting; (c) I talked in the meeting; (d) I felt comfortable saying what I thought; (e) I talked about (student's) strengths and needs; (f) I talked about (student's) interests; (g) I helped make the decisions; (h) I understood

what was said; (i) I know what I'm supposed to do next; and (j) I feel good about this meeting. Most team members indicated they understood what was said (mean = 3.85), and the fewest team members indicated they talked about the student's interest (mean = 2.87). Special education teachers rated themselves highest on helping with decision making (mean = 3.97), and lowest in talking about students' interests (3:13).

In a study of IEP team participation, observational data collected during 109 IEP meetings showed that special education teachers began 92% of the meetings (Martin et al., 2006). Data from this study also show that special education teachers talked 51% of the time in each meeting, which is significantly more than any other team member (family, 10%; general educators and administrators, 9%; support staff, 6%, and students, 3%).

The research is clear that special education teachers regard themselves as the leader and primary decision maker in IEP meetings. There was just one study in which first year special education teachers reported their perception of their own abilities as lacking (Whitaker, 2003). The rest of the research shows that special education teachers have a high opinion of their knowledge of the IDEA, specifically IEP development and implementation. The weakness that is apparent in the current literature is that the results of the studies are based on teachers' perceptions of their own knowledge and abilities regarding the IEP process. There is no literature to provide evidence of the special educators' actual working knowledge, although there is strong evidence to show that special education teachers are regarded as the authority in matters of IEP development and implementation.

## **IEP Team Decision Making**

Martin et al. (2004) used a questionnaire to study the perceptions of the roles of IEP team members in an IEP meeting. The questionnaire assessed the IEP team members' perceptions of three areas: their own understanding of the purpose of the meeting; meaningful participation in the meeting; and decision making in the meeting. Overall, special education teachers rated themselves favorably in each of the three areas, and perceived themselves as being in charge of IEP meetings. Compared with general education teachers, special education teachers reported higher scores in all areas. Special education teachers rated themselves higher than administrators in talking about students' strengths, needs and interests; and higher than parents in knowing what to do at meetings, talking at the meetings, helping make decisions, and knowing what to do next. In meetings where students attended, other team members reported feeling more confident about their own level of participation. In addition, related services personnel and general education teachers seemed to also have a positive impact on the perception of participation and understanding of other team members. Along the same lines, participation in IEP meetings was studied by Martin et al. (2006) by recording the amount of speaking for each IEP team member. In 92% of the meetings, the special education teacher opened the meeting, and spoke at least 51% of the time recorded. Family members talked 15% of the recorded time, with general education staff and school administration at 9%. Support staff and students were the lowest at 6% and 3% respectively.

It is imperative that all required IEP team members are present to help ensure a legally correct meeting is conducted. Goldstein, Strickland, Turnbull, and Curry (1980)

found that of 14 IEP meetings observed in three North Carolina School Districts, only five were considered legal meetings, based on the attendance of required team members. The LEA representative (principal) was present in just 36% of the meetings, school principal (when not serving as the LEA representative) at 21% of the meetings, general education teacher in 43% of meetings, and the student in 0%. The special education teacher and at least one of the parents were present in every meeting.

Whereas all IEP team members are responsible for appropriate educational decisions and full implementation of an IEP, studies show that the special education teacher is typically the most vocal participant in an IEP meeting, and is the central member in the decision making process. School principals generally regard the special education teacher as the legal expert, and will commonly defer to him or her during an IEP meeting and in matters of IEP recommendations and implementation (Martin et al., 2004). O’Laughlin and Lindle (2014) interviewed five elementary school principals, asking how they handle LRE requirements for students with disabilities, and how individual decisions are made at the student level. The authors found that LRE decisions were made based on the notion of what the child is able to handle or what he or she had accomplished. These principals indicated they follow the recommendations of their special education teachers above all else. Because special education teachers are typically in a position of leadership in matters of IEP development and implementation, it is important to investigate whether they are able to use their IDEA knowledge in practice.

### **Summary of Research**

The only research investigating special education knowledge of IEP team members has been with teachers and principals. The majority of studies conducted have

relied on information based on an individual's perception of his or her understanding of the law. Studies reviewed (Martin et al., 2004; O'Laughlin & Lindle, 2014; Wakeman et al., 2006) indicated both special education teachers' and principals' perception of their own foundational knowledge of the IDEA is satisfactory. Overall, special education teachers, with the exception of one study of new special education teachers in South Carolina (Whitaker, 2003), have reported confidence in their knowledge of special education law and procedures. The special education teacher seems to be considered the expert, by himself or herself, as well as by others, although no actual studies have shown that they have more genuine knowledge than other IEP team members. The only studies of actual knowledge have been conducted with school principals. Overall, principals also seem to report a relatively high level of confidence in their own knowledge (Martin et al., 2004; O'Laughlin & Lindle, 2014; Wakeman et al., 2006), however other studies note that principals were lacking in actual knowledge (Duncan, 2010; Jesteadt, 2012; Power, 2007; Woods, 2004), and unable to use IDEA knowledge in program implementation (O'Laughlin & Lindle, 2014). In each of the actual knowledge studies done with school principals, results have shown a lack of comprehensive knowledge, and an inability to appropriately apply existing knowledge, at least when presented with related problems.

No literature specifically examining the working knowledge of any IEP team members was found, except in some principals' studies, which showed a lack of working knowledge (Power, 2007; O'Laughlin & Lindle, 2014). Studies focused primarily on self-perception of teachers or principals. There was no analysis of the perception of knowledge of the IDEA for IEP team members other than teachers and principals, and no studies of application of knowledge other than those reviewed, which targeted principals.

The studies of perception may or may not accurately reflect the actual working knowledge of these team members. Special education teachers' self-perceptions of adequate knowledge may be a factor in increased confidence, resulting in their high level of participation in IEP meetings. However, self-perception does not provide evidence of actual knowledge or of the ability to apply such knowledge.

Although all team members are considered to be equal participants, clearly the special education teacher assumes the lead role in most meetings. The current study is important because it considers the working knowledge of the special education teacher, the IEP team member who usually takes the lead role in IEP development and implementation. Special education teachers must have not only basic knowledge of the requirements of the IDEA, but must also be able to navigate difficult or unexpected situations, such as those described in the scenarios in the current study. When districts make mistakes such as those noted earlier in South Carolina case law, we must investigate whether the perceived knowledge reported can be applied when developing and implementing IEPs on a daily basis.

### **Legal Implications**

The amount of case law decisions and increased requirements in the IDEA establish the need for special education teachers to have a high level of real-world knowledge of the IDEA. When special education teachers are faced with a parent who disagrees with the school's recommendations, they must be self-assured in their knowledge of the legal and appropriate options available to the district. Without this assurance, IEP teams may run into potential legal issues when they might have otherwise been avoided.



IEP teams can avoid conflict, and errors in IEP development when they understand and follow the procedural and substantive requirements of the IDEA (Christle & Yell 2010). Effective IEP development, and avoidance of would-be legal issues require that special education teachers possess the skills and knowledge to lead the team in the educational decision making process. Without this knowledge base, districts could potentially be at risk with careless or inaccurate remarks or practices. Research shows that both special education teachers and school administrators feel confident in their knowledge level; however, the actual knowledge level of the administrators, measured by their responses to scenarios involving the practical use of IDEA knowledge, is not impressive. Also, general education teachers have an overall lack of comfort with the IEP process and a lack of foundational knowledge (Martin et al. 2004). Zirkel (2014) suggested that because special education teachers play a key role in IEP development and implementation, their working knowledge of special education law and procedures is especially critical.

## **CHAPTER THREE**

### **METHODOLOGY**

The purpose of this research study was to examine the working and practical knowledge of special education teachers within the state of South Carolina. Specifically, this study assessed the knowledge of special educators in the practical application of special education law by providing scenarios involving IEP development and IEP implementation. The questions involved situations that have the potential to create a legal problem for a school district. The purpose of the study was also to assess whether the special education teacher had the knowledge to determine if the district's action or response is appropriate according to the requirements under the IDEA. The study will address the following research questions:

1. What is the working knowledge of the requirements of the IDEA among special education teachers in South Carolina, specifically related to IEP development and IEP implementation?
2. Is there a difference in the working knowledge of the IDEA and special educators' demographic characteristics, including areas of certification, years teaching in special education, degree held, and whether they have previously been involved in special education litigation?

This research will address these questions by assessing and analyzing special education teachers' knowledge and application of the requirements of the IDEA. Results of this research will be used to determine strengths and weaknesses of the special educators' ability to apply knowledge of the IDEA in potentially difficult situations, as described in written scenarios. The information gained in answering the research questions will be useful for districts in South Carolina, and potentially other states, in making recommendations for special education professional development for their special education teachers participating in IEP team recommendations and decisions. In turn, professional development should result in a more in depth working knowledge of the IDEA and will provide a measure of prevention regarding legal issues across the state.

The purpose of this chapter is to provide a summary of the methodology utilized in this study. The chapter begins with the study design and contains a description of how participants were chosen. The summary then includes a description of the survey instrument, procedures for data collection, and data analysis.

## **Methods**

### **Study Design**

This study was designed to assess special education teachers' working knowledge of the IDEA through an electronically administered survey. The survey provided teachers with hypothetical scenarios to which they were asked to read and respond. This study was conducted within several school districts in South Carolina. Approval from the Institutional Review Board (IRB) at the University of South Carolina was obtained prior to any data collection (see Appendix A).

**Survey participants.** The target population of this survey includes special education teachers from school districts in the state of South Carolina. The sample frame (Fowler, 2014) includes special education teachers in the South Carolina districts which make up the Olde English Consortium (OEC). The OEC includes the school districts of York One, Clover, Rock Hill, Fort Mill, Chester, Cherokee, Fairfield, Lancaster, and Chesterfield. The OEC includes districts that are representative of different sizes, locations, and high, middle, and low income districts across the state. Rock Hill is the largest district in the OEC with 17,770 students (South Carolina Department of Education State Report Card, 2015). Lancaster is the next largest (12,310), with Fort Mill close behind (12,256). The remaining districts have fewer than 10,000 students: Cherokee – 9,104; Chesterfield – 7,341; Clover – 7,088; Chester – 5,323; York – 5,144; and the smallest district in the OEC is Fairfield with 2,932 students. Rock Hill, Fort Mill, and Clover have more urban communities, whereas the other OEC districts have more rural areas within their boundaries. Fairfield, Chester, and Chesterfield are more economically disadvantaged, while Clover and Fort Mill are representative of higher socioeconomic districts in South Carolina. The other four districts are considered to be somewhere in the middle of these two groups. According to the South Carolina Department of Education 2015 State Report Cards, the poverty index for the districts are as follows: Fairfield – 89.5; Chester – 80.6; Chesterfield – 80.0; Cherokee – 74.7; York – 69.7; Rock Hill – 62.8; Lancaster – 62.6; Clover – 39.4; and Fort Mill – 23.6. The poverty index is computed based on students who qualify for Medicaid, Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF); or who

are homeless, foster children, or migrant. (South Carolina Department of Education, 2015)

An email containing a letter requesting approval from each districts' Research Review Board or Committee (Appendix B), and a copy of the proposed survey (Appendix C), was sent to these nine school districts. Following approval from each district to include their special education teachers, a list of email addresses for each special education teacher was obtained from each district's special education department. Permission to survey special education teachers was granted for Clover, York, Fairfield, Fort Mill, Cherokee, Chesterfield, and Lancaster. The Rock Hill and Chester school districts did not provide permission to survey their teachers. Therefore, the survey was sent to teachers in seven school districts. Special education teachers were sent the survey link via email along with a letter (Appendix D) explaining the purpose of the survey, and requesting their participation.

### **Instrumentation**

Information for this study was gathered via online survey (Survey Monkey <sup>TM</sup>, 1999-2015). Items were designed based on a review of the literature on IEP development and implementation, as well as issues identified in a review of South Carolina special education case law. Please refer to Appendix E for a chart which shows the alignment between survey items, research, and case law.

**Survey pilot.** A preliminary version of the survey was developed based on the literature reviewed and South Carolina special education case law. The pilot survey included ten scenarios involving IEP development, ten scenarios involving IEP implementation and four demographic questions. There were two pilot groups. The first

group included four certified special education teachers currently working in supervisory roles in special education (two instructional supervisors, one lead teacher, and one IEP compliance/transition specialist). The second pilot group included three current certified special education teachers (two elementary and one secondary). Each group was asked to complete the survey independently, and then provide specific feedback about the survey including (a) if the survey link worked as expected, (b) how much time the survey took, (c) if the content of the scenarios was relevant, (d) if there were any recommendations for grammar or wording of any questions. Based on feedback, the survey was revised and shortened. Revisions included deletion of four scenarios, some wording changes, and typographical errors corrected. The survey was shortened based on the amount of time the pilot teachers spent completing the survey. The time ranged from 30 minutes to over one hour for the first group and 30-45 minutes for the second group. The revised survey required between 20 and 25 minutes for completion. The scenarios that were removed included four scenarios which were answered correctly by all pilot teachers and which addressed issues found in other items which were kept in the survey. The survey is included as Appendix C.

**Survey design.** A final draft of the web based survey consists of 20 items including eight scenarios involving IEP development, eight scenarios involving IEP implementation, and four demographic questions. The scenarios are between two and five sentences in length and end with a question regarding the appropriateness of the action taken or decision made. The format of each scenario allows for both fixed choice (yes/no) and open response (why/why not). For each scenario, participants are asked to choose “yes” or “no,” regarding the appropriateness of the district’s action or response,

and then explain “why” or “why not.” The use of scenarios will allow participants to demonstrate whether they are able to apply their knowledge of the IDEA. Answering “why” or “why not” will allow respondents to explain their reasoning and their thought process. Using this format will provide more detailed and meaningful information, which will help to assess whether teachers are able to accurately apply IDEA requirements. Of the four demographic questions, two are multiple choice, requiring one answer, one is a checklist requiring one or more answers, and the last item requires a “yes” or “no” and then “If yes, explain...” The instrument was created using Survey Monkey™ (1999-2015). The use of a web-based instrument allows teachers to complete the survey at a time and location that is most convenient for them (Fowler, 2014).

The survey begins with a brief introduction with a summary of the information provided to teachers in the cover letter/consent letter which was emailed to teachers to request their participation (see Appendix D). The scenarios are divided into two sections. The first section includes scenarios involving IEP development. This section includes questions on the following subtopics: methodology (*Sumter Co. V. Heffernan, 2011*); draft vs. complete IEP (Rosas et al., 2012); placement/LRE decisions (two questions) (O’Dell & Schaefer, 2005; O’Laughlin & Lindle, 2014); an appropriate IEP meeting/including all team members (Goldstein et al., 1980; Martin et al., 2004); services/LRE decisions (*Board of Education V. Rowley, 1982*; Lynch & Beare, 1990; O’Laughlin & Lindle, 2014; Smith, 1990a; Smith, 1990b); measurable goals (Bateman & Herr, 2006); and present levels relate to goals/accommodations (Bateman & Herr, 2006; Blackwell & Rosetti, 2014; *Bridges v. Spartanburg Co., 2011*; Landmark & Zhang, 2012; Rosas et al., 2009). The second section includes scenarios involving IEP implementation,

and includes questions on the following subtopics: implement the entire IEP/implement as intended (two questions) (*Alexander v. Department of Juvenile Justice, 1995*; O'Dell & Schaefer, 2005; Bugaj, 2000; *Sumter Co. v. Heffernan, 2011*; Drayton, 2014; Ott, 2013; Zirkel, 2015); follow processes outlined in the IEP (*Midlands v. Richland Co., 2013*; Drayton, 2014; Ott, 2013); address the unique needs of the student (two questions) (*Florence Co. v. Carter, 1993*; *Lexington Co. v. Frazier, 2011*); provide accommodations (Drayton, 2014, O'Dell & Schaefer, 2005; Ott, 2013; Bugaj, 2000); LRE (one question about services and one question regarding program location) (*Board of Education V. Rowley, 1982*; Lynch & Beare, 1990; O'Laughlin & Lindle, 2014; Smith, 1990a; Smith, 1990b; *Troutman v. Greenville Co. 1983*) . The demographic questions are designed to gather information including area(s) of special education certification, number of years teaching in special education, the highest degree obtained and whether the teacher has been involved in special education litigation. The survey is designed to take approximately 20-25 minutes.

### **Procedures**

Data was collected via online survey. Teachers were provided a secure link to the survey, automatically generated by Survey Monkey™ (1999-2015), within an email which includes a cover letter/letter of consent to seek their participation in the study (see Appendix D). The email was sent to the special education teachers after approval from the district's Research Review Board or Committee. Teachers provided consent to use their responses through their participation in the survey. Teachers were not asked to provide their names in the survey and email addresses were not recorded through teacher responses, therefore, responses were confidential. To encourage teachers to respond,



reminder emails (Fink, 2013) were sent once each week after the initial email. The survey remained open for one month after the initial email was sent. Once the survey was closed, data analysis began.

