



Special Education Advisory Committee

Policy 5310: Special Education Abridged Report¹ and Recommendation October 11, 2020

Prepared For:
SEAC Membership
Special Education Community
Loudoun County School Board

For more information and supporting documents, please see SEAC's issue page:
[http://loudounseac.org/wiki/Special_Education_\(Generally\)_Policy](http://loudounseac.org/wiki/Special_Education_(Generally)_Policy)

¹This document is a brief report of the current SEAC recommendation on this policy. It does not, and is not intended to, fully capture the history and background of the issue. A full report is available upon request.

Summary of Recommendation

Recommendation 1: SEAC recommends that the school board not change the existing Policy 5310 to permit IEP amendments without an IEP meeting.

Rationale:

SEAC reviewed current information and circumstances and found that the existing prohibition is the right public policy for our community.

The IDEA 2004 provision that allows for IEP amendments without an IEP meeting is intended for minor changes. Staff have publicly stated, and staff actions have demonstrated, that their intent is to use it for major changes. Specifically, their intent is to use this provision for changes among distance, hybrid, and in-person learning, not for minor ones. Major program changes should result in an IEP meeting and a review of the entire program to ensure that the entire program meets the student's needs and provides a Free Appropriate Public Education (FAPE).

(In a recent school board meeting discussion, Atoosa Reaser, the school board member representing the Algonkian District, asked if an IEP meeting should be held when transitioning between distance and in-person. IEP meetings should be held as individual student needs are different in different platforms and learning environments. IEP teams need to make IEP adjustments based on student needs.)

SEAC is concerned that it might not be reasonable to expect that any terms added to this policy by the school board to protect equity and parents' rights would be followed in good faith.

Under the current circumstances, with parents directly providing critical supports to Special Education students, educational success requires that parents and the school communicate and collaborate more closely than ever. The staff's proposal is to reduce and marginalize student needs at a time when the educationally right policy should be to increase communication and collaboration and for IEP teams to carefully assess and adjust IEP's based on student's individual needs when circumstances change.

1. Abridged Issue Background and History

Policy 5310, Special Education, provides general statements of IDEA compliance and implementation that are required by the IDEA and/or Virginia regulations, or are advised by VDOE guidance.

The current LCPS policy 5310 was adopted in April 2019 and contains a public policy decision to prohibit IEP amendments without an IEP meeting. Prior to SEAC's review of this issue and prior to the school board enacting this prohibition in policy, LCPS staff had already prohibited IEP amendments without a meeting but was not documented through its Special Education procedures manual or a school board Policy as required by VDOE. During SEAC's March 2019 meeting, LCPS staff publicly stated their position that it would be difficult for them to ensure that they could meet their obligations under the IDEA, such as meaningful parental participation in all aspects of the administrative process, if they allowed IEP amendments without an IEP meeting. LCPS staff also publicly stated their position that IEP meetings are not burdensome. SEAC membership agreed with the staff's claims, voted unanimously to prohibit IEP meetings without a meeting and provided this discussion and input to the Department of Pupil Services, and the school board enacted this prohibition based on this consensus between SEAC and the Department of Pupil Services.

In May of 2020, LCPS staff proposed a new Policy 5310 to the school board that removed this prohibition. The school board's SSS committee referred this proposal to SEAC for review according to Virginia regulations. The SEAC policy subcommittee met to review this issue, and then SEAC held a special June 2020 meeting to specially review this policy. The school board's SSS committee then considered SEAC's recommendations, community, and LCPS staff input, and created a compromise revised draft of Policy 5310.

When Policy 5310 was brought before the school board as an information item, LCPS staff posted two staff-written drafts of Policy 5310 that they offered as replacements for the draft revised by the school board's SSS Committee. The LCPS staff claimed that provisions in the SSS Committee's draft might obligate LCPS to do more than the minimum required by law to protect equity, and claimed that their objection came from the LCPS staff's outside counsel at Reed Smith LLP. On June 25, 2020, the SEAC chair sent the school board a letter responding to the LCPS staff / Reed Smith claims. In particular, the letter showed that the equity provisions in the SSS Committee's draft were already required by the IDEA (Informed Parental Consent and Prior Written Notice) as clarified by the VDOE.

At the next school board meeting, the LCPS staff had their outside counsel speak to the school board to provide his advice that the school board not make a policy that could require LCPS to do more than the minimum required by law. On August 6, the SEAC Chair sent the school board a letter expressing concern with the actions and measures taken by the Department of Pupil Services to undermine the Special Education community's concerns, as well as the SEAC and SSS Committee's recommendations on Policy 5310.

The school board referred Policy 5310 back to the SSS Committee. The SSS Committee chair referred the drafts to SEAC for review. The SEAC Policy Subcommittee reviewed the issue in consideration of current community concerns and circumstances, and SEAC reviewed the issue at its October 7, 2020 meeting.

