

**Key points:**

- Clearly notate "DRAFT" on any pre-meeting materials
- Ensure parental input is properly considered
- Discuss variety of placements with parents

**Know the difference between preparation, predetermination**

Preparation for an IEP meeting can be incredibly helpful in making the IEP process run smoothly and efficiently. But districts should ensure their staff understand the difference between acceptable preparation activities and actions that could lead to liability for [predetermining](#) a child's placement.

Many districts that fall into the predetermination trap do so because they are unclear about the scope of pre-meeting activities. Courts and hearing officers consistently have held that district members of IEP teams must have an "open mind" when discussing a student's [placement](#).

This does not mean, however, that districts cannot prepare for IEP meetings. To the contrary, many educators recommend that districts develop draft IEPs to use as a roadmap for IEP meetings.

Still, the U.S. Department of Education has advised districts to use caution when developing draft IEPs:

"We do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child's needs. However, if a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents.

"The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP. It is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins." 71 Fed. Reg. 46,678 (2006).

Thus, the key question in predetermination cases is whether the district members of the IEP team were willing to listen to the parents' concerns and make changes to the draft IEP if necessary.

Follow these tips to ensure your staff knows the difference between preparation for an IEP meeting and predetermination of a child's placement:

- **Use caution with draft IEPs.** The development of a draft IEP may be something of a double-edged sword for districts. A draft IEP may help the district to identify topics for discussion and ensure that the IEP meeting is not a waste of the participants' time. On the other hand, the creation of a draft IEP increases the risk that the parents will file a predetermination claim. The best course of action is to inform the parents that the draft document is just that -- a draft -- and that the student's placement is still up for discussion. Including the notation "DRAFT" on top of the document will also show parents that the recommended placement is not set in stone.
- **Avoid pre-meeting statements.** District staff should be cautious about making pre-meeting statements about a child's placement, as these may give rise to a predetermination claim. These statements can be especially problematic when made to the child's parent. Districts can avoid liability by ensuring that parents are always afforded their meaningful opportunity to [participate](#) in the IEP meeting.
- **Keep an "open mind."** Even in predetermination cases that do not involve draft IEPs or staff members' off-the-cuff statements, courts and hearing officers often consider whether the district IEP team members came to the meeting with an open mind. In most instances, a parent alleging predetermination will bear the burden of proving that the district was unwilling to consider a particular placement. Still, districts should be prepared to show that they gave meaningful consideration to the [parents' input](#).
- **Consider alternatives.** Districts can minimize their potential liability for predetermination claims by discussing a variety of placements with the student's parents. What districts must realize, however, is that IEP teams must do more than discuss the parents' objections -- they also must consider alternatives to the recommended placement.

See also:

- [Attorney: Know 'fatal' IDEA procedural violations that deny FAPE \(March 4\)](#)
- [Limit 'off hours' communication between staff, parents \(Oct. 22\)](#)
- [Be careful what you say when prepping staff members for IEP meetings \(Sept. 4\)](#)

Adapted from: [Placement Under the IDEA: Avoiding Predetermination and Other Legal Pitfalls](#) by Amy E. Slater, Esq., edited by Joseph L. Pfrommer, Esq.

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