### **Data Analysis**

The items included in this survey reflect current and historical concerns in IEP development and IEP implementation, both nationally and in the state of South Carolina. Quantitative and descriptive analyses were used to examine the survey responses, and answer the research questions. Responses were exported to a spreadsheet within statistical software in order to analyze the results. The yes/no questions are closed-response items which were analyzed statistically in order to report frequency and percent of correct and incorrect responses for each scenario. These data were analyzed to answer the first research question (What is the working knowledge of the requirements of the IDEA among special education teachers in South Carolina, specifically related to IEP development and IEP implementation?). In order to answer the second research question (Is there a difference in the working knowledge of the IDEA and the special educators' demographic characteristics, including areas of certification, years teaching in special education, degree held, and whether they have previously been involved in special education litigation?) these data were further analyzed using cross-tabulation (Fink, 2013) to determine the differences, if any, in the number of correct vs. incorrect answers based on demographic characteristics. The why/why not questions are open response items which were analyzed to determine if there was a match between the yes/no response and the why/why not justification. Specifically, analyses determined if the legal

justification provided matches the legal issue in the question thereby supporting the participant's decision.

### **Reliability and Validity**

Reliability refers to consistency of scores and various types of errors that may lead to inconsistency of scores. There is a possibility of nonresponse error in this survey, if those teachers who did not respond differ from those who did respond in some way related to the survey. To help avoid nonresponse error, the surveyor should do a follow up administration of the survey for those who do not response (Johnson & Morgan, 2016). In this survey, responses were not associated with any identifiable information, therefore, reminder emails were sent weekly after the initial email to encourage responses and in an attempt to avoid nonresponse errors. Although reminder emails were sent, it is possible that teachers who did not feel confident in their knowledge were intimidated by the questions. The format of the survey is a self-administered online instrument. Using this format ensures that responses are recorded correctly (Fink, 2013), and allows participants to remain confidential (Fowler, 2014). Confidentiality encourages a better response rate and helps ensure responses are honest.

Reliability might also be assessed through statistical calculation of Cronbach's alpha. These reliability coefficients range from zero to one, with coefficients that are closer to one indicating a higher internal reliability. The Cronbach's alpha coefficient for the current survey is .66, with the range for individual items from .61 to .68. Fink (2013) suggests that coefficients above .50 may be considered acceptable.

Validity means the survey measures what it is intended to measure. In order to provide evidence of content validity, the survey was reviewed by a group of experts (first

pilot group). The survey was also piloted by the expert groups and another group to identify any concerns with either the content or the design of the survey. In addition, a table of specifications (Appendix E) is provided to show the alignment of each survey item to the literature and/or case law.

The target population includes special education teachers in South Carolina. A possible bias may arise as a result of the survey including seven school districts in the upper part of the state of South Carolina as opposed to districts across the entire state or nation. In addition, the knowledge of those who did not respond to the survey might differ from those who did respond.

## **CHAPTER FOUR**

### **RESULTS OF THE STUDY**

The purpose of the study was to examine the working and practical knowledge of special education teachers in the state of South Carolina. When given special education scenarios with certain legal implications, teachers were asked to make a judgment as to whether the action taken in the scenario was appropriate, and then to give a legal explanation of why it was or was not appropriate. Scenarios were based on real issues of noncompliance identified in a review of the literature and a review of case law specific to South Carolina. The study addressed the following research questions:

1. What is the working knowledge of the requirements of the IDEA among special education teachers in South Carolina, specifically related to IEP development and IEP implementation?
2. Is there a difference in the working knowledge of the IDEA and the special educators' demographic characteristics, including areas of certification, years teaching in special education, degree held, and whether they have previously been involved in special education litigation?

The purpose of this chapter is to analyze the results of the current study. The chapter begins with a review of the study's participants, and contains a description of the participants' demographic characteristics. The correct and incorrect survey responses are

examined, as well as the open response items. The chapter concludes with a brief summary of the results.

## **Results**

### **Participants**

The survey was sent to 387 special education teachers in seven school districts, and completed by 145 teachers (37.5% response rate). Most of the teachers who responded reported they have five to ten years experience (n = 25; 17.2%); are certified in Multi-Categorical/Generic Special Education (n = 61; 42.1%); hold a Master's Degree (n = 60; 41.4%); and have not been involved in Special Education litigation (n = 109; 75.2%). Twenty teachers (13.8%) did not respond to any demographic questions. Of the 145 respondents, 125 completed the survey in its entirety. Complete demographic data is presented in Table 4.1.

### **Data Analysis**

#### **Research Question One**

In order to answer the first Research Question (What is the working knowledge of the requirements of the IDEA among special education teachers in South Carolina, specifically related to IEP development and IEP implementation?), the total number of correct and incorrect responses were calculated. There were sixteen scenarios in the survey and 145 respondents, which allowed for a total of 2,320 possible responses. Overall, there were 1,352 correct responses (57.8%) and 738 incorrect responses (31.5%), with 230 (9.8%), for which no response was provided. The frequency of correct answers ranged from 114 correct responses (78.1%) for scenario number 1, to 27 correct responses (18.5%) for scenario number 9, with a median of 61% of correct responses.

See Table 4.2 for the frequencies and percentages for correct and incorrect answers, as well as for questions skipped by respondents.

Special education teachers surveyed are about 60% accurate in identifying appropriate responses to the scenarios overall (mean = 57.8%, median = 61%). Scenario number 1, which involved whether or not to add a specific methodology into the IEP, had the highest percentage of correct responses (78.1%). The question with the lowest percent of correct answers was scenario 9, involving what to do if the IEP is not properly implemented. Scenarios 10 and 16, which also had to do with ensuring appropriate IEP implementation, were answered correctly by 62.3% and 65.1%.

Scenarios 3, 5, 6, and 15 involve IEP team decisions regarding placement and services. There was a relatively wide range in percent of correct responses for these questions (scenario 5 = 76%; scenario 3 = 61%; scenario 15 = 51.4%; and scenario 6 = 43.8%). Scenario 6, with 43.8% correct answers, is specific to whether a district should move forward with a recommendation for certain services even if the parent is in disagreement. Many of the respondents who answered incorrectly offered the justification that parents must consent to the change in services.

Some of the scenarios that dealt with the same type of issue were answered with similar accuracy. Scenarios 13 and 14 involved ensuring the IEP meets the unique needs of the student. Both of these questions were answered correctly by fewer than half the respondents (45.2% and 47.9% respectively).

### **Analysis of Open Response Answers**

Further analysis of data includes an examination of the open response items (why/why not) to determine if the justification provided matched the actual legal issue in

the scenario, thereby lending support for the answer provided. Of 2,320 possible responses, 1,791 responses were given for the why/why not questions.

Slightly under half of the open responses (n = 850, 47.5%) matched the legal issue in the scenario; 941 (52.5%) did not match the legal issue in the scenario. In some instances, although there was a match between the legal issue provided and the respondent's why/why not answer, the yes/no questions were not answered correctly. Therefore, the 1,352 correct yes/no responses were analyzed to determine if the legal justification provided matched the legal issue in the scenario.

Of the 1,352 correct responses, 785 responses (58.1%; range = 33.3% - 74.1%) included an appropriate legal justification; 376 responses (27.8%) included an explanation which did not appropriately match the legal issue in the scenario; and 191 responses (14.1%) did not include a why/why not justification. Table 4.3 provides information for each scenario regarding whether the justification provided was correct. Although 58.1% of the correct yes/no responses included a why/why not response which was appropriate, this equates to just 33.8% of all possible responses (2,320) which included both a correct yes/no response and a why/why not justification which was legally appropriate.

Certain patterns of incorrect responding were noted in some open response answers. Scenarios 1, 6, 12, and 15 involved an IEP team decision. Many respondents indicated the district was not allowed to move forward with a IEP team recommendation they believed to be appropriate unless the parents were in agreement. A summary of the open response data can be found in Appendix F. Some comments included:

- "...parent has last say..." , "...can't deny parents' wishes..." (scenario 1)

- “...parents must consent...”, “...parents have the final say...” (scenario 6)
- “...school cannot do anything until school and parents agree...” (scenario 12)
- “...parents can determine what services a student gets...”, “...parents can refuse (certain) services...” (scenario 15)

It was also noted that some respondents believe that an IEP team decision is a majority vote.

- “...majority rules...”, “...everyone gets an equal vote...” (scenario 5)
- “...majority vote...”, “...the team is the majority...” (scenario 6)

For the scenarios 13 and 14, which dealt with ensuring the IEP meets the unique needs of the student, some respondents suggested a re-evaluation would be necessary in order for the IEP team to consider whether additional goals or services might be added to the IEP. Scenario 9 was missed by the largest number of respondents. The issue in this scenario was how the district should respond to its own failure to implement the IEP (missed special education sessions). Many teachers responded that the IEP team should not meet to determine the impact, but instead simply schedule and make up the sessions instead of the correct response.

### **Research Question Two**

The second Research question (Is there a difference in the working knowledge of the IDEA and the special educators’ demographic characteristics, including areas of certification, years teaching in special education, degree held, and whether they have previously been involved in special education litigation?) is addressed through an analysis of correct and incorrect answers by each demographic characteristic. This was accomplished by conducting a cross-tabulation of data using the statistical software, IBM



SPSS®. Based on the results, of each cross-tabulation, there does not appear to be a difference in special education teachers' working knowledge of the IDEA based on any of the demographic characteristics.

There were virtually no differences in the percentages of correct vs incorrect answers based on number of years experience in special education. The frequency of correct responses ranged from 248 correct of 388 total responses, for teachers with five to ten years experience, to 116 correct responses of 189 total responses, for teachers with 24 to 29 years experience. For each group, the percent of correct answers ranged from 66.4% (teachers with five to ten years experience) to 61.4% (teachers with 24 to 29 years experience) with a median of 63.9%. Table 4.4 includes information regarding the correct answers by number of years experience in special education.

Area of certification did not make a significant difference in correct vs incorrect answers. Just one teacher with Deaf and Hard of Hearing certification responded to the survey, with 81.3% correct responses. All other certification categories included 15 to 61 teachers, with the range of correct answers from 66.8% (Emotional Disabilities certification) to 59.9% (Early Childhood Special Education certification) with a median of 65.8%. Table 4.5 shows correct responses by area(s) of certification.

The differences in special education teachers' level of education including Bachelor's, Bachelor's + 18, Master's, and Master's + 30 were minimal, ranging from 66.5% correct responses for teachers with a Bachelor's degree to 63.9% correct responses for teachers with a Master's degree. Only two teachers reported holding a Specialist degree (53.1% correct responses); and two with a Doctoral degree (51.6% correct responses). Of the teachers who did not indicate educational level, 65.4% of responses

were correct. The median percent correct is 65.4%. Consequently, the educational level of the special education teachers does not appear to have an effect on their working knowledge of the IDEA. Correct responses by educational level is displayed in Table 4.6.

Whether a teacher had been involved in prior special education litigation did not appear to matter in the special education teachers' working knowledge of the IDEA. Table 4.7 shows the number of correct responses based on whether the educator has or has not been involved in special education litigation. There was very little difference in the percent of correct responses for those who reported they have been involved in special education litigation (64.7% correct responses) and those who reported they have not been involved in special education litigation (64.8% correct responses). Additionally, the teachers who did not answer the litigation question had a 65.4% correct response rate. The median percent of correct responses is 64.8%. Therefore, prior involvement in special education litigation does not appear to be a factor in teachers' knowledge.

### **Item Analysis of Each Scenario**

The survey consisted of sixteen scenarios, which allowed for a yes/no response as to the appropriateness of the action or decision of the district, as well as a why/why not open response. This section includes an analysis of responses for each scenario. Each analysis includes a brief description of the legal issue addressed in the scenario and the correct justification for the district's action. The analysis also includes the number and percent of teachers who answered the question correctly and incorrectly, as well as the number and percent who skipped the question. The analysis further includes the demographic characteristics of the teachers who answered correctly.

In order to analyze each scenario, the questions, along with the yes/no responses and the open response answers were downloaded into a spreadsheet. The data were sorted to include just the correct yes/no responses and the corresponding open response answer. The analysis was conducted by reading and examining each open response answer and noting whether the response contained an appropriate legal justification. If any specific patterns of erroneous responses were noted, they are included in the analysis.

#### *Scenario # 1*

*During an IEP meeting, the parents of a child with autism insist that a specific methodology be included in the IEP. The school does not agree with this, but the parents are very insistent and say they will not sign the IEP if the school does not comply. The IEP team agreed to include the methodology in order to avoid a disagreement. Was this the appropriate response?*

The legal issue in this question involves a school district's responsibility to include a methodology in a student's IEP that was demanded by his or her parents. The district has the responsibility of choosing the appropriate methodology for a student, but is not required to include methodology in the IEP unless it is necessary for FAPE. If the district does not believe the methodology is needed for FAPE, it should not be included in the IEP. Therefore, the IEP team should not agree to add the methodology simply to appease the parents. This question was answered correctly by 114 teachers (78.1%), incorrectly by 28 (19.2%) and skipped by 3 (2.1%). Of the 114 who answered correctly, most of them have five to nine years experience (n = 20), are certified in either Learning Disabilities (n = 20) or Multi-Categorical/Generic (n = 20), hold a Master's degree (n =

48), and have not been involved in special education litigation (n = 86). Of the 114 correct responses, 59 (51.7%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario. A common mistake noted in some of the inappropriate responses was the idea that parents have the final word regarding what is included in the IEP, regardless of the district's opinion.

#### *Scenario # 2*

*An IEP meeting lasts for several hours. Once the content of the IEP has been agreed upon, the special education teacher says that she will enter the information into the computer system later and send the parent an updated copy in order to keep the meeting from lasting even longer. The parent agrees, but the principal insists that the team remain until all information is entered and signatures are obtained. Was this an appropriate response for the principal?*

The legal issue in this question involves completing the IEP prior to the conclusion of the meeting. Although it is appropriate to bring a draft to the IEP meeting, the meeting should conclude with a final document. The IEP should be complete before team members sign the document, thereby avoiding the chance of errors which can potentially lead to the parents later receiving an inaccurately completed document. Therefore, the principal's insistence that all remain for the completion of the document was correct. This question was answered correctly by 80 teachers (54.8%), incorrectly by 63 (43.2%) and skipped by 2 (1.4%). Of the 80 who answered correctly, most of them have five to nine years experience (n = 14), are certified in Learning Disabilities (n = 35), hold a Master's degree (n = 27), and indicated they have not been involved in special education litigation (n = 57). Of the 80 correct responses, 42 (52.5%) included a

response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

### *Scenario # 3*

*The IEP team recommends a student for a more restrictive placement to include specialized instruction in a special education class, which is housed at a different school location. The parent stated if the student's sister could have an accommodation to also attend the other school, then she would agree. The IEP team agreed to hold on the decision until the principal could get an answer to the question about the sister's attendance accommodation. Was this an appropriate action for the IEP team?*

The legal issue in this question involves determining the appropriate LRE and services for the student with a disability based on the student's needs. The request for the student's sister to attend the same school is not a factor in the IEP team decision, and should not be used to leverage an otherwise appropriate educational recommendation in any way. Therefore, the IEP team should not delay the decision until the sister's accommodation is decided. This question was answered correctly by 89 teachers (61.0%), incorrectly by 52 (35.6%) and skipped by 4 (2.7%). Of the 89 who answered correctly, most of them have either zero to four years (n = 14) 30 years or more experience (n = 14), are certified in Multi-Categorical/Generic (n = 39), hold a Master's degree (n = 37), and indicated they have not been involved in special education litigation (n = 70). Of the 89 correct responses, 44 (49.4%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

### *Scenario # 4*

*An IEP meeting is scheduled during the general education teacher's planning time. The IEP team gets all pertinent information from the general education teacher at the beginning of the meeting so that she can leave to retrieve her class when her planning time is over. The general education teacher leaves and the rest of the team continues. Was this an appropriate action?*

The legal issue in this question involves IEP team attendance at an IEP meeting. All team members should be in attendance for the entire meeting. It is not appropriate for any team member to complete his or her "part" of the IEP and then leave. Therefore, the general education teacher should have made arrangements to stay for the whole meeting. This question was answered correctly by 89 teachers (61.0%), incorrectly by 51 (34.9%) and skipped by 5 (3.4%). Of the 89 who answered correctly, most of them have 25-29 years experience (n = 25), are certified in Multi-Categorical/Generic (n = 38), hold a Master's degree (n = 41), and indicated they have not been involved in special education litigation (n = 68). Of the 89 correct responses, 60 (67.4%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

#### *Scenario # 5*

*All IEP team members are in agreement with a placement recommendation except for the principal. Because he is the LEA representative, he chooses to "veto" the decision and move the team in a different direction. Was this an appropriate action for the principal?*

The legal issue in this question involves appropriate team decision making for LRE based on student needs. It would be inappropriate for any IEP team decision to be

made unilaterally by just one team member. Therefore, the principal does not have the power to “veto” a team recommendation. This question was answered correctly by 111 teachers (76.0%), incorrectly by 24 (16.4%) and skipped by 10 (6.8%). Of the 111 who answered correctly, most of them have ten to fourteen years experience (n = 17), are certified in Learning Disabilities (n = 48), hold a Master’s degree (n = 48), and indicated they have not been involved in special education litigation (n =85). Of the 111 correct responses, 69 (62.1%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario. A common mistake noted in the responses includes the belief that an IEP team decision is a “majority” vote. This was erroneously provided as a reason the principal was not able to “veto” the team decision.