2. Concerns

Concern 1: SEAC has received reports of IEP amendment documents being created without a meeting, which appears to be a direct violation of the current Policy 5310.

When the school board referred Policy 5310 back to the SSS Committee, part of the discussion was the LCPS staff's previous claim that they needed this change to be in place prior to the beginning of the 2020-21 school year. Their stated intent was to use this process to "streamline" the process of revising Special Education students' IEPs for 100% distance learning at the beginning of the school year. However, when faced with the decision between accepting the SSS Committee's draft with equity provisions that might go beyond the minimum already required by law and not having this change in place prior to the start of the school year, LCPS staff considered the equity provision issue to be of greater concern.

SEAC has received many reports that LCPS staff wrote and handed parents IEP amendments to sign, without holding an IEP meeting and without an agreement to develop an amendment without an IEP meeting. That is, it appears that LCPS staff handled this issue by violating existing Policy 5310 and possibly the IDEA.

SEAC has also received reports that LCPS staff wrote and handed parents new IEPs that were developed without holding an IEP meeting, or were the product of a partial IEP meeting where changes were made and not fully discussed by the IEP team, and IEP amendments were developed without an agreement to develop an amendment without an IEP meeting. These appear to be violations of the IDEA.

These reports raise concerns that LCPS staff may have responded to the school board's good faith efforts by violating the school board's policy and the IDEA.

Concern 2: SEAC has expressed concern that staff actions in the process of consideration of this policy appeared to be attempts to circumvent a transparent, collaborative public process, SEAC, and the school board's Student Support and Services (SSS) Committee.

The SEAC Chair has sent the school board a series of emails and letters detailing this concern.

Concern 3: SEAC has received many reports that parents are having to provide many and/or all of the supports students with disabilities require to receive an education.

Many parents/guardians are reporting to SEAC, and we understand that the school board is receiving similar reports, that they are having to sit with their child for nearly all of the instructional day, to navigate the computer and provide access to instruction, effectively fulfilling the role of a special education instructional assistant for distance learning. In many cases, the roles that parents are having to provide is that of the special education teacher, providing instruction and tutoring beyond simple support. In some cases, the student simply cannot learn through the distance learning platform, placing the full burden of providing special education on the parents, guardians or caregivers.

Many parents/guardians are reporting to SEAC that resources available to them, school/teacher communication, and collaboration, are insufficient, and they are being left to figure things out for themselves.

Many parents/guardians are reporting to SEAC that they are effectively homeschooling their children, while LCPS receives substantial funding and teachers are unable to fulfill their child's educational needs. Many parents/guardians have expressed concern that the current level of effort they have to expend in order for their students to receive an education is unsustainable, and many parents/guardians are considering withdrawing from LCPS and officially homeschooling.

Concern 4: IEP meetings are not supposed to be burdensome. LCPS administration, at the March 2019 SEAC meeting, publicly claimed that IEP meetings are not burdensome and that changes to the IEP should not be made without a meeting to ensure meaningful parental participation.

A minimum compliant IEP meeting consists of a parent or guardian, one of the student's general education teachers, one of the student's special education teachers (or a related service provider, if that is the only service), and a person able to commit the school (generally, an administrator). LCPS often chooses to bring other people, such as additional Special Education supervisors, other non-school administrators, and LCPS staff's outside counsel. These non-school staff often have limited schedule availability that delay scheduling the meetings.

These non-school staff often change the tone of the IEP meeting, make them take more preparation and more time, and cause them to not complete their agendas in the scheduled time, requiring continuation meetings. SEAC has received many reports that the tone of LCPS IEP meetings has changed over the past few years from collaborative and student-focused to adversarial and focused on minimizing the amount of support that LCPS provides to its students.

IDEA case law and guidance requires that parents meaningfully participate in all aspects of the administrative process and Virginia regulations require that parents give their informed consent to IEP changes. These are legal procedural requirements to protect the principle that parents and schools need to work together in order for the educational program to be successful, and even more so for students with disabilities. These had to be explicitly protected in the regulations due to a history of discrimination. When not specifically obligated to do so, school staff would exclude parents and/or guardians, or their inclusion would be superficial.

IDEA meaningful participation protections include equity protections for parents and guardians. These include that parents/guardians must be provided reasonable accommodations for their own disabilities (such as alternate modes of communication/interpreters) and/or provided accessible materials in their preferred language (such as Spanish or other foreign languages), as well as to be able to access student records and have them explained, and for all proposed and refused actions to be explained to the parents prior to requesting their informed consent (Prior Written Notice).

SEAC has received many reports of LCPS violations of this legal requirement and common-sense principle. LCPS administrators publicly claim to support transparency and collaboration. It is unclear why there is such a disconnect between their public claims and actual experiences.