



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 24, 2011

XXXX XXXX XXXX
XXXX XXXX XXXX
XXXX XXXX XXXX

XXXX XXXX:

This is in response to your November 4, 2010 letter in which you present two issues and ask for guidance from the Office of Special Education Programs (OSEP). Your issues and our responses are below.

Statement of First Issue:

Insofar as Title I/B/614/d/B(v) may be a member of the described in clauses (ii) through (vi) do there exist conditions wherein this member's knowledge about the availability of resources of the local educational agency disallow Team "placement" participation as it relates to instructional implications of evaluation results, OR related services personnel as appropriate and if not, what is the designated course per IDEA [Individuals with Disabilities Education Act] when efforts made at Amicable resolution are to no avail?

Requirement

The provision of the IDEA to which you refer in your inquiry, is title 20 of the United States Code, section 1414(d)(1)(B)(v), cited as 20 U.S.C. 1414(d)(1)(B)(v). The Department's regulation at 34 CFR §300.321(a)(5) implements this statutory provision, and states that the individualized education program (IEP) Team for each child with a disability must include: "(5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section."

These other IEP Team members are: the child's regular education teacher, (if the child is, or may be, participating in the regular education environment) (34 CFR §300.321(a)(2)); the child's special education teacher or, where appropriate, the child's special education provider (34 CFR §300.321(a)(3)); a representative of the public agency who-

- (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
- (ii) Is knowledgeable about the general education curriculum; and

- (iii) Is knowledgeable about the availability of resources of the public agency (34 CFR §300.321(a)(4));

and at the discretion of the parent or the public agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate (34 CFR §300.321(a)(6)).

Analysis and Conclusion

As we understand, based on a conversation you had with a member of my staff, you are concerned that this regulation could limit the IEP Team to the child's parents and only one other individual who could perform the responsibilities of other IEP Team members. We do not believe that this regulation would permit the IEP team to include only the child's parent and one other required IEP Team member. Rather, the IDEA provision you cite in your inquiry and the implementing regulation merely permit the individual who can interpret the instructional implications of evaluation results to be the same person as one of the other members of the IEP Team listed in paragraphs (a)(2), (3), (4), and (6) of 34 CFR §300.321, provided that member is also qualified to interpret the instructional implications of evaluation results.

Statement of Second Issue and Conclusion

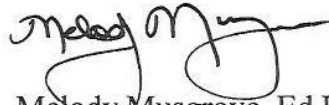
You also ask what recourse parents have if an amicable resolution cannot be reached with public agency officials. The IDEA's dispute resolution mechanisms include mediation, described in 34 CFR §300.506, the due process procedures described in 34 CFR §§300.507 through 300.516, or the State complaint procedures described in 34 CFR §§300.151 through 300.153. Each public agency must have procedures allowing parties to disputes involving any matter arising under the Part B regulations, including matters arising prior to the filing of a due process complaint, to resolve their disputes through a mediation process. A due process complaint, which may be filed by a parent or a public agency, must allege matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to a child with a disability. If a parent files a due process complaint, the local educational agency (LEA) must convene a resolution meeting within 15 days of the LEA's receiving notice of the parent's due process complaint, consistent with 34 CFR §300.510, unless the parent and the LEA agree in writing to waive the resolution meeting or the parent and the LEA agree to engage in mediation. If the resolution process is not successful in resolving the parent's due process complaint, a due process hearing may occur, consistent with 34 CFR §§300.511 through 300.516. The IDEA's State complaint procedures described in 34 CFR §§300.151 through 300.153 provide another dispute resolution mechanism for parents. Note however, that an organization or individual, including an organization or individual from another State, may file a State complaint alleging that a public agency has violated a requirement of Part B of the IDEA or the Part B regulations.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

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If you have additional questions, please do not hesitate to contact Sheila Friedman at 202-245-7349 or by email at Sheila.Friedman@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", with a long horizontal flourish extending to the right.

Melody Musgrove, Ed.D.

Director
Office of Special Education Programs

cc: XXXX XXXX