#### *Scenario # 6*

*The IEP team reviews all data and makes a recommendation for special education services. The team is in agreement except for the parent. After a lengthy discussion the team is still in agreement and the parent is still opposed to the recommendation. The school moves forward with the recommendation even though the parent is opposed. Was this an appropriate action?*

The legal issue in this question involves providing appropriate special education services, based on data and student needs. Even when the parent does not agree, the district is responsible for providing educationally sound programming. Therefore, the district should move forward with their recommendation. This question was answered correctly by 64 teachers (43.8%), incorrectly by 73 (50%) and skipped by 8 (5.5%). Of the 64 who answered correctly, most of them have ten to fourteen years experience (n =

12), are certified in Multi-Categorical/Generic (n = 31), hold a Master's degree (n = 28), and indicate they have not been involved in special education litigation (n = 52). Of the 64 correct responses, 34 (53.1%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario. Many teachers stated parent consent was required in order for the team to move forward. However, consent is only required for initial evaluation and initial placement in special education. Once initial consent has been provided, all other decisions are team decisions. Another error noted in the responses was that the team decision was made based on a "majority vote".

#### *Scenario # 7*

*A student's IEP currently consists of present levels of performance that include reading and math. During the IEP meeting, the general education teacher also mentions that the student is struggling with writing a paragraph. The team discusses how the student's writing impacts other areas of the curriculum. The team decides to add a goal stating "the student will improve paragraph writing in order to meet the grade level curriculum standards". Is this an appropriate annual goal to meet the needs of the student?*

The legal issue in this question involves the requirement for measurable annual goals. The goal in this scenario is too vague and is not written in measurable terms, therefore, it would not be considered an appropriate goal to meet the student's needs. This question was answered correctly by 102 teachers (69.9%), incorrectly by 39 (26.7%) and skipped by 4 (2.7%). Of the 102 who answered correctly, most of them have five to nine years experience (n = 18), are certified in Multi-Categorical/Generic (n = 46), hold a



Master's degree (n = 45), and indicate they have not been involved in special education litigation (n = 80). Of the 102 correct responses, 58 (56.8%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

#### *Scenario # 8*

*A student's IEP indicates needs in the areas of academics and impulsive behavior. There are goals for all academic areas impacted and accommodations in place to assist with the impulsive behavior. Is this an appropriate way to address the behavior?*

The legal issue in this question involves developing annual goals and providing accommodations based on student needs. A student's needs can be addressed through accommodations, modifications, and/or annual goals. In this scenario, the student's behavioral needs were appropriately addressed through accommodations. This question was answered correctly by 70 teachers (47.9%), incorrectly by 69 (47.3%) and skipped by 6 (4.1%). Of the 70 who answered correctly, most of them have five to nine years experience (n = 16), are certified in Learning Disabilities (n = 34), hold a Master's degree (n = 35), and indicated they have not been involved in special education litigation (n = 55). Of the 70 correct responses, 44 (62.8%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

#### *Scenario # 9*

*A student's IEP indicates that he should receive supplemental math instruction three times each week for 30 minutes each session. Because of different events at school, the student has missed a number of scheduled sessions. Parents have asked how the missed sessions will be made up and are very insistent that every minute missed must be*

*accounted for. Instead of scheduling make up sessions, the district decided to hold an IEP meeting to discuss the impact of the missed sessions. Was this an appropriate response?*

The legal issue in this question involves implementing the IEP as written. Although the IEP must be followed, as many teachers pointed out, if the district is aware they have not followed the IEP (as is the case in this scenario), the IEP team should convene to determine the impact of the error. Therefore, it is appropriate for the IEP team to meet instead of simply scheduling make up sessions. This question was answered correctly by 27 teachers (18.5%), incorrectly by 95 (65.1%) and skipped by 23 (15.8%). Of the 27 who answered correctly, most of them have five to nine years experience (n = 8), are certified in Multi-Categorical/Generic (n = 17), hold a Master's degree (n = 11), and indicate they have not been involved in special education litigation (n = 25). Of the 27 correct responses, 9 (33.3%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario. The issue in this scenario was not that the IEP had not been followed, but how to properly address the known implementation mistake. Most teachers simply responded that the IEP should have been followed, thereby providing an incorrect justification.

#### *Scenario # 10*

*A student's IEP indicates progress will be reported every four and a half weeks. The special education teacher sends an IEP generated progress report every nine weeks, and on the interim, call the parent with an update. Does this meet the IEP requirement?*

The legal issue in this question involves implementing the IEP as written, specifically regarding required documentation of a student's progress. Because the IEP specifically called for a progress report every four and a half weeks, the documentation

should have been reported in that format. To simply call with an update would not meet the IEP requirement. This question was answered correctly by 91 teachers (62.3%), incorrectly by 33 (22.6%) and skipped by 21 (14.4%). Of the 91 who answered correctly, most of them have five to nine years experience (n = 21), are certified in Multi-Categorical/Generic (n = 17), hold a Master's degree (n = 45), and indicated they have not been involved in special education litigation (n = 78). Of the 91 correct responses, 65 (71.4%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

#### *Scenario # 11*

*The IEP for a student with a reading disability calls for oral administration of tests and quizzes. The general education teacher does not have time to test the student separately, so she decides to read all tests and quizzes aloud to the class. Does this meet the requirement in the student's IEP?*

The legal issue in this question involves the provision of accommodations per the IEP. There is nothing to preclude a teacher from reading to an entire class in order to meet a child's need for oral administration. In this scenario, the accommodation was provided per the IEP. This question was answered correctly by 112 teachers (76.7%), incorrectly by 11 (7.5%) and skipped by 22 (15.1%). Of the 112 who answered correctly, most of them have five to nine years experience (n = 23), are certified in Learning Disabilities (n = 53), hold a Master's degree (n = 55), and indicated they have not been involved in special education litigation (n = 99). Of the 112 correct responses, 83 (74.1%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

### *Scenario # 12*

*A parent wants her child to receive his special education services at the school that is closest to their home. The district recommended services be provided at another school location because that is where the program that meets the requirements in the student's IEP is housed. The parent is angry and threatens litigation against the school district. The district moves forward with placement in the other school location. Is this an appropriate action by the district?*

The legal issue in this question involves appropriate LRE and programming. The district is required to provide an appropriate education within the district, or seek options outside of the district, but is not required to house equivalent programs in all school locations. Therefore, it was appropriate for the district to move forward with the special education program which was appropriate for the student. This question was answered correctly by 97 teachers (66.4%), incorrectly by 22 (15.1%) and skipped by 26 (17.8%). Of the 97 who answered correctly, most of them have five to nine years experience (n = 23), are certified in Learning Disabilities (n = 48), hold a Master's degree (n = 41), and indicated they have not been involved in special education litigation (n = 85). Of the 97 correct responses, 66 (68%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario. A common error noted in the responses included the belief that the school is not allowed to move forward with a recommendation until the parents agree. However, parent consent is not required for IEP team decisions.

### *Scenario # 13*

*A student classified as having a Specific Learning Disability also demonstrates some behavioral difficulties, such as following directions and completing academic tasks. Because the behavioral issues do not appear to be related to the identified learning disability, the IEP team does not address the behaviors, rather the school simply addresses the behavior in the manner they would for any student. Is this an appropriate action?*

The legal issue in this question involves developing an IEP which meets the unique needs of the student. The IEP team should consider all things that might interfere with the student's learning. Therefore, it would be appropriate for the IEP team to consider the behavioral issue and make a team decision regarding whether to address it within the IEP, and if so, how. This question was answered correctly by 66 teachers (45.2%), incorrectly by 56 (38.4%) and skipped by 23 (15.8%). Of the 66 who answered correctly, most of them have either five to nine years experience (n = 12) or ten to fourteen years (n = 12), are certified in Multi-Categorical/Generic (n = 36), hold a Master's degree (n = 31), and indicated they have not been involved in special education litigation (n = 55). Of the 66 correct responses, 42 (63.6%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

#### *Scenario # 14*

*A student with a language disability receives services in speech/language and in reading comprehension. Based on recent difficulties with math application, the special education teacher collects data in math and recommends to the IEP team to add a goal*

*for math. The student's identified disability is not in the area of math. Is it appropriate to add a math goal and services to the student's IEP?*

The legal issue in this question involves addressing the unique needs of the student through the IEP. As in question 13, the IEP team should consider all areas that might interfere with a student's learning. Data has been collected and justifies a math goal. Therefore, the team should provide goals that meet the student's comprehension needs in math. This question was answered correctly by 70 teachers (47.9%), incorrectly by 50 (34.3%) and skipped by 25 (17.1%). Of the 70 who answered correctly, most of them have either zero to four years experience (n = 13) or five to ten (n = 13), are certified in Learning Disabilities (n = 38), hold a Master's degree (n = 32), and indicated they have not been involved in special education litigation (n = 63). Of the 70 correct responses, 43 (61.4%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

#### *Scenario # 15*

*A student classified with a learning disability receives speech/language services as a related service. The parent has recently begun taking the student for outside speech therapy services, and because the student is receiving similar services outside of school, mother requests that the school based speech/language services be discontinued. The IEP team determines the student should still receive therapy in school although mother is very opposed. Did the IEP team make an appropriate recommendation?*

The legal issue in this question involves providing the services the student requires through the IEP. The outside speech therapy services should not take the place of school therapy, therefore the IEP team should move forward with its recommendation

of school based therapy if it has data to support this need. This question was answered correctly by 75 teachers (51.4%), incorrectly by 47 (32.2%) and skipped by 23 (15.8%). Of the 75 who answered correctly, most of them have five to nine years experience (n = 17), are certified in Multi-Categorical/Generic (n = 40), hold a Master's degree (n = 34), and indicate they have not been involved in special education litigation (n = 64). Of the 75 correct responses, 28 (37.3%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario. A common mistake in responses for this scenario mirrored mistakes in scenario 1, 6, and 12, that parents must give consent for all decisions made by an IEP team.

#### *Scenario # 16*

*A student's IEP indicates the need for specific instruction in reading fluency. The student receives special education services in a group of students who need math instruction because this is the time of day that works best in the general education teacher's schedule. While the special education teacher is providing direct math instruction to the group, the reading student works on a computer program designed to remediate general reading ability. Does this meet the requirements in the IEP?*

The legal issue in this question involves implementing the IEP as written. In this case, the special education teacher should be providing instruction in reading fluency, as called for in the IEP. The general reading program did not focus on fluency, therefore the IEP requirement was not met. This question was answered correctly by 95 teachers (65.1%), incorrectly by 25 (17.1%) and skipped by 25 (17.1%). Of the 95 who answered correctly, most of them have five to nine years experience (n = 17), are certified in either Learning Disabilities (n = 47) or Multi-Categorical (n = 47), hold a Master's degree (n =

46), and indicate they have not been involved in special education litigation (n = 82). Of the 95 correct responses, 39 (41%) included a response to the why/why not question with appropriate legal justification that matched the legal issue in the scenario.

### **Summary**

The survey included sixteen scenarios that participants were to read, provide a yes/no response supporting or not supporting the reported action, and legally justify their response. Overall, the study resulted in an average of 57.8% correct responses, 31.5% incorrect responses, and 9.8% which were skipped. Factoring out the skipped questions, there were 2,090 responses provided. Of the 2,090 yes/no responses, 1,352 (64.7%) were answered correctly. This percentage is generally similar to each of the percentages of correct responses for each demographic category (years experience, ranging from 66.4% to 61.4%; area(s) of certification, ranging from 66.8% to 59.9% (excluding the outlier of Deaf and Hard of Hearing with 81.3% correct for one teacher); level of education, ranging from 66.5% to 63.9% (excluding Specialist and Doctorate which included just 2 teachers in each category with 53.1% and 51.6% respectively); and those who have and have not been involved in litigation (64.8% and 64.7%).

Results of the study indicate that overall 57.8% of teachers surveyed within seven districts in South Carolina responded correctly. Of the 57.8% (1,352 responses) 58% (785) responses) included a legal justification which matched the legal issue in the scenario. Although some teachers were able to provide the correct yes/no response, it appears that almost half of them do not understand why it is the correct response.



Table 4.1

*Respondents by Demographic Characteristics*

Demographic Characteristic	Frequency	Percent
<b>Years Experience as a Special Education Teacher</b>		
4 or fewer	20	13.8%
5-9	25	17.2%
10-14	20	13.8%
15-19	16	11%
20-24	17	11.7%
25-29	9	6.2%
30 or more	18	12.4 %
No Answer	20	13.8%
<b>Area of Certification</b>		
Early Childhood Special Education	17	11.7%
Blind and Visually Impaired	0	0%
Deaf and Hard of Hearing	1	.7%
Emotional Disabilities	24	16.6%
Learning Disabilities	59	40.7%
Mental Disabilities	38	26.2%
Multi-Categorical/Generic	61	42.1%
Severe Disabilities	15	10.3%
Speech Language	0	0%
Other	3	2.1%
<b>Education</b>		
Bachelor's	20	13.8%
Bachelor's + 18	14	9.7%
Master's	60	41.4%
Master's + 30	27	18.6%
Specialist	2	1.4%
Doctorate	2	1.4%
No Answer	20	13.8%
<b>Special Education Litigation</b>		
Has been involved in litigation	16	11%
Has not been involved in litigation	109	75.2%
No Answer	20	13.8%

Table 4.2

*Frequency and Percent of Correct and Incorrect Answers for each Question*

Scenario Number	Correct Responses		Incorrect Responses		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Scenario 1	114	78.1	28	19.2	3	2.1
Scenario 2	80	54.8	63	43.2	2	1.4
Scenario 3	89	61.0	52	35.6	4	2.7
Scenario 4	89	61.0	51	34.9	5	3.4
Scenario 5	111	76.0	24	16.4	10	6.8
Scenario 6	64	43.8	73	50.0	8	5.5
Scenario 7	102	69.9	39	26.7	4	2.7
Scenario 8	70	47.9	69	47.3	6	4.1
Scenario 9	27	18.5	95	65.1	23	15.8
Scenario 10	91	62.3	33	22.6	21	14.4
Scenario 11	112	76.7	11	7.5	22	15.1
Scenario 12	97	66.4	22	15.1	26	17.8
Scenario 13	66	45.2	56	38.4	23	15.8
Scenario 14	70	47.9	50	34.2	25	17.1
Scenario 15	75	51.4	47	32.2	23	15.8
Scenario 16	95	65.1	25	17.1	25	17.1
	Total	Mean	Total	Mean	Total	Mean
	1352	57.8	738	31.5	230	9.8

Table 4.3

*Does the Why/Why Not Legal Justification Provided Match the Legal Issue in the Scenario?*

Scenario Number	Correct Yes/No Response	Correct Legal Justification	Incorrect Legal Justification	No Justification Provided
Scenario 1	114	59 (51.7%)	45	10
Scenario 2	80	42 (52.5%)	28	10
Scenario 3	89	44 (49.4%)	35	10
Scenario 4	89	60 (67.4%)	18	11
Scenario 5	111	69 (62.1%)	27	15
Scenario 6	64	34 (53.1%)	21	9
Scenario 7	102	58 (56.8%)	40	4
Scenario 8	70	44 (62.8%)	11	15
Scenario 9	27	9 (33.3%)	12	6
Scenario 10	91	65 (71.4%)	13	13
Scenario 11	112	83 (74.1%)	9	20
Scenario 12	97	66 (68%)	16	15
Scenario 13	66	42 (63.6%)	18	6
Scenario 14	70	43 (61.4%)	11	16
Scenario 15	75	28 (37.3%)	29	18
Scenario 16	95	39 (41%)	43	13
Total	1,352	785 (58%)	376 (28%)	119 (14%)

Table 4.4

*Frequency and Percent of Correct Answers Based on Number of Years in Special Education*

Scenario Number	0-4 years	5-9 years	10-14 years	15-19 years	20-24 years	25-29 years	30 years or more
	Correct Response	Correct Response	Correct Response	Correct Response	Correct Response	Correct Response	Correct Response
Scenario 1	13	20	18	15	13	7	14
Scenario 2	11	14	11	7	8	4	10
Scenario 3	14	13	13	8	9	8	14
Scenario 4	12	12	14	12	9	25	13
Scenario 5	16	16	17	13	12	8	16
Scenario 6	8	9	12	9	10	4	7
Scenario 7	14	18	15	12	14	6	13
Scenario 8	9	16	7	8	8	5	11
Scenario 9	7	8	4	5	0	2	1
Scenario 10	12	21	15	9	16	7	11
Scenario 11	19	23	19	15	15	7	14
Scenario 12	17	19	14	10	13	9	15
Scenario 13	8	12	12	9	9	6	10
Scenario 14	13	13	11	9	8	5	11
Scenario 15	11	17	13	7	9	6	12
Scenario 16	16	17	16	12	14	7	13
Total	200	248	211	160	167	116	185
Percent	63.3	63.9	66.4	65.6	63.0	61.4	64.9

Table 4.5

*Frequency and Percent of Correct Answers Based on Areas of Certification*

Area	EC	DHH	ED	LD	MD	Multi	Sev
Number Certified	17	1	24	59	38	61	15
Scenario Number	Correct Response	Correct Response	Correct Response	Correct Response	Correct Response	Correct Response	Correct Response
Scenario 1	14	1	20	48	27	48	13
Scenario 2	7	1	13	35	19	31	7
Scenario 3	10	1	16	37	27	39	10
Scenario 4	6	1	16	36	23	38	9
Scenario 5	15	1	20	48	31	44	13
Scenario 6	8	0	9	27	17	31	10
Scenario 7	12	1	17	45	28	46	11
Scenario 8	8	1	14	34	20	30	6
Scenario 9	1	0	6	15	5	17	2
Scenario 10	13	1	16	37	28	48	11
Scenario 11	17	1	21	53	30	52	13
Scenario 12	12	0	20	48	31	46	13
Scenario 13	9	1	14	28	17	36	7
Scenario 14	5	1	17	38	16	35	6
Scenario 15	13	1	15	36	24	40	11
Scenario 16	13	1	20	47	28	47	9
Total	163	13	254	612	371	628	151
Percent	59.9	81.3	66.8	65.4	63.0	65.8	66.2

*Note.* Early Childhood Special Education = EC. Deaf and Hard of Hearing = DHH. Emotional Disabilities = ED. Learning Disabilities = LD. Mental Disabilities = MD. Multi-Categorical/Generic = Multi. Severe Disabilities = Sev.

