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for people with disabilities

The Ohio Legal Rights Service (OLRS) is an independent state agency and the federally and state designated Protection and Advocacy (P&A) system and Client Assistance Program for people with disabilities in the State of Ohio. The mission of OLRS is to protect and advocate, in partnership with people with disabilities, for their human, civil and legal rights. In keeping with its mission, OLRS provides legal advocacy to students with disabilities and their parents in the special education system and has extensive experience with the use of the forms addressed in these comments. **OLRS submits the following comments to the draft forms.**

Comments to Evaluation Team Report (ETR) Draft Form

Part A: INDIVIDUAL EVALUATOR'S ASSESSMENT SUMMARY

Recommendation:

Under "INFORMATION" section (page 1) add an area for documenting the following:

Date of evaluation
Date of request for evaluation
Person requesting evaluation

Rationale:

In order to determine whether an evaluation was conducted in compliance with timelines set forth in the Administrative Code, it is important to document the date an evaluation is completed. Although the draft form requires signatures of the individuals completing evaluations, often the signature does not reflect the date the evaluation was conducted but rather the date the evaluation summary is completed. Further it can be important to know the actual date of evaluation and/or observation and who requested the evaluation to determine the specific circumstances affecting the evaluation/observation and the child's circumstances at the time.

Recommendation:

Under "MEETING INFORMATION" section (page 1) add an area for documenting that a parent invitation to the IEP meeting was sent and the date the invitation was sent.

Rationale:

Documentation that an invitation to an IEP meeting was sent will serve to remind school districts of the obligation to ensure parental participation in IEP meetings and will help to document that requirements of the Administrative Code are met.

Recommendation:

Under “AREAS OF ASSESSMENT” section (page 1) add a reminder to consider an assistive technology assessment.

Rationale:

It is the experience of Ohio Legal Rights Service's clients that assistive technology evaluations are rarely discussed or recommended by school districts. This often occurs because there is rarely an individual on the ETR planning team that has expertise in assistive technology and it is, therefore, overlooked. In order to ensure that assistive technology evaluations are conducted when necessary, the form should include a reminder that such evaluations may be necessary for some children. Moreover, other evaluation results may differ and be a more accurate reflection of the child's needs and abilities if the child has access to appropriate AT.

Part B: TEAM SUMMARY OF RESULTS AND INTERPRETATIONS

Recommendation:

Under the “INTERVENTIONS SUMMARY” section (page 3) explanatory sentence, add a second sentence that states “After a request for an evaluation, interventions should not delay the evaluation process which must be conducted within 60 days of consent for evaluation.

Rationale:

It is the experience of Ohio Legal Rights Service's clients that the length of the intervention process varies greatly among school districts and that many school districts engage in the intervention process for extended periods of time without evidence that the child is benefiting from the intervention. This leads to delays in evaluation to determine eligibility for necessary special education. To decrease the likelihood of delays in evaluation and service delivery, language should be added to remind the evaluation team of relevant timelines.

Recommendation:

Clarify how the “INTERVENTIONS SUMMARY” section (page 3) relates to evaluations other than initial evaluations. This section appears to require completion of all of the boxes on page 3 of the draft form ONLY for initial evaluations. It is unclear how the form allows the evaluation team to address the issues in the boxes for other evaluations. For example, how is the process documented if a parent requests a full and complete re-evaluation or if a child develops an additional disability (such as a traumatic brain injury) or change in needs and evaluation for the new disability or service is required?

All boxes should have separate BOLD headings or the descriptive sentence under the “INTERVENTIONS SUMMARY” section (page 3) should be re-written to state “Complete the interventions summary section for initial evaluation only...”

Add language to this section that requires documentation of the length of time that interventions were provided prior to evaluation.

Rationale:

The confusion in the current form should be resolved and the evaluation team should have clear direction that re-evaluations and evaluation for new disabilities require the discussion of the relevant issues addressed in the boxes on page 3 of the draft form.

See rationale above relevant to documentation of length of time interventions were provided.

Part C: ELIGIBILITY

Recommendation:

Under the “ELIGIBILITY DETERMINATION” section (page 4) change the language of the third statement from “The child *demonstrates* an educational need that requires specially designed instruction” to “The child *has* an educational need that requires specially designed instruction.”

Rationale:

The word “demonstrates” is a weighted term that has the potential to shift the burden of proving a need onto the child if misinterpreted by evaluation team personnel. Use of the more neutral term “has” would alleviate the potential of teams to place a burden on the child/family that the law does not contemplate.