Table 4.6

*Frequency and Percent of Correct Answers Based on Level of Education*

Scenario Number	Bachelor's	Bachelor's +18	Master's	Master's +30	Specialist	Doctorate	No Answer
	Correct Response	Correct Response	Correct Response	Correct Response	Correct Response	Correct Response	Correct Response
	Scenario 1	15	14	48	20	1	2
Scenario 2	13	10	27	13	1	1	15
Scenario 3	12	8	37	19	2	1	10
Scenario 4	10	7	41	18	1	0	12
Scenario 5	16	9	48	23	2	0	13
Scenario 6	11	6	28	12	1	1	5
Scenario 7	14	11	45	20	1	1	10
Scenario 8	11	5	35	12	0	1	6
Scenario 9	8	1	11	5	1	1	0
Scenario 10	15	10	45	20	1	0	0
Scenario 11	18	13	55	23	1	2	0
Scenario 12	18	13	41	23	0	2	0
Scenario 13	7	10	31	17	0	1	0
Scenario 14	11	10	32	15	2	0	0
Scenario 15	12	7	34	18	2	2	0
Scenario 16	15	13	46	19	1	1	0
Total	206	147	604	277	17	16	85
Percent	66.5	65.9	63.9	66.1	53.1	51.6	65.4

Table 4.7

*Frequency of Correct Based on Whether the Teacher has been Involved in Special Education Litigation*

Scenario Number	Have Not Been Involved in Special Education Litigation	Have Been Involved in Special Education Litigation	Did Not Answer Litigation Question
	Correct Response	Correct Response	Correct Response
Scenario 1	86	14	14
Scenario 2	57	8	15
Scenario 3	70	9	10
Scenario 4	68	9	12
Scenario 5	85	13	13
Scenario 6	52	7	5
Scenario 7	80	12	10
Scenario 8	55	9	6
Scenario 9	25	2	0
Scenario 10	78	13	0
Scenario 11	99	13	0
Scenario 12	85	12	0
Scenario 13	55	11	0
Scenario 14	63	7	0
Scenario 15	64	11	0
Scenario 16	82	13	0
Total	1104	163	85
Percent	64.8	64.7	65.4

## CHAPTER FIVE

### DISCUSSION

The IDEA guarantees a FAPE for children with disabilities, ages three to 21. The IEP is the document that guides schools and districts in the provision of FAPE for each student. FAPE has been defined and further clarified through case law since the landmark case, *Board of Education v. Rowley (1982)*. Special education is the most litigated segment in all of public education (Zirkel, 2014). According to Zirkel (2015), FAPE is the subject of most special education litigation, with IEP development and implementation reported to be the most frequently named area of noncompliance (Drayton, 2014; O'Dell & Schafer, 2005; Ott, 2013). Therefore, special education teachers who are leading IEP teams must be prepared to address issues as they arise in a meeting.

This chapter provides a summary of the study. It begins with a review of the purpose of the study and a discussion of participants' responses, including identified issues of noncompliance in IEP development and implementation. The chapter includes limitations of the study, implications for practice and further research, and concludes with a summary.

#### Purpose of the Study

The study was conducted in order to examine the working knowledge of the IDEA, specifically regarding IEP development and implementation, of special education



teachers in a large geographic region in the state of South Carolina. The research questions that focused this study were:

1. What is the working knowledge of the requirements of the IDEA among special education teachers in South Carolina, specifically related to IEP development and IEP implementation?
2. Is there a difference in the working knowledge of the IDEA and the special educators' demographic characteristics, including areas of certification, years teaching in special education, degree held, and whether they have previously been involved in special education litigation?

## **Discussion**

### **Findings**

The analysis of data revealed that teachers who completed the survey, regardless of their demographic characteristics, are 57.8% accurate in their ability to determine, in the scenarios provided, if an action taken by the district was a legally appropriate action. In addition, just 58.1% of these correct yes/no responses included an appropriate legal justification. It is concerning that only a little more than half of the teachers were able to determine if the district's action in the scenario was legally appropriate. It is equally concerning that of the teachers who correctly determined the appropriateness of the district's action, only a little over half were able to explain why the action was legally correct.

There could be several reasons why special education teachers could not provide legal justification for many answers. Perhaps teachers have been given information specific to certain situations or problems that have occurred within their districts.

However, in answering some yes/no questions they simply recalled the familiar “rule” they were told without understanding the legal reasons. Therefore, they were able to answer some of the questions correctly, but were not able to generalize their knowledge or apply the law in situations that were less familiar to them. One could also speculate that some special education teachers are simply limited in their basic knowledge and understanding of IDEA requirements. Given that the state of South Carolina is not a highly litigated state, this is quite possible.

The findings of this study demonstrate an overall weakness in special education teachers’ ability to understand and correctly apply the law. Based on the literature, with the exception of the Whitaker (2003) study involving first year special education teachers, special education teachers report a high level of knowledge and understanding of special education law (Martin et al., 2004; Martin, et al., 2006; O’Shea et al., 2000). All of these studies are based on special education teachers’ self-perception and self-reporting of their knowledge (Martin et al., 2004; Martin, et al., 2006; O’Shea et al., 2000). Teachers’ ability to apply the law has not previously been studied. Therefore, the current study is the first to assess teachers’ actual knowledge and examine whether they know why certain actions are legally appropriate or inappropriate. This is new information that adds to the literature. The results of the current study, instead of supporting the earlier findings in the literature, contradict the notion that all or most special education teachers are highly proficient in their ability to apply the requirements of the IDEA in real life scenarios involving issues of procedural and substantive noncompliance identified in research and case law.

**Issues of procedural noncompliance.** Some previously identified problems with procedural compliance include developing the IEP as a legal document with all necessary components, including measurable annual goals and appropriate accommodations that are based on students' needs. Landmark and Zhang (2012), in their study of IEPs, determined that some IEPs they reviewed had incomplete or missing components. Scenario 2 asked whether it would be appropriate to conclude an IEP meeting without a final IEP document. Some teachers stated it would be acceptable to allow the IEP to be completed after the meeting had concluded. However, others correctly stated that it would be inappropriate to sign a document that is not complete. Teams must ensure that IEPs are complete prior to being signed by the IEP team. IEPs inadvertently left incomplete could create a compliance issue for districts.

Researchers have shown that IEP teams have had difficulty ensuring that annual goals are based on data, and are measurable (Bateman & Herr, 2006; Blackwell & Rosetti, 2014). There is also evidence that accommodations do not always line up with a student's identified needs (Rosas et al., 2009). Scenarios 7 and 8 involve the IEP components of measurable annual goals, and IEP accommodations that meet the student's needs. In scenario 7, about a third of the teachers recognized that the proposed annual goal was not measurable, and therefore was inappropriate. Almost a quarter more of the teachers referenced the need for more data or more details. All of these teachers seemed to understand that the goal in scenario 7 did not meet the criteria for a measurable goal, however, several teachers did not address the insufficiency of the written goal, and indicated that because the goal addressed an identified weakness it was acceptable.

Accommodations to the general curriculum is another acceptable way to meet a student's needs. In scenario 8, appropriate accommodations had been put in place to address the student's impulsive behavior. Whereas about a quarter of the teachers agreed the accommodations would be appropriate to address the student's needs, almost twice as many teachers erroneously believe the IEP must also include a goal, FBA, and/or BIP to address impulsive behavior. However, it is equally appropriate to address a student's needs, based on data, through accommodation, as well as an annual goal (Landmark & Zhang, 2012; Rosas et al., 2009). If an accommodation meets the needs of the student, a goal would not be required.

Conducting a legal IEP meeting with all required team members is another procedural matter that was identified as problematic in the literature. Goldstein et al. (1980) found issues of noncompliance related to districts holding IEP team meetings without all required team members. In almost half of the meetings examined, the general education teacher did not attend or stay for the entire meeting. Scenario 4 involved holding a legal meeting with all required team members. While over half of the teachers correctly stated that the general education teacher is required to attend the IEP meeting from start to finish, almost a quarter of the teachers stated it would be permissible for the general education teacher to leave after "her part" of the IEP was discussed. One teacher suggested the general education teacher could sign the paperwork later, after being provided a complete report about the meeting. This would be an inappropriate action, as the general education teacher cannot participate in IEP development simply by reviewing the outcome of the meeting at a later time. Some teachers correctly noted that there is an excusal process which allows a team member to be excused, with both parent and district

permission. This process must be completed prior to an IEP team meeting. Team members whose area of service will be discussed are typically advised not to request excusal. A legal team contains all required members, including the general education teacher. It is extremely important that decisions made are truly team decisions. This is not possible without a complete and legal IEP team.

In the current study, special education teachers consistently referenced team decision making in IEP development. However, although the IEP team is presented as the decision making entity, many teachers believe that parents' preferences can overturn a team decision. Special education teachers' perceptions and beliefs of which actions under the IDEA require parental consent have not been studied explicitly. Although, not the specific focus of the current study or previous research, a theme that became overwhelmingly apparent in the current study, is that teachers do not have a clear understanding of which actions in special education require consent from parents. Numerous open response answers in the current study indicate that many special education teachers believe that districts must abide by parents' wishes, and that parental consent is required for IEP changes, regardless of the data or an IEP team's recommendations. In scenario 1, most teachers responded correctly that the district is responsible for making decisions regarding methodology, and referenced the fact that all IEP team decisions are based on data, and are team, rather than individual, decisions. Within the team, the role of parent is that of equal team member. However, several teachers stated that parents have the last say in all IEP decisions. One teacher stated that if the district does not follow the parents' wishes, it puts itself at risk for a law suit.

Districts should not acquiesce to parents' wishes simply to avoid a confrontation or disagreement.

The role of parents was also addressed in scenario 3, in which the question of changing a student's placement to a different school location was examined. In this scenario, the parents' stated decision hinged on whether a sibling without a disability would be allowed to attend the out of zone school. In response, some teachers answered that the team could not move forward with a new placement unless the parent provided consent, even though the decision was based on evidence considered by the team in making its recommendation. Scenario 12 also dealt with parents and placement, specifically the location of special programs within a district. Most teachers agree the district has the right to choose where to house certain special programs, but a few teachers erroneously stated that the student cannot be served at a location that is not the student's home school without the parents' permission. United States District Court of South Carolina confirmed that districts are not required to provide equivalent programs at each school location, nor are they required to have parental consent to serve a student at a location that is not the student's home school (*Troutman v. Greenville Co., 1983*).

Many teachers expressed the belief that special education services cannot be changed without parental consent. Scenario 6 involved an IEP team recommendation for certain special education services. In this scenario, almost half of the teachers responded that the district could not move forward with the recommendation without parental consent. In scenario 15, almost as many teachers responded that parents can revoke consent for one service, or deny some services while keeping the other services intact.

Although the IDEA emphasizes the importance of parent participation, consent is not required to implement changes in an IEP. Once initial consent for the provision of special education services has been obtained, all subsequent decisions are made by the IEP team. These scenarios demonstrate the obligations that districts have regarding IEP development as well as the obligation to implement IEPs that are appropriate for each student, based on data that has been collected regarding student needs and abilities. Districts must ensure that each IEP is not only written in a compliant manner, but that it provides for the appropriate services and placement for the student in question. For students who are already receiving special education services, the decision to add services, remove services, or change services that might result in a change of placement, are IEP team decisions. Parents do not have the unilateral authority to make any educational decision except to revoke consent for all special education services.

Research shows IEP teams have experienced difficulty in making special education placement decisions in an appropriate manner (O'Dell & Schaefer, 2005). This concept is validated in teachers' responses in the previously discussed scenarios, as well as in teachers' responses to scenario 5, in which the principal wants to exercise "veto" power in a placement decision. In this situation, teachers correctly stated that LRE or placement decisions are student focused decisions that are based on data. However, some teachers felt that if the principal is serving as the LEA representative, he or she would have the power to say yes or no to any IEP team recommendation. If the district and parents are not in agreement, and the team cannot reach consensus, as noted in some of the scenarios, the district has the ultimate responsibility of developing an IEP that is based on data, and meets the unique and individual needs of the student. However, this

does not equate to a “veto” by the principal or any other team member. Some of the teachers who correctly stated the principal did not hold “veto” power, incorrectly stated the IEP team decision would be made by a “majority vote”. IEP team decisions should be consensus of the group, never a demand by a parent, a “veto” by the LEA representative, or by vote. Interestingly, several teacher responses consistently referenced a two-thirds majority vote in IEP team decision making.

The procedural errors revealed in previous studies, developing a legal IEP (Bateman & Herr, 2006; Blackwell & Rosetti, 2014; Landmark & Zhang, 2012; Rosas et al., 2009) and conducting a legal IEP meeting (Goldstein et al., 1980), were also areas of weakness revealed in the current study, with the exception of the understanding of what constitutes a measurable annual goal, which was a relative strength. Other areas of weakness in procedural knowledge in the current study included understanding the role of the parent and the LEA representative as equal team members, and the lack of a clear understanding of how to make appropriate placement decisions. It was surprising that many responses referenced the need for parental consent for changes in the IEP. This might be a result of the high level of litigation in special education and perhaps teachers’ fear of legal action from parents.

**Issues of substantive compliance.** Substantive compliance refers to whether the IEP is written to meet the student’s individual needs, to allow the student to progress in his or her educational program, and whether it is implemented as intended in the written document. Procedural errors are often judged on whether they have a negative effect on a student’s ability to progress in his or her educational program. If the error results in a



negative effect on the student’s educational program, it might be considered a substantive error, as well.

IEP implementation has been identified as an issue in substantive compliance in the literature and in case law. Failure to fully implement the IEP is a significant issue in the state of South Carolina (*Alexander v. Department of Juvenile Justice, 1995; Midlands v. Richland County, 2013; Drayton, 2014; Ott, 2013*), and across the country (O’Dell & Schaefer, 2005; Bugaj, 2000; Zirkel, 2015). Drayton (2014) and Ott (2013) pointed out that failure to implement the IEP as written is reported as the most prevalent issue of noncompliance in South Carolina each year. In the case of *Sumter Co. v. Heffernan (2011)*, the school district was found in violation because it did not implement the specific methodology which was included in the IEP, in the precise manner that was described in the IEP. Although teachers consistently stated that the IEP must be implemented as written (scenarios 9, 10, and 16), they did not demonstrate an understanding of how to address the issue of a district’s failure to fully implement an IEP. The most frequently missed survey question (scenario 9) dealt with the district’s response following its failure to fully implement an IEP. This scenario was answered correctly by just 18.5% of teachers; missed by 65.1% and skipped by 15.8%. In cases where the district has not effectively implemented the entire IEP, the IEP team should convene to determine the educational impact for the student. Most teachers responded that the missed sessions should be made up. Whereas teachers were correct in responding that the IEP should always be implemented as written, they were incorrect to suggest that simply scheduling “make up” sessions would address the errors in implementation. The

school cannot necessarily ensure the student’s specific needs will be met, without the IEP team’s consideration of impact of the missed sessions.

Midlands Math and Business Academy Charter School (*Midlands v. Richland County, 2013*) lost its charter for failure implement the IEP as written when it failed to provide regular progress reports, as indicated on a number of IEPs. In scenario 10, most teachers agreed that IEP progress reports ought to be more than a phone call. Some thought a phone call would be satisfactory, however, a phone call would not meet the IEP requirement. If the progress reports are not provided through the designated IEP system, how can a teacher show she has met the IEP requirement? In scenario 16, the student’s IEP called for specific instruction in reading fluency. Many teachers correctly agreed that “general” reading instruction would not meet the IEP requirement of “specific instruction in reading fluency”. However, more teachers missed the point that reading fluency is not addressed by general reading instruction, proposing that the requirement could be met if the instruction was provided by the teacher instead of computer based instruction. Regardless of the teaching mode, the IEP would not be implemented correctly if the instruction focused on general reading instead of reading fluency.

All special education and related services outlined in the IEP must be implemented as indicated in the written document (Lynch & Beare, 1990; Smith, 1990a; Smith, 1990b). Provision of IEP accommodations is also an important part of IEP implementation and has been recognized as a problematic area (Drayton 2014; O’Dell & Schaefer, 2005; Ott, 2013; Bugaj, 2000). In scenario 11, most teachers appropriately agreed that as long as the student with a disability received the accommodation of oral administration, as indicated in the IEP, the whole class accommodation would not be a

problem. Some teachers correctly noted that if the accommodation also called for small group or individual administration, reading to the whole class would not be in line with the IEP requirement.

Case law reminds us to design each IEP individually to ensure educational benefit for the student (*Florence Co. v. Carter, 1993; Lexington v. Frazier, 2011*). Scenarios 13 and 14 focused on addressing the unique needs of the student in the IEP. In scenario 13, almost half of the teachers answered correctly that the IEP team should address behavioral difficulties for a student who had been identified with a learning disability. If learning is affected, the IEP team must convene to discuss and determine whether the behavioral issues should be included in the student's IEP, or if the behaviors should be dealt with through typical school discipline. Almost a quarter of the teachers felt an FBA should be completed to address the behavior. While an FBA would not necessarily be required, it might be a recommendation of the IEP team. In order to consider this or other possible recommendations, the team must convene. In their responses to scenario 13, over a quarter of the teachers made the same mistake that was made in *Lexington v. Frazier (2011)*, in which the IEP team did not consider the student's behavior because the student had not been identified with a behavioral disability.

In scenario 14, more than a third of the teachers incorrectly stated that the IEP team could not add a goal to the IEP, although data had been collected, unless a reevaluation was conducted to consider if the student might be a student with a math disability. This student had been identified with a language disability which had been noted to affect comprehension. A reevaluation is not required before an IEP team can add goals or services to an IEP. Although an IEP team might consider reevaluation in

this case, it would not be required. Appropriate data had already been collected, and it was likely the math difficulties were related to the language disability. Goals and services can be added to the IEP based on data which has been collected in the student's identified areas of need.

Even when teachers responded correctly that data is required in LRE placement decisions, annual goals must have certain components in order to be measurable, the entire IEP must be implemented, and accommodations must be provided; many teachers were not able to articulate the reasons they believed the district's action in the scenario to be either appropriate or inappropriate. Based on the responses provided, special education teachers demonstrated difficulty in knowing how and when to include IEP goals and services that address the unique needs of the student, how to make appropriate IEP team decisions when all team members are not in agreement, and how to address the issue when mistakes are made in IEP implementation. Because of these weaknesses in understanding of how to apply the law, teachers are likely to make legally incorrect recommendations in meetings that involve any decisions that are not extremely clear cut. Based on the results of the study, special education teachers are likely to have difficulty in meetings where there is any disagreement either among team members, or between the district and the parents.

The role of IEP team members was studied in previous research (Martin et al., 2004; Martin, et al., 2006; O'Laughlin & Lindle, 2014; O'Shea et al., 2000; Rosas, et al., 2009), emphasizing the team approach to decision making, but noting a dependence on the special education teacher to lead the team. Although the current study verified the findings of previous research which emphasize a team approach, it does not fully support

the notion of the special education teacher as the resident expert in the group. Although the special education teacher is probably the team member with the most knowledge of special education policies and procedures, he or she might not have the ability to keep the district out of legal trouble when there are difficult decisions to be made. Based on the responses in the current study, the special education teacher is not likely to outwardly disagree with the parent or the principal even when the data support his or her opinion.

### **Limitations**

There are several limitations noted in this study. A potential limitation is that the study includes a small number of districts in just one state. Districts in the Old English Consortium (OEC), in South Carolina, were selected for the survey, with seven of the nine agreeing to allow their special education teachers to participate. Although the districts in the OEC are reasonably representative of districts across the state, seven districts is a small percentage of the entire state. Of the 387 teachers who were invited to participate in the survey, 145 (37.5%) chose to participate; therefore, we have no information about the knowledge of the teachers who did not participate in the study. Additionally, due to the confidential nature of the web-based survey instrument, we do not know the response rate for each participating district, or if teachers in any one district might have responded more or less accurately than teachers in any other participating district. It can also be considered a limitation that we do not know if teachers, in districts which were not surveyed, would respond to the scenarios in the same or in a different manner.

The potential legal issues presented in the 16 hypothetical scenarios cannot be considered all-inclusive regarding potential problems or disagreements that occur in

school districts across the state or nationally. Because of this, there are legal concerns that arise in IEP development and implementation that are not addressed in this study. Therefore, no data were collected regarding teachers' understanding of or ability to apply knowledge of the law in these situations not investigated.

### **Implications for Practice**

The results of the study show a 57.8% accuracy rate overall, with just over half of the teachers who answered correctly providing appropriate legal justifications for their answers. This means that only 33.8% of all possible responses included both a correct answer to the scenario and a correct legal justification. These alarming figures clearly indicate that special education teachers have a lot to learn about the IDEA and how to apply this law. The strongest areas were related to understanding how to send an appropriate progress report (scenario 10), and how to provide accommodations in a legally correct manner (scenario 11). These were probably the clearest cut scenarios, and those that teachers are likely to encounter often. The weakest areas were knowing how to address a mistake in IEP implementation (scenario 9) and understanding that the district is responsible for providing school based services (scenario 15), and parents cannot choose some services and decline others (scenario 15). These are situations that teachers are not likely to encounter very often. It is quite possible that the teachers who participated in the study have never dealt with these issues.

As Whitaker (2003) asserted, special education teachers need more training in policies and procedures under the IDEA. Flannery and Hellemn (2015) suggested that special education teachers need to be specifically educated in the requirements of compliant and relevant IEPs. Teachers can be taught through formal or informal

professional development that includes specific information about the IDEA and how to apply the requirements in real situations. The results of a study conducted by Flannery and Hellemn (2015) showed a positive impact from professional development that targeted specific areas. Therefore, districts should provide focused professional development in the legal requirements of the IDEA, including exploration of a number of possible situations in which the legal requirements must be applied.

Results from the current study demonstrate a lack of understanding by special education teachers regarding how team decisions in an IEP meeting should be made and how to react in situations when parents are not in agreement. Special education teachers must be explicitly taught which actions in the IEP process require parent consent and which ones do not. It was surprising that many teachers do not understand that all decisions following initial placement in special education are team decisions and cannot be made unilaterally by either parents or the school principal. Teachers need detailed training about when reevaluation is needed for changes in the IEP and when it is not. Professional development has to be required and ongoing in order to ensure a detailed understanding. Again, as Whitaker (2003) advised, special education directors must be cognizant of the needs for training in these areas and must make themselves aware of the IEP recommendations and decisions occurring within their districts. This will allow each director to focus district training on specific issues of noncompliance within the district.

When Districts are dealing with parents who have demonstrated a history of disagreement, or when possible issues are anticipated in an upcoming meeting, professional development might consist of holding a planning meeting prior to the IEP meeting to consider what legally appropriate options are available to the team. They

could also trouble shoot situations that might transpire in the IEP meeting. Districts with issues of noncompliance could implement a practice of debriefing IEP teams following IEP meetings to discuss the things that were handled well by the team, as well as issues that were problematic.

The state of South Carolina, as well as other states, provides guidance in the form of state meetings, professional development, and documents such the South Carolina Process Guide for Special Education. Often, the special education director and others in the district's special education administrative office are the only professionals who attend state level meetings or take advantage of access to this document. It is a very detailed and comprehensive reference document which guides districts in the evaluation process as well as in the provision of special education services. Special education directors could use this guide in the district to instruct teachers in proper procedural and substantive compliance. Districts also need to refer to this guide to examine their own practices and policies to be sure they are in line with the state requirements. Not only should districts evaluate their own practices, but they should also assess the political climate of the district. Do either spoken or unspoken political calculations effect the way special education teachers are expected to lead an IEP meeting? School or district administrations' encouragement of "keep parents happy and quiet" will likely influence the teachers' practices and beliefs regarding IEP team decisions.

Colleges and universities with special education teacher education programs should also spend more time teaching prospective teachers about possible legal concerns with IEP development and implementation. The same should be included in school administrator preparation programs. Although the current study did not focus on the



knowledge of school administrators, the lack of proficient special education teacher knowledge emphasizes the need for school administrators to develop their own knowledge and understanding, perhaps depending less on the knowledge and guidance of their special education teachers.

### **Implications for Research**

The large number of responses in the current study that reference the need for parental consent in many decisions indicate a need to specifically study special education teachers' beliefs about when parental consent is needed and when it is not. In their responses, a number of teachers mentioned their own district's practices for certain situations. In light of this, districts' practices should be examined to determine whether the practices match the legal requirements under the IDEA.

The current study should be expanded to include more school districts within South Carolina, as well as in other states. Based on the literature reviewed, concerns with IEP development and implementation are not exclusive to South Carolina. Special education administrators (directors and coordinators) should be included in future studies to ensure that the special education leaders within each LEA are indeed the local "experts" and are knowledgeable enough to provide appropriate guidance to the teachers and IEP teams in their districts. Given the results of the current study, it would be beneficial to conduct the same survey with special education leaders across the state, to determine if the special education directors or coordinators are able to provide more correct responses and appropriate legal justification for their answers.

Because targeted professional development has been shown to be successful (Flannery & Hellemn, 2015), there is a need to investigate the amount, frequency, and

intensity of professional development routinely provided by districts to their special education teachers in the area of legal literacy. Special education teachers who participated in the current study should be provided focused professional development in the areas found to be weak in the survey responses. Following this professional development, the same teachers should be surveyed again and given an opportunity to change or expand their responses. This would help determine if professional development in this area is effective. There is also a need to examine teacher education programs in colleges and universities to determine if legal literacy is emphasized when teaching about IEP development. If this is not a topic of focus in both districts and in teacher preparation programs, the issues of non-compliance will not improve.

### **Summary**

The IEP is the vehicle by which districts provide a FAPE to students with disabilities. Special education teachers are the primary participants and typically take the lead in both IEP development and implementation for the students they serve. The FAPE standard, established by *Rowley (1982)*, provides a two-part test to be used in determining whether FAPE has been provided for students with disabilities. Part one is to ensure that districts have followed the applicable IDEA procedures. Part two asks if the IEP has been developed to afford educational benefit to a student. In order to ensure districts are operating within the law, one must understand the required procedures, be able to create a legally correct IEP document, and apply the law correctly in situations that occur in districts each day.

In this study, special education teachers' ability to apply the law was studied. A review of the literature suggests that special education teachers feel competent in their

knowledge of special education law and perceive themselves as leaders in IEP development and implementation. The results of the current study do not support those beliefs. However, the results of the study are not surprising and are in line with identified issues of noncompliance that were apparent in the literature and in case law. The responses provided by the special education teachers surveyed resulted in a 57.8% accuracy rate, with just 58.1% of the correct responses accompanied by sound legal justification. These results demonstrate a less than proficient understanding of the IDEA for special education teachers, as well as a significant weakness in their ability to apply the law in a variety of situations. These findings establish a need for specific professional development in the understanding and application of special education law. Special education is the most litigated segment of K-12 education, therefore, those taking the leadership roles within our schools must be prepared with the knowledge of understanding to guide teams in legally correct decisions.

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## APPENDIX A

IRB Approval Letter



OFFICE OF RESEARCH COMPLIANCE

### INSTITUTIONAL REVIEW BOARD FOR HUMAN RESEARCH APPROVAL LETTER for EXEMPT REVIEW

This is to certify that the research proposal: **Pro00054752**

Entitled: *To Assess the Knowledge of Special Educators in the Practical Application of Special Education Law: Individuals with Disabilities Education Act (IDEA)*

Submitted by:

Principal Investigator: Laura Holland

College/Department: Education

Educational Studies / Special Education

Wardlaw

Columbia, SC 29208

was reviewed in accordance with 45 CFR 46.101(b)(2), the referenced study received an exemption from Human Research Subject Regulations on **4/12/2016**. No further action or Institutional Review Board (IRB) oversight is required, as long as the project remains the same. However, the Principal Investigator must inform the Office of Research Compliance of any changes in procedures involving human subjects. Changes to the current research protocol could result in a reclassification of the study and further review by the IRB.

Because this project was determined to be exempt from further IRB oversight, consent document(s), if applicable, are not stamped with an expiration date.

Research related records should be retained for a minimum of three (3) years after termination of the study.

The Office of Research Compliance is an administrative office that supports the University of South Carolina Institutional Review Board (USC IRB). If you have questions, contact Arlene McWhorter at [arlenem@sc.edu](mailto:arlenem@sc.edu) or (803) 777-7095.

Sincerely,



Lisa M. Johnson  
IRB Manager

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## APPENDIX B

### District Cover Letter

**Study Title:** Special Education Teachers' Working Knowledge of the IDEA

Dear Research Review Board/Committee,

My name is Laura Holland. I am a Doctoral Student in Special Education Leadership at the University of South Carolina. I am conducting a study of special education teachers' knowledge of the IDEA in South Carolina. The purpose of this study is to determine the working and practical knowledge of special education teachers within the state of South Carolina. Given scenarios that have the potential to create a legal problem for a district, will the special education teacher be able to determine if the decision made is legally appropriate? The study will address the following research questions:

1. What is the working knowledge of the requirements of the IDEA among special education teachers in South Carolina, specifically related to IEP development and IEP implementation?
2. Is there a difference in the working knowledge of the IDEA and the special educators' demographic characteristics, including areas of certification, years teaching in special education, degree held, and whether they have previously been involved in special education litigation?

I am writing to request approval to conduct this study within your school district. Special education teachers will be asked to respond to a 20 item web-based questionnaire which includes 16 hypothetical scenarios and four demographic items. The survey should take 20-25 minutes to complete. Attached is a copy of the proposed survey.

This research will address these questions by gathering and analyzing special education teachers' practical knowledge of the IDEA. Special education teachers will be asked to complete an online survey of hypothetical scenarios based on issues in special education that can potentially result in legal struggles for a school district, in order to determine strengths and weaknesses of special education teachers' ability to apply knowledge of the IDEA in potentially difficult situations.

Results of this research will be presented as my dissertation in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Special Education Leadership. In addition, the results of the study might be used to recommend special education professional development for participating districts' special education teachers regarding IEP team recommendations and decisions. In turn, professional development should result in a more inclusive working knowledge of the IDEA and will provide a measure of prevention regarding legal issues across the state.

There are no potential risks associated with this study, and individual responses will be confidential. Results will be reported by topic and special education teacher demographic information, with no references made to any particular participant, school, or district. A summary of the overall results of the study will be shared with the Special Education Director in each participating district.

Please do not hesitate to contact me with any questions you may have about the study. You may contact me at 803-517-1685, 803-810-8406, or

[laura.holland@clover.k12.sc.us](mailto:laura.holland@clover.k12.sc.us).

Thank you for your consideration.

Laura Holland

803-517-1685

803-810-8406

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**Faculty Advisor:** Kathleen Marshall, Ph.D.

## APPENDIX C

### Survey – Web-based Questionnaire Items

#### **Introduction**

Study Title: Special Education Teachers' Working Knowledge of the IDEA

Thank you for participating in the survey. Your feedback is extremely important. The survey consists of three sections. The first two sections include hypothetical scenarios in which you will determine if the action taken or decision made by the district was an appropriate action or decision. Section one includes eight questions about IEP development. Section two includes eight questions about IEP implementation. Please answer each question by choosing “Yes” or “No” and then answer “Why” or “Why Not” (In one or two sentences, please explain why you believe the action or decision is legally appropriate or why it is not legally appropriate). The third section includes basic demographic questions. No personally identifiable information will be collected or reported in any way in the survey results. Your responses will be completely confidential. Thank you again for your participation.

#### **IEP Development**

Please respond to each item by choosing “Yes” or “No”, explain “Why” or “Why Not”, and then continue on to the next question in the questionnaire.

1. During an IEP meeting, the parents of a child with autism insist that a specific methodology be included in the IEP. The school does not agree with this, but the



parents are very insistent and say they will not sign the IEP if the school does not comply. The IEP team agreed to include the methodology in order to avoid a disagreement. Was this the appropriate response?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

2. An IEP meeting lasts for several hours. Once the content of the IEP has been agreed upon, the special education teacher says that she will enter the information into the computer system later and send the parent an updated copy in order to keep the meeting from lasting even longer. The parent agrees, but the principal insists that the team remain until all information is entered and signatures are obtained. Was this an appropriate response for the principal?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

3. The IEP team recommends a student for a more restrictive placement to include specialized instruction in a special education class, which is housed at a different school location. The parent stated if the student’s sister could have an accommodation to also attend the other school, then she would agree. The IEP team agreed to hold on the decision until the principal could get an answer to the question about the sister’s attendance accommodation. Was this an appropriate action for the IEP team?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

4. An IEP meeting is scheduled during the general education teacher's planning time. The IEP team gets all pertinent information from the general education teacher at the beginning of the meeting so that she can leave to retrieve her class when her planning time is over. The general education teacher leaves and the rest of the team continues. Was this an appropriate action?

*(Drop down choices of "Yes" and "No"; Comment box to answer "Why or Why Not")*

5. All IEP team members are in agreement with a placement recommendation except for the principal. Because he is the LEA representative, he chooses to "veto" the decision and move the team in a different direction. Was this an appropriate action for the principal?

*(Drop down choices of "Yes" and "No"; Comment box to answer "Why or Why Not")*

6. The IEP team reviews all data and makes a recommendation for special education services. The team is in agreement except for the parent. After a lengthy discussion the team is still in agreement and the parent is still opposed to the recommendation. The school moves forward with the recommendation even though the parent is opposed. Was this an appropriate action?

*(Drop down choices of "Yes" and "No"; Comment box to answer "Why or Why Not")*

7. A student's IEP currently consists of present levels of performance that include reading and math. During the IEP meeting, the general education teacher also mentions that the student is struggling with writing a paragraph. The team

discusses how the student's writing impacts other areas of the curriculum. The team decides to add a goal stating "the student will improve paragraph writing in order to meet the grade level curriculum standards". Is this an appropriate annual goal to meet the needs of the student?