Recommendation:

Under the “BASIS FOR ELIGIBILITY DETERMINATION” section (page 4) add a sentence that states “ If the child is determined to be not eligible for special education, provide documentation that the child was referred for an evaluation to determine eligibility under Section 504 of the Rehabilitation Act of 1973 or other relevant federal law.”

Rationale:

School districts frequently stop the eligibility for special education inquiry when the child is determined ineligible for an IEP. This usually occurs as there is no member of the evaluation team knowledgeable in the requirements of Section 504. Adding language to

the form will decrease the likelihood that a child with a disability will be denied services due to the failure to evaluate for alternate eligibility.

Recommendation:

Under the “STATEMENT OF DISAGREEMENT” section (page 5) add the following language. “Any dissenting team member shall attach a statement of disagreement.” The draft form as written limits the attachment of a dissenting statement to determinations in the category of specific learning disability, which is not consistent with state law at OAC 3301-51-06 (G)(1)(b)(i)(b) (“Any team member who is not in agreement with the team’s determination of disability shall submit a statement of disagreement.”)

Rationale:

The draft form is not in compliance with state law. The recommended changes bring the form into compliance.

Recommendation:

Add language to the form to require that copies of the underlying evaluations be attached to the ETR Assessment Summaries. In the alternative, add language that gives parents the option of getting copies of the evaluations upon which the Assessment Summaries are based.

Rationale:

Having copies of the evaluations attached to the ETR provides easier access to information that may be necessary for IEP teams to make determinations about services and supports for children with disabilities and can eliminate delays in developing or modifying an IEP should a team require an evaluation that is in storage or a file located in another location in a school district. Further, providing copies of the evaluation with the ETR allow the parent the option of sharing evaluation information with private providers so that consistency in service can be achieved.

Recommendation:

Under “G. MEDICAL FINDINGS” (page 7) add language to the explanatory sentence so that it reads: “Describe the educationally relevant medical findings, if any *and provide enough information about relevant medical finding, including medication issues, to allow the IEP team to determine a plan to address the findings, if necessary.*”

Rationale:

Relevant medical information should be addressed in a child's IEP and may require the development of a student health plan. Explanatory information is required to address the findings in an IEP and appropriately provide for health services.

General Formatting Comment:

The use of capital letters throughout the form is confusing. It is unclear whether E., F. and G. on page 7 of the form refers to the evaluation process in general or just Part D: DOCUMENTATION FOR DETERMINING THE EXISTENCE OF A SPECIFIC LEARNING DISABILITY.” Certainly G. “MEDICAL FINDINGS” is a relevant area of discussion for all children with disabilities and should not be limited to evaluation for SLD.

Recommendation:

Use numerals and letters to make the form clearer.

Comments to Individualized Education Program (IEP) draft form

Recommendation:

Under “STUDENT INFORMATION” section (page 1) add language to ask whether the child is in the custody of the state and whether a surrogate parent is required or appointed.

Rationale:

The provision of surrogate parents to children who need them is a challenge in Ohio in part because school districts are not knowledgeable about the surrogate parent requirements and in part because there is a lack of trained surrogates available for appointment. Adding language to the IEP will serve to raise awareness among school districts about the requirements of surrogate parent appointments and will help to ensure compliance with the law so that children who need surrogates receive them and so that the surrogate can exercise the role of the parent in the IEP process.

1-FUTURE PLANNING

Recommendation:

Incorporate the explanatory language found in the current IEP form which reminds the IEP team to consider student and family preferences in future planning statements (page 2).

Rationale:

There are few opportunities for students with disabilities for meaningful participation in the development of their IEP. Given that participation by the student and family is a central goal of the IDEA, removing language that encourages this participation is inapposite to that goal.

2-SPECIAL INSTRUCTIONAL FACTORS

Recommendation:

While this section (page 2) states that items checked “YES” will be addressed in this IEP, the form does not provide clear direction about how the items should be addressed and does not provide a place to address the items. Add space in this section and require the IEP team to state how items checked “YES” will be addressed and where they appear on the IEP form.

Rationale:

Many IEP teams feel constricted by the IEP form currently in use and Ohio Legal Rights Service has ample experience with IEP teams that refuse to add legitimate services to an IEP because there is not a specific space for the service on the IEP. Similarly, many IEP teams struggle with where to put a service if there is not a specific space for it on the IEP. Adding space to this section will assist IEP teams in developing thorough IEPs and will ensure that the special factors are addressed in a meaningful way and incorporated into the IEP.