*(Drop down choices of "Yes" and "No"; Comment box to answer "Why or Why Not")*

8. A student's IEP indicates needs in the areas of academics and impulsive behavior. There are goals for all academic areas impacted and accommodations in place to assist with the impulsive behavior. Is this an appropriate way to address the behavior?

*(Drop down choices of "Yes" and "No"; Comment box to answer "Why or Why Not")*

### **IEP Implementation**

Please respond to each item by choosing "Yes" or "No", explain "Why" or "Why Not", and then continue on to the next question in the questionnaire.

9. A student's IEP indicates that he should receive supplemental math instruction three times each week for 30 minutes each session. Because of different events at school, the student has missed a number of scheduled sessions. Parents have asked how the missed sessions will be made up and are very insistent that every minute missed must be accounted for. Instead of scheduling make up sessions, the district decided to hold an IEP meeting to discuss the impact of the missed sessions. Was this an appropriate response?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

10. A student’s IEP indicates progress will be reported every four and a half weeks.

The special education teacher sends an IEP generated progress report every nine weeks, and on the interim, call the parent with an update. Does this meet the IEP requirement?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

11. The IEP for a student with a reading disability calls for oral administration of tests and quizzes. The general education teacher does not have time to test the student separately, so she decides to read all tests and quizzes aloud the class. Does this meet the requirement in the student’s IEP?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

12. A parent wants her child to receive his special education services at the school that is closest to their home. The district recommended services be provided at another school location because that is where the program that meets the requirements in the student’s IEP is housed. The parent is angry and threatens litigation against the school district. The district moves forward with placement in the other school location. Is this an appropriate action by the district?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

13. A student classified as having a Specific Learning Disability also demonstrates some behavioral difficulties, such as following directions and completing academic tasks. Because the behavioral issues do not appear to be related to the identified learning disability, the IEP team does not address the behaviors, rather the school simply addresses the behavior in the manner they would for any student. Is this an appropriate action?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

14. A student with a language disability receives services in speech/language and in reading comprehension. Based on recent difficulties with math application, the special education teacher collects data in math and recommends to the IEP team to add a goal for math. The student’s identified disability is not in the area of math. Is it appropriate to add a math goal and services to the student’s IEP?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

15. A student classified with a learning disability receives speech/language services as a related service. The parent has recently begun taking the student for outside speech therapy services, and because the student is receiving similar services outside of school, mother requests that the school based speech/language services be discontinued. The IEP team determines the student should still receive therapy in school although mother is very opposed. Did the IEP team make an appropriate recommendation?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

16. A student’s IEP indicates the need for specific instruction in reading fluency. The student receives special education services in a group of students who need math instruction because this is the time of day that works best for the general education teacher’s schedule. While the special education teacher is providing direct math instruction to the group, the reading student works on a computer program designed to remediate general reading ability. Does this meet the requirements in the IEP?

*(Drop down choices of “Yes” and “No”; Comment box to answer “Why or Why Not”)*

### **Demographic Information**

Please respond to each item and then continue to the next question.

17. How many years have you been working in special education? *(Multiple choice;*

*one answer)*

4 or fewer years

5-9 years

10-14 years

15-19 years

20-24 years

25-29 years

30 years or more

18. Please check your area(s) of special education certification. Please check all that apply. *(Multiple answer choices; check all that apply)*

Early Childhood Special Education

Education of Blind and Visually Impaired

Education of Deaf and Hard of Hearing

Emotional Disabilities

Learning Disabilities

Mental Disabilities

Multi-Categorical/Generic Special Education

Severe Disabilities

Speech Language

I am not certified in special education

Other \_\_\_\_\_

19. What is the highest degree you have attained? *(Multiple choice; choose one)*

Bachelor's

Master's

Master's + 30

Specialist

Doctorate

20. Have you ever been involved in litigation/conflict resolution in special education?

\_\_\_\_\_ Yes – specify: \_\_\_\_\_

\_\_\_\_\_ No

## APPENDIX D

### Teacher Cover Letter/Consent

**Study Title:** Special Education Teachers' Working Knowledge of the IDEA

Dear Special Education Teachers,

My name is Laura Holland. I am a Doctoral Student in Special Education Leadership at the University of South Carolina. I am conducting a study of special education teachers' knowledge of the IDEA in South Carolina. The purpose of this study is to determine the working and practical knowledge of special education teachers within the state of South Carolina. Given scenarios that have the potential to create a legal problem for a district, will the special education teacher be able to determine if the decision made is legally appropriate? The study will address the following research questions:

1. What is the working knowledge of the requirements of the IDEA among special education teachers in South Carolina, specifically related to IEP development and IEP implementation?
2. Is there a difference in the working knowledge of the IDEA and the special educators' demographic characteristics, including areas of certification, years teaching in special education, degree held, and whether they have previously been involved in special education litigation?



Your district has provided approval for me to request your participation in the survey. The survey consists of a 20-item web-based questionnaire which includes 16 hypothetical scenarios and four demographic items. The hypothetical scenarios are based on issues in special education that can potentially result in legal struggles for a school district. The survey should take 20-25 minutes to complete.

Results of this research will be presented as my dissertation in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Special Education Leadership. In addition, the results of the study might be used to recommend special education professional development for participating districts. Overall results of the study will be shared upon request.

There are no potential risks associated with this study. Results will be reported by topic and special education teacher demographic information, with no references made to any particular participant, school, or district. Your responses will be confidential. Your district is neither sponsoring nor conducting this study. Your participation is extremely important and appreciated. However, participation is completely voluntary and there is no penalty for not participating in the study.

Please do not hesitate to contact me with any questions you may have about the study. You may contact me at 803-517-1685, 803-810-8406, or [laura.holland@clover.k12.sc.us](mailto:laura.holland@clover.k12.sc.us).

Thank you in advance for your assistance in this research. Your consent to participate will be acknowledged through the submission of your responses via the survey link below:

<https://www.surveymonkey.com/r/WTP7V2B>

Thank you again for your valuable contribution to this research.

Laura Holland

803-517-1685

803-810-8406

[laura.holland@clover.k12.sc.us](mailto:laura.holland@clover.k12.sc.us)

**Faculty Advisor:** Kathleen Marshall, Ph.D.

## APPENDIX E

### Survey Item Alignment

<b>Content Topic</b>	<b>Scenario #(s)</b>	<b>Research/Case Law</b>
Methodology	1	Sumter Co. v. Heffernan, 2011
Complete IEP	2	Rosas, Winterman, Kroeger, & Jones, 2009; Landmark & Zhang, 2012
LRE/ Placement	3 and 5	O'Dell & Schaefer, 2005; O'Laughlin & Lindle, 2014
LRE/Program Location	12	Troutman v. Greenville Co, 1983
LRE/Services	6 and 15	Board of Education v. Rowley, 1982; Lynch & Beare, 1990; O'Laughlin & Lindle, 2014; Smith, 1990a; Smith, 1990b
IEP Team Members	4	Goldstein, Strickland, Turnbull, & Curry, 1980; Martin, Marshall, & Sale, 2004
Present Levels/ Annual Goals/ Accommodations	7 and 8	Bateman & Herr, 2006; Blackwell & Rosetti, 2014; Bridges v. Spartanburg Co., 2011; Landmark &

		Zhang, 2012; Rosas, Winterman, Kroeger, & Jones, 2009
Implement/ Follow Entire IEP	9, 10, and 16	Alexander v. Department of Juvenile Justice, 1995; O'Dell & Schaefer, 2005; Bugaj, 2000; Midlands v. Richland County, 2013; Sumter Co. v. Heffernan, 2011; Drayton, 2014; Ott, 2013; Zirkel, 2015
Provide Accommodations	11	Drayton, 2014; O'Dell & Schaefer, 2005; Ott, 2013; Bugaj, 2000
Address Unique Needs of Student Through IEP	13 and 14	Florence Co. v. Carter, 1993; Lexington Co. v. Frazier, 2011

## APPENDIX F

### Summary of Open Response Data

This appendix includes each scenario question, along with some examples of the open response answers for that question, as they were written in the response. The examples are listed by central idea of the response.

#### Scenario 1

During an IEP meeting, the parents of a child with autism insist that a specific methodology be included in the IEP. The school does not agree with this, but the parents are very insistent and say they will not sign the IEP if the school does not comply. The IEP team agreed to include the methodology in order to avoid a disagreement. Was this the appropriate response? Why/Why Not?

#### Examples of Responses

Responses indicating parents have the authority to decide:

- Parents have the right to try any method they deem necessary. To deny a parent that right opens up the door for a possible lawsuit.
- The parents have more power than the IEP team
- I believe the parent has the final say in how their child is taught.
- Yes, because ultimately the parent has the last say.

Responses referencing a team decision:

- Decisions are a team decision and not made by only one member of the team.
- It is a team decision.

- IEP decisions are a team decision and should not be swayed by a parent not agreeing to sign a document and wanting to avoid a disagreement.
- Parents do not have to sign an IEP for it to be in place. The entire team decides what will be in the IEP.

Responses stating the majority decides:

- Although the parent is a member of the IEP team, they still don't have the final say. It should be a collaborative agreement. Therefore, if the team was against it, they serve as the majority. The majority has the final say.
- The IEP TEAM decides, not the parent, and the majority "wins". The parent did not have to agree or sign if the majority of the team deemed it in the best interest of the student.

Responses referencing decisions made based on needs of student:

- The school should not make decisions for any reason other than what is in the best interest of the child. If the methodology was an appropriate service that met the needs of the student, and the district did not already have a comparable service, then the school needs to make every effort to comply.
- The best interests of the child should be paramount, not appeasement of parents. If the team agreed the methodology was in the best interest of the child, they should consider it. If it would not be in the child's best interests, they should not succumb to parental coercion. The district should not have been specific as to a particular methodology. Perhaps stating that "a multimodality approach" or "through the use of a variety of methodologies . . ."
- The IEP Team decisions are based upon the needs of the student.

- This is a team decision. It is ok to disagree. There are many methods that can produce the same result. The team needs to do what is best for the child.

Responses stating decisions should be based on data:

- The IEP should do what they feel is right for the child based on data they have collected not to avoid a disagreement.
- The school team needs to have data in order to support an addition or change to the IEP prior to making it.
- The IEP should reflect what helps the child to be successful based on data. There is no data that this methodology helps the child be successful with the information given.
- Present levels of performance data warrant services, goals, accommodations, and modification. There needs to be data to warrant decisions to develop a free, appropriate, public education.

Responses referencing the need for evidence based methodology:

- Many methodologies can be used at any time and should be researched based. If you include that methodology you will be legally bound to use it whether it works or not.
- Congress clarified to use research based methodology.
- Districts are allowed to select the curriculum as long as they are research based.
- The methodology must be research proven to work in order to be used.

Responses stating that methodology should not be included in the IEP:

- Specific methodologies should not need to be included in an IEP.

- IEPs should discuss the child's strengths and areas of need and have goals developed to meet the areas of need. Specific methodology should not appear in the IEP although the team could certainly discuss how they will go about meeting the child's needs.
- Service times and goals are included in the IEP, not methodology. A specific methodology is not written into the IEP, although it could be used in instruction in order to reach the goal written in the IEP. This should be explained to the parents at the meeting and noted in the minutes.
- We do not put specific methodologies on an IEP. Collectively it is a committee decision. Parent may not agree with all of the decision but signature or the lack of one won't stop the new IEP from going on.

Responses indicating parents cannot choose the methodology:

- Parents can't dictate the methodology.
- Parents cannot demand a specific methodology or curriculum be used by the district.
- An IEP is developed by a team of people. The parents are an integral part of this team, but they cannot dictate what should or should not be in an IEP unless the entire team is in agreement that is what provides the students with a FAPE. Methodology can and should be mentioned in the IEP when that methodology is what provides the students with a FAPE.

Responses recommending another meeting be held:



- Legally the school is now bound to pay for and implement the methodology. The meeting should have been tabled and rescheduled once the school was able to research the methodology and see if it would benefit the student by its usage.
- Another meeting needs to be held before a decision is made.
- The team should have concluded the meeting with the understanding another meeting would be held. Between the two meetings, the team could research the methodology parents would like to implement with other comparable methods. The IEP will most likely not be implemented with the methodology as it is now stated.
- The school should not agree to do what they know is not okay; the meeting should have been stopped and the director of special education should have been notified so he/she could help sort out the problem.

Responses indicating the district should not agree simply to avoid a conflict:

- The team should not agree just to avoid an argument. If the team doesn't come to a decision, then the parents have the right for due process.
- You don't make decisions in a team meeting in order to avoid a disagreement. Will there be someone at this student's school who can implement this methodology?
- The school district has a right to refuse the use of specific methodology given comparable methodology is offered, and its efficacy can be supported with research. Districts must stand their ground to avoid creating IEPs based on parent's demands verses meeting committee decisions that are best for the child.

Responses that do not clearly address the issue:

- Parents should be informed of the types of assessments conducted by the team and the results of those assessments.
- If the methodology is included and the other team members disagree, it can be included, however everything discussed including who makes suggestions, and those disagreeing should be documented. The methodology then, can be included even if there is disagreement.
- It could be that the persons involved with the student's educational process does not know or understand the methodology or it could go against school/district policy.
- Actually I have no idea on this situation.

## **Scenario 2**

An IEP meeting lasts for several hours. Once the content of the IEP has been agreed upon, the special education teacher says that she will enter the information into the computer system later and send the parent an updated copy in order to keep the meeting from lasting even longer. The parent agrees, but the principal insists that the team remain until all information is entered and signatures are obtained. Was this an appropriate response for the principal? Why/Why Not?

## **Examples of Responses**

Responses focusing on completing the IEP:

- The changes should be made to the IEP before the IEP is signed by the team.
- You should complete the IEP as a team no matter how long it takes.
- To make sure all changes were entered correctly it would be best for the team to stay. The changes could be made during the meeting as well.

- To keep information valid and consistent it is best to complete draft IEP and sign then.

Responses indicating it is acceptable to send documents to parents later:

- You could send the parent home with a drafted copy and initials written in on a hand written copy if the parent agrees. Signatures do have to be obtained at the meeting but not the final corrections.
- The IEP meeting is used to determine a student's goals, accommodations, etc. the IEP does not have to be completed before ending the meeting. The sped teacher can finish up the IEP after a meeting is concluded.
- As long as the team has signed a draft IEP and are all in agreement, then the parents can be provided with a clean copy of the IEP within a couple of days of the meeting.
- Drafts are made at the IEP meeting with signatures obtained. Final copies will be provided to parents within a specific number of days following the meeting. The time frame will depend on the district. It sometimes takes hours to enter in all material for an IEP. The principal has no clue of what is involved in the IEP process.

Responses indicating if changes were documented, it is acceptable to send final copies later:

- The information can be handwritten and parents can sign/initial next to the changes. The special education teacher can enter those changes in later (with the initials as consent). A hard copy with all updated typed information will be sent

- home. Parents need to sign before leaving though. Everyone should be in agreement with any and all decisions to help benefit the student.
- The IEP brought to the meeting is always a draft. So long as all changes have been noted on the draft copy, initials and date noted by teacher and parent at every change in the IEP, signatures of all participants obtained, and a copy of that changed draft IEP is sent home with the parent, changes can be made in the computer at a later time, so long as that changed document is also sent to the parent and only reflects that changes made in the IEP and initialed by parent and teacher at the meeting.
  - As long as the IEP team signed and approved any changes on paper, then the team would not need to stay for the teacher to enter the information. The teacher would need to ensure that only the agreed upon wordage was entered into the computer.
  - I will say no, not necessarily. The agreed upon content can be initialed by parties on the working or draft copy of the IEP at the meeting. The sped teacher can update after the meeting from the draft copy. The draft copy with initialed changes will be included with finalized IEP.

Responses recommending to reconvene the meeting to review changes:

- No, with the parent's approval, the IEP team could find another time to reconvene and discuss the additions to the IEP once they are in the computer system.
- The IEP team can reconvene at a later time the next day.
- First of all, an IEP should never last that long. A better solution would to continue it the next day.

- Since the team members would not be signing to agree to the IEP until each had received a copy, and if each received and signed that they agreed, then the special education teacher could type and send the information to parents. If a team member was not sure about something, the IEP team could meet again to discuss the student's present levels and most appropriate plan.

Responses stating that signatures are required:

- Signatures should be obtained by the IEP team at the meeting.
- All signatures of the team are required at the end of the meeting.
- This is a legal binding document and it should be signed before the meeting is over.
- The IEP is not valid until the signatures are obtained.

Responses referencing the PWN:

- A signature does not necessarily imply agreement. Furthermore, PWN has to be sent. Staying was not necessary.
- Only the Prior Written Notice has to be completed outlining what the team agreed upon. The IEP can be sent home the next day.
- PWN will state what services are before the IEP is implemented. All IEPs brought to a meeting are drafts, so it is understood that changes will be made.
- Information does not have to be entered at the meeting. PWN should be given to parents or sent home that day. Parents can receive a copy later.

Responses that do not clearly address the issue:

- The Principal is the leading educational administrator and makes that kind of decision.

- As a special education teacher you should always come to an IEP prepared with all of your information and all of the signature pages as well.
- No, a draft should always be taken into an IEP meeting. There are things to be discussed and decided upon during the actual meeting.
- It is an IEP Team decision and the parents are part of this team, as well as the principal.

### **Scenario 3**

The IEP team recommends a student for a more restrictive placement to include specialized instruction in a special education class, which was housed at a different school location. The parent stated if the student's sister could have an accommodation to also attend the other school, then she would agree. The IEP team agreed to hold on the decision until the principal could get an answer to the question about the sister's attendance accommodation. Was this an appropriate action for the IEP team? Why/Why Not?

### **Examples of Responses**

Responses stating the decisions is not about the sister:

- Decisions about the student's placement should not be contingent upon the sister's attendance. If the placement is best for the student, it is best whether or not the sister is attending the same school.
- No, accommodations are made for the individual student. This meeting was for the brother not the sister. While the change of schools may be what is best for the brother it may not be what is best for the sister. Accommodations need to reflect the individual needs.

- A team decision should be based on the child receiving special education services only.
- The sister's educational placement is not part of the IEP.

Responses indicating the school should provide an answer about the sister before a decision is made:

- Because it is reasonable for the parent to request that siblings go to the same school. It is also reasonable that the principal be given a short amount of time to get an answer about the sister's accommodation.
- If the person who makes the decision on a student's enrollment is not present, then the decision will need to wait until that person is able to consider the request.
- This is appropriate because until the school knows whether or not her sister can attend the other school, then the parents aren't going to agree to the different location. They still need to meet after the principal gets the answer, regardless of the decision about the sister attending the school.
- The team has the right to hold decisions about placement until all are in agreement and until all facts are able to be presented.

Responses recommending the team table the meeting and meet again later:

- They would then meet again to finish the IEP, but this would not be included in the IEP. It would be written into the minutes instead.
- A meeting can always be tabled when more information is needed. Usually a new meeting date is set before everyone leaves.

Responses indicating the parent must agree before the district can move forward:

- The parent has the right to withhold agreement. Until she agrees, then the team must wait on the IEP decision since it is a team decision.
- Parent has the right to refuse services so the team was right to wait to see if the parent's wishes could be accommodated rather than doing the IEP and having to change it
- The IEP pertains to the particular child, not the sibling. If the parent does not agree of the move, the school must accommodate the services at the school the child attends.
- A student cannot change placement without parent consent therefor holding the decision for a brief period should be OK as long as the student with the IEP is receiving adequate instruction during this time period. I would think the information would need to be obtained within a couple of days to ensure the student does receive an appropriate placement as determined by the team.

Responses focusing on the sister's needs:

- The sister would have to go through the appropriate referral and evaluation process before accommodations could be discussed.
- It is a more restrictive placement so the "sister" would be misplaced.
- If the sister does not have a special needs requirement, then this should not be allowed. The decision to place a student in a different school or setting should be done so only if there is a specific need for the student that cannot be fulfilled at the current location.
- It depends on if the sister qualified for special education services or not, and if the accommodations requested are even offered for the sister at the new school.



Responses referencing a team decision:

- Again, it is a team decision and correct decisions are made when all information is gathered to make appropriate decisions for all parties involved.
- Placement is an IEP team decision.

Responses that do not clearly address the issue:

- You want to make sure you giving the correct answer.
- The recommendation can be made with all information/concerns documented. It can be written in the conference summary what will or will not take place upon either decision.
- It was a good decision.
- Not sure why but it seems reasonable.
- District policy does not accommodate siblings attending other schools.

#### **Scenario 4**

An IEP meeting is scheduled during the general education teacher's planning time. The IEP team gets all pertinent information from the general education teacher at the beginning of the meeting so that she can leave to retrieve her class when her planning time is over. The general education teacher leaves and the rest of the team continues. Was this an appropriate action? Why/Why Not?

#### **Examples of Responses**

Responses stating it is okay if parents are in agreement:

- Yes, if the parent agreed to it.
- If the parent agrees with this.

- She had input and with the parent consent, it was ok for her to leave but documented.
- The general education teacher should be in attendance throughout the entire meeting. However, if the parent agrees, and this is the only alternative, the teacher may be dismissed. It's not proper format.

Responses stating the general education teacher can leave if her part is finished:

- This is an appropriate action, because the general education teacher has only a limited amount of time before she has to return to her class. By allowing her to give her information at the beginning the general education teacher is able to take part in the meeting and not lose instructional time with her class.
- This has happened many times in our district. After the teacher told her parent and the parents have asked any questions that they need, we have allowed the regular education teacher to go back to class while we completed paperwork. As long as everyone has done their part and had time to discuss matters, then I don't see the problem.
- The teacher had to get back to her class and she gave all of the information that was needed.
- This is appropriate as long as the teacher had a chance to give her observations concerning the student and his/her progress, has been briefed on the general outline of the IEP, she can leave and be given a complete report after the meeting and sign all paperwork.

Responses indicating the general education teacher is required to stay:

- Meetings should be held after school without a time restraint. The general education teacher is an important part of the team and should remain until the meeting is over.
- General education teacher should always be in attendance with the meeting and stay until the meeting is over and everyone has signed because you always want to make sure that you are in compliance with IDEA laws.
- The law requires that a general education teacher be present during the meeting at all times.
- The general education teacher has to be there as a team member the whole meeting to agree to the any changes on the IEP.

Responses stating all team members must stay until the end of the meeting:

- The team members present need to be there for the IEP meeting.
- No team members should leave a meeting before it has ended.
- Everyone on the team is supposed to attend for the entire meeting!!
- The entire team needs to meet to determine the best Individual Education Plan for the student. Each team member is important and has a valued position on the team. All team members need to be present in order for the team to have all perspectives and input from each stakeholder.

Responses referencing the formal excusal process:

- Yes, if and only if the parent is aware and agrees. The parent would need to sign an excusal form. The team should ask the school to provide coverage for the teacher or reschedule the meeting.

- As long as the parent agreed, completed an excusal form, and a teacher summary is collected prior to the meeting.
- This action is only appropriate if the correct forms are signed and filled out by the parents and the LEA or special services director allowing the teacher to leave the meeting early.
- Yes, If the following has occurred. The parent is notified ahead of time that the related arts teacher may not attend the entire meeting and why. The parent would then sign a permission /dismissal from the meeting document, Yes, If the related arts teacher stays for the majority of the meeting and is able to share her information in the meeting. (It is also critical that the related arts teacher be a part of the present levels and goal setting part of the meeting).

Responses that do not clearly address the issue:

- Technically probably not the letter of the law but it is done quite frequently.
- This might not necessarily be appropriate... but it is realistic in a public school. The teacher shared their options and what they knew of the student.
- The IEP team meets whenever the Coordinator, parents, principal and say it is convenient for everyone on the team. The most important thing is does it meet compliance too. Sometimes time and deadlines effect when a meeting takes place.
- Depending on what the reason for leaving is, yes. I've had this happen several dozen times this year because there was no administration to begin the meeting on-time. And my administration will not allow you to start a meeting without them present.

#### Scenario 5

All IEP team members are in agreement with a placement recommendation except for the principal. Because he is the LEA representative, he chooses to “veto” the decision and move the team in a different direction. Was this an appropriate action for the principal? Why/Why Not?

### **Examples of Responses**

Responses referencing a team decision:

- There is no VETO clause in the IEP team process for the LEA. The LEA is responsible for the allocation of resources. The consensus of the IEP team drives decisions.
- The IEP Team members decide as a team the best option for the student not just the principal/LEA representative.
- It has to be a team decision.
- It is a TEAM decision

Responses agreeing that the principal has “veto” power:

- He is the LEA so he has the final say.
- If he is the District Rep, then he has final say over placement.
- The purpose of the LEA representative is to be a part of the entire team and also to commit school and district resources to the education of the student. His "veto" of the decision must be based on the fact that the school or district are unable to commit that specific resource to the student, given the proposed and recommended placement.
- This is part of the principal's discretion.

Responses indicating the decision is made by a majority vote:

- The majority rules.
- IEP can be put in place with 2/3 vote. LEA should have brought up concerns.
- Each team member has an equal "vote".
- If the team has already discussed all other options, then the principal should have voiced his opinion then. However, the IEP team can still agree on a placement with a two-thirds majority vote.

Responses focusing on data based decisions that are best for the student:

- The IEP Team decisions are based upon the needs of the student after a review of the data.
- IEP decisions are team decisions based on the students need. Needs should be determined based on data collected.
- He is part of the team and all need to agree. Best to support recommendations thoroughly with data.
- Every decision should be in the best interest of the individual child.

Responses that do not clearly address the issue:

- If I were going along with a prior answer, then I should have put a Yes, but I feel as though this is a special case. I'm not really sure what kind of authority the LEA really has in the meeting--is he/she the final authority on all decisions?
- I am unsure of this answer. However, if the parent & the team are in agreement to the principal's direction, then it might be ok.
- It is not appropriate because the principal is one member of the team. This doesn't mean that the principal wouldn't get his veto.
- He has every right to disagree and explore other options with the team.

## Scenario 6

The IEP team reviews all data and makes a recommendation for special education services. The team is in agreement except for the parent. After a lengthy discussion the team is still in agreement and the parent is still opposed to the recommendation. The school moves forward with the recommendation even though the parent is opposed. Was this the appropriate action? Why/Why Not?

### Examples of Responses

Responses indicating parents must provide consent:

- The parent should give consent for all IEP components before it can be implemented.
- Against the law. Must have parental consent at every step.
- No, without the permission from the parent to give consent for services, the team cannot move forward.
- As long as the committee stated what they feel is appropriate for the student, the parent has the final say.

Responses indicating all team members must agree:

- No, all need to be in agreement.
- All team members must agree or find a compromise that they can all agree on.
- No always want to make sure that everyone is in agreement with the recommendation for the child.
- All team members must be in agreement. If the parent disagrees, document everything in question.

Responses referencing a team decision/parent consent not required:

- The team as a whole is who has the final say as to what will happen.
- It is a team decision. It does not have to be unanimous.
- The team needs to follow through.
- The school system has the right to provide FAPE even if the parent is not in agreement.
- All members may not be in agreement; the team does what is best for the child.

Responses referencing parents' options/due process:

- The team does not have to 100% agree with the parent. If the parent does not agree they can use their due process rights.
- The team should continue to try to reach an agreement or offer other options to the parent: mediation, due process, file a complaint, etc. Until this disagreement is resolved, the previous IEP is followed.
- The parent can then go to Due Process with a hearing.
- The school can offer the appropriate program for the student the parent can accept the program or seek other alternatives such as home school, moving to another district etc.

Responses stating the decision is made by majority vote:

- If there is a two-thirds majority vote the team can move forward. However, it is best practice to help the parent to an agreement that both parties feel will help the student.
- Majority rules.
- It is best if a team decision is unanimous, but if not everyone agrees after discussion, then the team must go to a majority vote.



- Yes. In an IEP meeting, the majority should have control. If the parent is not in agreement, he/she has the right to refuse services for their child.

Responses focusing on initial consent for special education services:

- The school district must receive initial consent for special education services. The school district will not be faulted for not providing FAPE if reasonable attempts were made and documented to receive consent for services.
- The parent has to sign for initial special education services.
- Yes, it's a team decision unless this is the initial placement and then the parent can refuse services.
- Parents have to give permission for initial services.

Responses suggesting parents can revoke consent for services:

- The parent by law has the right to revoke services.
- If the parent disagrees, she can sign a waiver known as Revoke to receive services, and the school can go on and serve the student as a regular student. The school at that point is not responsible for whether the child passes or fails.
- The Parent can complete a Refusal for Services in order to have the student removed from Special Ed. Services.

Responses that do not clearly address the issue:

- The team should try to compromise and please the parent and try to get as much of what they think is needed for the student as possible.
- Again, the parent may not have all of the information or understand the whole picture of their decision. Again, find an equitable solution. The easiest, and most widely accepted by a parent, is to have a trial period and then meet again to make

- a final decision based on information gathered from the school and the parent at home. The trial period is a safe time for the school to try what they are recommending and for the parent to see if it is helpful, no change, or digression. All parties need to at the least be okay with the decisions made at an IEP meeting.
- I'm a little on the fence about this one. If the majority of the team is in agreement, it's possible that they could move forward with the placement. A better idea would be to end the meeting without making a decision and agree to reconvene in a week or two with more information and possibly ask for others to join the meeting, such as a student advocate, special education supervisor, etc. to bring other perspectives and options to the meeting. I think it another factor to consider is whether the services being recommended represent a change of placement and whether it is to a more or less restrictive setting.
  - Actually I would like to have more specific information.
  - We have had a similar case in our school. The school knew that the child needed help and the parent was denying the child the help they needed. We were going to have to go to court over it, but the parent finally agreed before DS had to get involved.

### **Scenario 7**

A student's IEP currently consists of present levels of performance that include reading and math. During the IEP meeting, the general education teacher also mentions that the student is struggling with writing a paragraph. The team discusses how the student's writing impacts other areas of the curriculum. The team decides to add a goal stating "the student will improve paragraph writing in order to meet the grade level

curriculum standards". Is this an appropriate annual goal to meet the needs of the student? Why/Why Not?

### **Examples of Responses**

Responses stating the goal is not measurable:

- The goal is not measurable and does not include specific criteria for mastery. Baseline data is needed to determine the student's present level of performance.
- The goal is not measurable. You need to add specific details such as "write a paragraph about a topic using correct punctuation and capitalization marks with 80% accuracy."
- The goal is not specific, measurable, and has no criteria. There is not enough data to suggest that writing needs to be added. You need more information than just what the general education teacher is saying.
- NOT measurable; no present level; A goal needs to be:
  1. Is the goal clear and understandable? A. not vague? B. avoids educational jargon? C. not too specific?
  2. Is the goal positively stated?
  3. Is the area of need stated in the Present Level of Educational Performance (PLEP)?
  4. Can the goal be justified on the basis of the information in the PLEP?
  5. Is the goal practical and relevant to the student's academic, social, and vocational needs?
  6. Is the goal practical and relevant when the student's age and remaining years in school are considered?
  7. Does the goal reflect appropriate growth within the instructional area?
  8. Can the goal be accomplished within one year?

Responses stating there is not data to support the goal:

- There was no data in the IEP to support this decision. An accommodation to support writing may have been more appropriate.
- Data needs to be gathered before an appropriate goal can be set.
- You must have findings to support a goal. With no findings you could not write a goal. You may decide to collect data and come back together to discuss if there is a need and amend the IEP at that time.
- No, the special education teacher needed to have data to support writing a writing goal in the IEP. More specific present levels needed to be documented and the goal would need to be based on the present levels.

Responses stating a reevaluation must take place/student is not eligible in the area of written expression:

- A reevaluation should take place before another area can be addressed.
- Unless the child qualified in the area of written expression, a goal cannot be written for this area.
- The IEP team cannot add on goals if the student does not qualify in that area.
- You can only add goals in areas where students qualify and are receiving services.

Responses agreeing the goal meets the student needs:

- If it will help the student, then add it.
- Additional goal can be added based upon the need of the student
- If the student needs help with writing, then this is an appropriate annual goal.
- It is addressing the student's current needs.

Responses that do not clearly address the issue:

- Yes, according to what I have been told in my current school district in South Carolina. No, according to what I have been told in my previous North Carolina School district.
- Any extra information or skills that the students' needs to improved will be considered.
- That could be a part of reading and the input from the general education teacher is most helpful.
- A great example on why the general ed teacher needs to be there and is a valued member of the IEP team.

### **Scenario 8**

A student's IEP indicates needs in the areas of academics and impulsive behavior. There are goals for all academic areas impacted and accommodations in place to assist with the impulsive behavior. Is this an appropriate way to address the behavior?

Why/Why Not?

### **Examples of Responses**

Responses agreeing the accommodation was appropriate for the need:

- If the student's behaviors can be addressed through accommodations, yes.
- It is up to the IEP team to determine if accommodations are enough to address behavior concerns or if services and goals are more appropriate.
- It depends on the behaviors. Behaviors can be covered in a goal and/or with accommodations whichever is more appropriate for that specific student.

- Impulsive behaviors can be addressed through behavior contracts, preferential seating, having a cool off period, etc. There does not always have to be a goal for behaviors.

Responses indicating an annual goal is required:

- There should be at least a goal for the impulsive behavior since it is identified as a need.
- There needs to be a specific goal to address the impulsive behavior.
- Areas of need should be addressed through formal goals that can be monitored and data collected.
- The student also needs a behavior goal because behavior is mentioned as a need in the present levels. There should be findings for the behavior and a goal set to address the behavior.

Responses stating an FBA and/or BIP would be required:

- Student would need a Functional Behavioral Assessment and a Behavior Intervention Plan.
- The student should have a behavior intervention plan in place, as well as a behavior goal and crisis intervention plan, if necessary, after an FBA has been completed.
- If the learning is impeded by the behavior, then a BIP is required.
- A functional behavior assessment needs to be done and a Behavior Intervention Plan needs to be put in place.

Responses that do not clearly address the issue:

- The behavior interferes with academics.

- What about the services?
- I don't understand what is being asked.
- Where is the behavior counseling to help the student?

### **Scenario 9**

A student's IEP indicates that he should receive supplemental math instruction three times each week for 30 minutes each session. Because of different events at school, the student has missed a number of scheduled therapy sessions. Parents have asked how the missed sessions will be made up and are very insistent that every minute missed must be accounted for. Instead of scheduling make up sessions, the district decided to hold an IEP meeting to discuss the impact of the missed sessions. Was this the appropriate response? Why/Why Not?