Recommendation:

Add language from the currently used IEP form regarding “other relevant information e.g., medication” back into the draft form on page 2.

Rationale:

Other relevant information is an important section for children taking medication or with health needs that must be addressed in the school setting. This section should be included in the draft form so that relevant information is documented in the IEP.

Recommendation:

Under the question “Does the student have limited English proficiency?” (page 2) add language that requires documentation of the native language of the child.

Rationale:

A child's native language is relevant to evaluation, testing and instruction and should be documented on the IEP to ensure that the administration of evaluation and testing are not discriminatory on a racial or cultural basis and are most likely to yield accurate information about the child, and that instruction is provided in a manner accessible to the child.

Recommendation:

Under the question "Does the student need instruction in Braille and the use of Braille?" (page 2) add language that also addresses other services that may be necessary for students who are visually impaired but who do not use Braille.

Rationale:

All students with visual impairments do not use Braille and the IEP should address the full spectrum of services and accommodations that may be necessary to address the unique needs of any student with visual impairments.

Recommendation:

Under the question "Does the student have communication needs (deaf or hearing impaired only)?" (page 2) add language to expand this inquiry to include a determination of the communication needs of other children who are not deaf or hard of hearing, as required by state law at OAC 3301-51-07 (L)(1)(b)(iv). Make two separate inquiries for children with communication needs and for children who are deaf or hearing impaired.

Rationale:

The draft form is not in compliance with state law which requires the IEP team to consider the communication needs of all children with IEPs, not just children who are deaf or hard of hearing. The recommended change would bring the form into compliance with state law.

3-TRANSITION

Recommendation:

Under the section FOR 14 YEARS AND OLDER, (page 2) remove the ("Optional for students under age 14") language and replace with ("Or younger, if appropriate").

Rationale:

This language is the language used in OAC 3301-51-07 (H)(2)(a) and brings the form into compliance with state law.

Recommendation:

Under the section INDEPENDENT LIVING (page 3) delete the language “(As appropriate).”

Rationale:

This language is unnecessary, does not appear with any other transition goal area, and makes it appear that the goal of independent living is not as important as other transition goals. The IDEA and other federal laws and courts have determined that individuals with disabilities are entitled to community integration and independent living.

Recommendation:

Add language to the transition section of the form (pages 2 and 3) that requires the IEP team to ask whether the student is registered to vote and, if the student is not, provide information about and assistance with voter registration.

Rationale:

The National Voter Registration Act (NVRA) requires school districts to assist in the voter registration of students with disabilities. Adding this language to the form will help ensure that school district meet their obligations under the NVRA.

Recommendation:

Add check boxes to the transition section that reference appropriate entities to include in transition planning. For example, add a check box that documents "referral made to Bureau of Vocational Rehabilitation (BVR)/(RSC), and a box that documents "referral made to university/college disability services", etc.

Rationale:

Adding check boxes would help to ensure consideration by the IEP team of available agencies that might be necessary for transition and that referrals are made to the appropriate partners in transition.

4-GOALS

Recommendation:

The criteria used to identify the child’s present levels of performance (page 4) should match the criteria used to define the measurable IEP goals and to measure the child’s performance level toward achieving those goals. The IEP form should require the use of

consistent criteria throughout so that it is possible to compare apples to apples and determine actual progress.

Rationale:

Determining progress is often difficult because IEPs lack measurable goals and the consistent use of criteria throughout the process. Adding a statement that requires consistency in criteria used will make it more likely that the IEP team can determine, with accuracy, whether and to what extent a child has made progress.

Recommendation:

Define “Goal mastery” (page 4) to mean performance of a goal at 80% or higher, where percentages are used.

Rationale:

Many IEPs set goals at 50% (the percentage of chance) for mastery. Given the high expectations for students with disabilities stated in the IDEA and NCLB, mastery should be set at 80% or higher.

Recommendation:

Clarify that the “PRESENT LEVEL OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE” box (page 4) should be completed for each goal by adding “FOR THIS GOAL” after the titular language.

Rationale:

The current layout of the draft form is unclear and unwieldy should an IEP team have to go back to refer to one present level of performance box as they are writing individual goals. Having a separate present level of performance box for each goal would increase the likelihood that the goal would relate to the present level of performance and, thus, be measurable.