### **Examples of Responses**

Responses agreeing an IEP meeting is needed:

- Yes, an IEP will document in writing the missed time and then negotiate what the child is due under FAPE and what the child needs to be offered for compensatory education. Did the missed time affect the child's education? The teacher must have data and bring it to the meeting. The parent's too must negotiate what is fair and does not cause undue burden on the child. Whenever there is a meeting for the child's education it must be an IEP to formalize any decisions and the team come to a consensus.
- The IEP team should meet to reviewed missed sessions, as well as progress towards IEP goals and develop a plan for making up missed time if the team feels that is appropriate.

- This would have brought the IEP team together to see if missing the minutes had a significant impact on the students learning and whether the minutes need to be made up or not.
- Circumstances of absences and their direct effects on his progress in the curriculum would dictate how much was required to made up. Data would need to be collected and the team would need to decide the impact and need for time missed.

Responses stating the services must be made up:

- Instead of meeting, the district should just make sure that every minute is made up. If there are further complications, then the team can meet.
- No, the time in the IEP should be made up.
- If the IEP states he could get that time - it needs to be made it. The IEP is a legally binding document and should be abided by. Services are set based upon the child's needs, not the most convenient schedule.
- Missed time must be provided according to the law.

Responses stating the time should have been provided:

- Service delivery is driven by the IEP and is to delivered as prescribed.
- If the IEP states the students would be serviced for an appropriate amount of time, then it should be followed. Not following through on an IEP plan gives parents the right to sue.
- The student should receive the services as indicated in the IEP.
- By law the student is guaranteed to X number of minutes of instructions per the IEP.



Responses indicating the student should receive compensatory education:

- Compensatory services can be provided if the need with approval from the LEA.
- The school should provide compensatory time for the missed sessions if the IEP does not state that the schedule could be altered due to school events.
- If the original IEP stated time and that time was missed, the school owes that student compensatory time.
- Student should be entitled to compensatory services.

Responses that do not clearly address the issue:

- The minutes will be adjusted in the meeting to fit the needs of the student from there on.
- Team discussion is good
- To ensure the student get the time necessary to supplement his math the team may choose to change placement to a resource setting.
- While service times are important, students cannot be removed from activities involving nondisabled peers.

### **Scenario 10**

The student's IEP indicates he will receive progress reports every four and a half weeks. The special education teacher sends an IEP generated progress report every nine weeks, and on the interim, call the parent with an update. Does this meet the IEP requirement? Why/Why Not?

### **Examples of Responses**

Responses indicting progress should be reported as stated on the IEP:

- The progress note should be sent as stated in the IEP

- Information should be reported just as stated in the IEP
- If the IEP states that they will receive progress by means of a report, then it has to be put in place or the IEP is not being followed and is not in compliance.
- Progress reports must be send as indicated in the IEP.

Responses referencing the IEP system generated progress report:

- There would be no valid documentation to support the interim report with parents on the phone. Documentation is key and the reports need to be created in the IEP program!
- I would think there needs to be documentation in the form of a IEP progress report every 4 1/2 weeks.
- The progress reports must be updated in Enrich every 4 1/2 weeks.
- The Progress Report should be updated in the Enrich Program and a copy sent to the parent every 4 1/2 weeks. Calls can be made in addition to a paper copy of the Progress Report.

Responses noting a phone call would not be appropriate documentation:

- There is no verification of the phone call made on the Interim.
- No documentation?
- No written documentation that can be attached to the IEP to document progress every 4 1/2 weeks.
- Every 4.5 weeks the IEP needs to be updated with the child's progress; there is no record of reporting for a phone call.

Responses indicating a phone call is fine as long as information is shared and phone call documented:

- As long as there is documentation that she spoke with the parent concerning the child's progress.
- It could meet the requirement if every goal and objective was read and progress reported. However, it does not seem to be best practices.
- If there is documentation of the interim update.
- It is documented that progress will be reported every 4 1/2 weeks. If the teacher is documenting phone calls at the indicated intervals, then it would be ok.

Responses that do not clearly address the issue:

- If it is on the IEP for 4.5 weeks, then it needs to be addressed.
- Should take the time to document and then discuss if needed
- Progress should be reported in a consistent manner.
- Grades are to be sent to the parents every 4.5 weeks however the school sends to the regular education students.

### **Scenario 11**

The IEP for a student with a reading disability indicates he should receive oral administration of tests and quizzes. The general education teacher does not have time to test the student separately, so she decides to read all tests and quizzes aloud the class.

Does this meet the requirement in the student's IEP?

### **Examples of Responses**

Responses agreeing the requirement is met:

- Oral administration is being provided regardless.
- The student receives the accommodation.

- Yes, as long as that study has oral administration the teacher is providing the service.
- As long as the student receives the accommodation of oral administration or tests and quizzes, then the IEP requirement is met.

Responses agreeing the requirement is met as long as small group or individual is not also required:

- I would think that as long as the tests/quizzes were delivered through oral administration, it would meet the requirement. It says nothing about small group administration.
- The material is being read... the accommodations do not state that the child needs a small group setting.
- This meets the oral administration accommodation of the IEP. Small group or individual testing was not indicated.
- Since student does not require small group or extended time then this would be appropriate.

Responses stating the tests should not be read to the other student:

- But the other students do not need it to be read to them.
- The student's IEP is an individual education plan, not a group.
- All students do not have IEPs and all do not need oral administration unless they are qualified for student services with that as an accommodation.
- It meets the student's requirement but is not appropriate to give all kids accommodations that are not needed.

Responses stating this would not meet the IEP requirement:

- The accommodation on the IEP is not being given.
- Probably not, the student would need to have small group.

Responses that do not clearly address the issue:

- That has been my question also. If the IEP says oral, it usually says small group. The entire class is not considered small group. During a standardized test, the student will be removed for testing. What takes place in the regular class room should be what takes place during testing.
- The teacher cannot discriminate or single out the SE student in any way.
- The student is receiving service.
- As long as the teacher does not have an issue with it is fine.

### **Scenario 12**

A parent wants her child to receive his special education services at the school that is closest to their home. The district recommended services be provided at another school location because that is where the program that meets the requirements in the student's IEP is housed. The parent is angry and threatens litigation against the school district. The district moves forward with placement in the other school location. Is this an appropriate response by the district? Why/Why Not?

### **Examples of Responses**

Responses indicating equivalent programs are not required at each school:

- The school district does not have to provide the same services at every school.
- The team is obligated to determine what program meets the student's needs, not the location.

- Schools are not required to have identical services at every school. Districts have the lead way to provide specialized services at various school sites to provide students who need them based on needs for specialized instruction.
- The school district is providing the services outlined in the IEP. Each school is not required to provide every single service at every school.

Responses stating the district should offer transportation:

- The service at the other school is acceptable as long as the school provides transportation.
- As long the student has transportation provided by the district and the service meets the student's needs is in compliance.
- As long at transportation is provided to the student.
- If the student is provided transportation and these services are required and not offered at their home school.

Responses focusing on parental consent:

- The district should not do anything until the parent and IEP team are in agreement.
- If that is the closest location for the student's needed program, the parent can either agree with the placement or refuse services for them. Also, the school district would be responsible for transporting the student to the new location of services.
- The parent basically has the final say so and if the student is placed where it is not the least restrictive environment for them then by lawsuit would probably be overturned due to the parents' insistence on services that were against the district.

- Yes, if the parent agrees to placement in the class since the school can't be forced to move the class, no if the parent has not agreed to placement in the actual class

Responses focusing on FAPE/meeting the needs of the student:

- The student's needs must be met.
- The school is providing FAPE.
- The team are providing services within the school district that is fitting the needs of the student for FAPE.
- Whichever school better meets the needs of the child is where they should be placed.

Responses that do not clearly address the issue:

- LRE
- Based on the disability in the least restrictive environment is the most important not the building it is housed.
- The parents threatened litigation against the school district. The student is entitled to the same rights as regular students.
- The other school is the child's school of residence.
- Against the law

### **Scenario 13**

A student classified as having a Specific Learning Disability also demonstrates some behavioral difficulties, such as following directions and completing academic tasks. Because the behavioral issues do not appear to be related to the identified learning disability, the IEP team does not address the behaviors, rather the school simply addresses

the behavior in the manner they would for any student. Is this an appropriate decision?

Why/Why Not?

### **Examples of Responses**

Responses indicating the IEP team should address the behavior:

- The IEP should include positive behavior supports in place even if it is determined that the behavior is not related to the student's disability.
- Anything that has an impact on the student's learning can be addressed in the IEP with data.
- Even if the need is not directly related to the eligibility category, the IEP team is required to address all areas of need and conduct additional assessments if needed to address these needs.
- It is very difficult to determine that any behavior is not tied to a disability. Regardless of that, once a student qualifies for special designed instruction, the IEP team is obligated to address all weaknesses the student has that impacts student's (that student and other students) ability to learn.

Responses stating the need for an FBA and/or BIP:

- Functional Behavior Plan, and Behavior Intervention Plan need to be put into place for the student.
- A FBA should be done to confirm what is thought. Then if the FBA determines that they are not related than the behavior can be handled as it would for any other student.
- A functional behavioral assessment and possibly a behavior intervention plan may be needed for this student too.



- If the behavior is mentioned during the meeting, a Functional Behavior Assessment should be done and a Behavior Intervention Plan should be put in place. The student is a special needs child and should in all cases be treated as such.

Responses indicating the behavior is not related to the disability:

- The behavior is not a manifestation of the child's disability.
- If the behaviors are not related to the learning disability, then the student should be held accountable for their behavior.
- If the behavior is not associated with the child's disability, then the school is responsible for the child's behavioral issues.
- The behavior is not related to the disability

Responses that do not clearly address the issue:

- If it works for that child, then go for it.
- I feel like I need more information. On what basis did the team decide the behaviors are not related to the disability? In my experience, those behaviors often accompany a learning disability. Also, if the behaviors are mentioned in the present levels, they need to have goals to address them.
- The behavior is not stopping the student or the class from receiving what the teacher is teaching.
- Unless they feel he has a disability for behavior, it is not part of the stated disability and should not be part of the IEP. If they feel he has a disability and needs services, goals and accommodations they should send him to eligibility.

#### Scenario 14

A student with a language disability receives services in speech/language and in reading comprehension. Based on recent difficulties with math application, the special education teacher collects data in math and recommends to the IEP team to add a goal for math. The student's identified disability is not in the area of math. Is it appropriate to add a math goal and services to the student's IEP? Why/Why Not?

### **Examples of Responses**

Responses stating a math goal should be added:

- Even if the need is not directly related to the eligibility category, the IEP team is required to address all areas of need and conduct additional assessments if needed to address these needs.
- If the team agrees that the student requires services in the area of math as a result of the language disability's impact on his/her ability to access math instruction, it is appropriate.
- The IEP is supposed to be designed to help the student in whatever area(s) they may need help, regardless of the label of their disability.
- An IEP should address the student's needs. Math weakness can be related to the reading comprehension piece of a student's disability.

Responses indicating a reevaluation must be done:

- The team would need to do an evaluation to consider adding math to the disability.
- A re-evaluation must be completed to add areas of qualification. Goals cannot be added until those results are documented.
- The student should be reevaluated to determine if a Math disability is present.

- The team would need to conduct a reevaluation and determine if math services/accommodations are appropriate at this time.

Responses that do not clearly address the issue:

- No baseline data.
- Again, according to my current school district is acceptable or at least that is what we have been told. According to my former school district it is not acceptable.
- Again this would depend on the district. If the district allows for identification through RtI then the teacher could potentially have sufficient data to recommend a goal, but it would also result in a change of eligibility. Without either the discrepancy model or RtI, a student's identification is what the IEP is written to address. Now if the reading is affecting the comprehension say on math word problems, the special ed teacher can address that during the resource time without adding an additional goal as this would comply with the identification of a student with a disability in reading comprehension.
- Depends. If the law is followed in the process and the team agrees. My concern is how long have the difficulties been? If he's always done well and it's a one-time situation, then it's not appropriate at all. All students struggle from time to time. That doesn't mean they need special education services.

### **Scenario 15**

A student classified with a learning disability receives speech/language services as a related service. The parent has recently begun taking the student for outside speech therapy services, and because the student is receiving similar services outside of school, mother requests that the school based speech/language services be discontinued. The IEP

team determines the student should still receive therapy in school although mother is very opposed. Did the IEP team make an appropriate recommendation? Why/Why Not?

### **Examples of Responses**

Responses stating the district is responsible for school services:

- The school is obligated to provide services in the areas which the student qualifies for special education.
- Although the team should be able to reach an agreement, the school is responsible for meeting the students' speech/language needs.
- The school district is responsible for serving the student in Speech if he meets the qualifications for school base therapy. They have no control over private services. The parent could appeal.
- If the IEP team feels that speech services are necessary, then they should continue. School services and outpatient services are separate and tend to address separate issues.

Responses referencing a team decision and what is best for student:

- The decision should be made by the team.
- The team probably made this recommendation based student's performance in the classroom.
- The team has to base its decision on the student's progress and level of mastery, not on parent recommendation.
- The IEP Team decisions are based upon the needs of the student.

Responses indicating parents must consent/can decline certain services:

- The parent has the decision/right to remove special education services from their child.
- Parents have the right to accept or deny services.
- The parent has the right to refuse some or all services for their child.
- If the parent does not agree to a service, the team cannot continue the service.

Responses referencing revocation of consent:

- Parent has the right to revoke services.
- If the parent no longer wants services provide through the IEP, they may choose to end special education services. The appropriate paperwork needs to be signed indicating that the parents is revoking consent.

Responses that do not clearly address the issue:

- School evaluations are sometimes different from outside agencies.
- The mother wants the speech stopped at school.
- It ensures that the child is receiving services, and gaining more support.
- Yes, they are there to serve the student.

### **Scenario 16**

A student’s IEP indicates the need for specific instruction in reading fluency. The student receives special education services in a group of students who need math instruction because this is the time of day that works best for the general education teacher’s schedule. While the special education teacher is providing direct math instruction to the group, the reading student works on a computer program designed to remediate general reading ability. Does this meet the requirements in the IEP?

### **Examples of Responses**

Responses stating the student is not receiving instruction in reading fluency as indicated in the IEP:

- If the IEP indicates specific instruction in fluency, the program does not meet the requirements of the IEP.
- The student is not receiving designated instruction in reading fluency as stated in IEP
- If the IEP designates that a student receives specific instruction in reading fluency, then the student needs specific instruction in reading fluency. The IEP team did not state in the IEP that the student needs general reading ability. The student should be placed in a group of students with reading fluency goals and services.
- The student needs specially designed instruction for his/her area of weakness. If the program is designed for general reading ability, it is not focused on fluency and will not provide appropriate instruction.

Responses stating the IEP requirement is not met:

- Not meeting the service per the IEP.
- The student work does not address the disability he is to be receiving services.
- This will not meet requirements if the IEP requires direct instruction but if it is indirect the student can have services through some type of remedial program.
- This is not direct instruction as more than likely stated in the IEP

Responses referencing reading fluency:

- The student will need to be assessed in oral reading to check on reading fluency. Some work on the computer is good, but the teacher must make time to listen frequently to the student read and assess the student's reading fluency skills.
- Reading fluency is the ability to orally read. Working on a computer is not going to increase a student's ability to read orally.
- Yes, as it hits the fluency part and is okay as long as she also spends time just on fluency.
- As long as the program is geared towards instructing the student's reading fluency as mentioned in the IEP.

Responses focusing on the need for teacher directed instruction instead of computer based:

- No because the teacher isn't providing the instruction and has no way of telling if the student's fluency is improving if the teacher isn't listening to the child read. General education schedules should not dictate when special education services are provided because a special education teacher cannot effectively teach two subjects at the same time.
- Student must receive direct instruction from the special education teacher
- The student must receive specialized instruction by a special education teacher in order to be in compliance with the IEP. The teacher can teach multiple subjects as long as each group gets sufficient direct instruction daily. He/She could start the class with math, then have them work independently while he/she works with the fluency student and vice versa.

- To assist in reading fluency, the teacher would need to work directly with the student. The IEP service should identify that the teacher provides the service, and the student working on the computer does not represent receiving service. The student might benefit from this in addition to receiving the direct service of the teacher.

Responses stating the instruction meets the IEP requirement:

- The student is still receiving specific instruction in reading fluency although it is from a computer designed to remediate general reading ability. This is specific instruction.
- Yes, as long as the teacher is checking periodically with the student monitoring progress, making sure that the student is benefiting from the online instruction.
- The student is receiving instruction in reading. When the teacher is done with the math instruction, the teacher can help the reading student.
- If the special education teacher is able to meet the reading needs of the child during the scheduled time, then it is ok.

Responses stating services should not be based on convenience:

- Services should not be provided based on a group or a general education teacher's schedule. The student is not working on fluency.
- NO NO NO the school or teacher's schedule does not dictate when a child receives services.
- It's fine to have him in the same group but he should be receiving services stated in IEP, not just stuck on a computer for convenience



- It is not meeting the needs of the child. It sounds like it is in the best interest of school staff, not the child.

Responses that do not clearly address the issue:

- The student should be given instruction as written in the goal. However, sometimes it is difficult to make a schedule to accommodate all the goals of all the students. The student could read and time his/her reading.
- The IEP must be implemented as written.
- IEP gives service times and tells how instruction will be rendered.
- Specialized instruction in reading whatever the goals and objectives on the IEP dictates is the correct instruction necessary for that student.