Recommendation:

Under the “TYPES OF EVALUATION FOR ANNUAL GOAL” section, (page 4) the box named “Teacher Observation” should read “Documented Teacher Observation.”

Rationale:

Parents are entitled to documentation of their child’s progress and should not have to rely on undocumented teacher observations that cannot be substantiated in order to determine progress. Requiring documentation of teacher observation adds reliability to the reporting that is necessary to ensure the effective team process.

Recommendation:

Under the “METHOD/FREQUENCY FOR REPORTING PROGRESS OF ATTAINING GOALS TO PARENT” section, (page 4) require more explanatory information in annual goal progress reports. Require progress reports that use the same, consistent criteria recommended above.

Rationale:

Current progress reports generally include less than helpful information about student progress such as AP=Adequate Progress. This is generally meaningless to parents as it cannot be measured against a baseline and does not align with criteria used in present levels and goals. Requiring the use of the same measurement criteria in the progress report as in the IEP, will ensure that parents and educators receive useful information about the progress of the child.

5-SPECIALLY DESIGNED INSTRUCTION AND RELATED SERVICES

Recommendation:

The issues addressed on under this section (page 5) should be addressed separately for each goal, (page 4) such that a separate page 5 is recommended for each page 4.

Rationale:

It will be confusing to parents and IEP teams to lump all of the goals together, especially when there are multiple services listed in a single row. It will be difficult to tell which services correspond to which goals.

Recommendation:

The title of the last column “ANTICIPATED FREQUENCY OF SERVICES” (page 5) should be changed to “FREQUENCY OF SERVICES.”

Rationale:

The IDEA requires documentation and provision of the actual services determined to be necessary and/or appropriate for a child with an IEP. The term "anticipated" should be deleted as it is not in compliance with the requirements of the IDEA. Further, use of the word might lead a school district to believe it is not required to provide the services listed on and agreed to in the IEP.

Recommendation:

Add a column to this section (page 5) that requires listing of the individual responsible for the provision of the services.

Rationale:

School personnel are required to know their obligations under an IEP and such obligations will be unclear if individuals (e.g., teacher, aide, school nurse) are not listed on the IEP with particularity. Further, failure to specifically list responsibilities increases the likelihood that a service on an IEP will not be provided to a child.

Recommendation:

Under the “RELATED SERVICES” row, (page 5) add a column that requires the IEP to specify whether the related service will be individual or group and direct or consultation, and specify the amounts of each (direct and/or consultation).

Rationale:

Specificity is required in an IEP. Specificity ensures that children receive the appropriate level of service. Lack of specificity increases the likelihood that children will not receive the services determined necessary by their IEP and that services will be provided according to administrative convenience and staffing levels rather than according to student need.

6-TRANSPORTATION

Recommendation:

Add the following accommodations/modifications to the list in this section (page 6): door-to-door transportation, aide, behavior plan and parent reimbursement for transportation.

Rationale:

Depending on the need associated with the disability, a child may need door-to-door transportation, an aide or a behavior plan for school transportation. Further, in some cases, other team members and the parent agree to provide transportation for the child as a related service, and the parent should be reimbursed for providing the transportation.

7-NONACADEMIC AND EXTRACURRICULAR ACTIVITIES

Recommendation:

Re-write the first sentence to read “How much time will the student participate in nonacademic/extracurricular activities with his/her non disabled peers?” (page 6)

Rationale:

The draft sentence “Will the student have the opportunity to participate in nonacademic/extracurricular activities with his/her non disabled peers?” does not contain the same presumptive language as the recommended sentence. Since a primary goal of the IDEA is for students with disabilities to spend as much time with typical peers as possible, the sentence should be re-written with more presumptive language.

Recommendation:

Separate NONACADEMIC and EXTRACURRICULAR services in this section or make two separate sections.

Rationale:

There are different standards and considerations applicable to a determination of participation in nonacademic services (e.g., lunch and recess) than are applicable to a determination of participation in extracurricular activities (e.g., sports, fieldtrips, clubs) and separating the two allows for a better determination of the supports, modifications and accommodations that may be necessary for full participation in the school program.

8-GENERAL FACTORS

Recommendation:

Under the “HAS THE IEP TEAM CONSIDERED:” section, (page 7) allow the form to expand and require the IEP team to document and provide evidence that supports a YES or NO answer to the questions posed. It is unclear how it affects the process if the team answers NO to a question. Also, this section seems to be located in the incorrect location in the IEP process. It should be moved closer to the beginning of the process.

Rationale:

The IEP team should be required to document what information was considered when one of the questions is answered YES. Documentation will allow for a more accurate review of whether or not the IEP and IEP process was appropriately completed. If the team answers No to one of the questions, it should be required to justify why it did not consider the issue in developing the IEP.

Recommendation:

Expand the section discussing ESY (page 7) to include a requirement that the team justify the decision if the team has determined that ESY services are not necessary, and a requirement that the team document what ESY services are necessary and where those services are documented in the IEP. Add a check box for dissenters to sign and state a reason for dissent.

Rationale:

Requiring IEP teams to provide a rationale for decisions increases the likelihood that decision will be reasoned and also allows for review of the process. Services agreed upon for a child should always be clearly documented in the IEP.

9-LEAST RESTRICTIVE ENVIRONMENT

Recommendation:

This section (page 7) should be completed separately for each goal and service as a child can receives services and address goals in multiple settings in a school environment. The proposed draft language is too limiting. The second question in the section “Does this student receive all special education services with non disabled peers” should be rewritten to read “If this student does not receive all special education services with non disabled peers, describe the extent to which the child is removed from the regular education environment, and where the child receives services.”

Rationale:

This level of specificity is required to comply with federal IDEA LRE requirements. IEP teams are more likely to comply with the requirements and to write appropriate IEPs when specific direction is given in the form.

10-MEETING PARTICIPANTS

Recommendation:

Add the following participants to the list:
TRANSPORTATION REPRESENTATIVE
TRANSITION PROVIDER
SCHOOL NURSE

Rationale:

These participants are frequently needed at IEP meetings but school districts often fail to request their attendance. Adding these participants serves to remind team members that they may be necessary participants.

Recommendation:

Change the language “INFORMATION FROM PEOPLE NOT IN ATTENDANCE” (page 8) to “PEOPLE NOT IN ATTENDANCE BUT PROVIDING INFORMATION.”

Rationale:

The draft language does not accurately reflect the actual information that is documented in this section. The form is not documenting “information” but rather “individuals” not attending the meeting, but providing information to the team. The recommended language accurately describes the information to be documented in this section of the form.

Recommendation:

Add a section to document the identities of individuals who are excused from the IEP meeting and the parent’s consent to the excusal. Add a section that documents alternate methods of participation in the IEP meeting (e.g., via conference call or video conferencing).

Rationale:

Excusals and consents should be documented on the IEP form to eliminate confusion and disputes about whether the IEP meeting was properly constituted. Alternate participation in IEP meeting is becoming increasingly common and should be documented.

11-SIGNATURES

Recommendation:

Under SIGNATURES (page 9), add a section that documents notice to parents regarding participation in the Medicaid School Program (MSP), including notice that participation in the MSP option is voluntary. Also include a section documenting informed parental consent to participation in the MSP option.

Ensure that parents are informed of their choice whether to allow billing to Medicaid for their child's services at school and are advised of any effects an agreement to allow such billing would have on their child's benefits outside of the school setting. Further, parents should be clearly informed that the services necessary for their child to receive a FAPE must be provided under IDEA regardless of whether the parent agrees to allow the use of public or private insurance benefits. Parental consent is defined in 34 C.F.R. 300.9.

Rationale:

IDEA regulations specifically give parents a choice whether to allow the use of their public benefits to pay for services at school. 34 C.F.R. 300.154(d). Additionally, IDEA states that parents cannot be required to use private insurance to provide services for children at school.

Parental consent to participation in the MSP option must be informed and voluntary. Parental consent to a Medicaid service must be separate from parent consent for an IEP/IDEA service not funded by Medicaid. Thus, documentation of separate, informed consent is necessary and should be documented on the IEP so that it is readily available to team members.

Recommendation:

Fix typo on page 9 under ANNUAL REVIEW (Not a Change of Placement). Second box reading “I agree with the implementation of this IEP” should have only 1 * after it, not 2 **.

Rationale:

Since this box indicates agreement with the IEP, the IEP serves as prior written notice which is indicated by one *.

Thank you for the opportunity to comment on the draft forms. If you have any questions or would like further clarifications about these comments, please contact Kristin Hildebrant at khildebrant@olrs.state.oh.us or at 614-466-7264, ext. 109.