

April 25, 2011

Lilly Rangel-Diaz
Center for Education Advocacy, Inc.
5973 SW 42nd Terrace
Miami, Florida 33155

Dear Ms. Rangel-Diaz:

This is in response to a series of electronic mail (email) inquiries to Ms. Sheila Friedman and Dr. Deborah Morrow, in the Office of Special Education Programs (OSEP). I apologize for the delay in our response. Your primary inquiry is whether a school district may have a practice of generally prohibiting related services personnel, specifically speech-language pathologists, physical therapists, and occupational therapists, from attending individualized education program (IEP) Team meetings when parents request that a related services provider attend the meeting. You also ask whether a school district may restrict those related services providers invited by parents to IEP Team meetings to providing written input in lieu of actually attending the meeting, and under what circumstances related services personnel may attend IEP Team meetings. The following is an explanation of the requirements in Part B of the Individuals with Disabilities Education Act (Part B or IDEA) that are relevant to your inquiry.

Overview of Legal Requirements and Analysis of Provisions Regarding Participation in IEP Team Meetings

Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child's unique needs and ensure the provision of a free appropriate public education (FAPE) to the child, participate in the child's IEP Team meeting. The IDEA does not expressly require that related services personnel attend IEP Team meetings. However, if a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting. As discussed below, there are two provisions in 34 CFR §300.321, governing how related services personnel can attend an IEP Team meeting: 34 CFR §300.321(a)(3), which applies to required IEP Team members; and 34 CFR §300.321(a)(6), which applies to others with knowledge or special expertise regarding the child who are invited to attend by the parent or public agency.

Participation of Required IEP Team Members

Under 34 CFR §300.321(a)(3), each child's IEP Team must include "[n]ot less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child." The child's special education teacher or provider is a required member of the IEP Team.

The teacher or provider who is a member of the IEP Team and must be designated by the public agency, should be the person who is, or will be, responsible for implementing the child's IEP. If the child's disability is a speech impairment and the only service the child receives is speech-language pathology, and speech-language pathology is also considered special education rather than a related service under State standards, then the special education provider on the IEP Team for the child should be the speech-language pathologist.

A required IEP team member may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to, or discussion of, the member's area of the curriculum or related services if: (i) the parent, in writing, and the public agency consent to the excusal; and (ii) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting. 34 CFR §300.321(e)(2).

If the public agency designates the related services provider as a required IEP Team member, the public agency must ensure that the individual attends the child's IEP Team meeting, unless the excusal provisions in 34 CFR §300.321(e) are met. The excusal provisions apply only to the required IEP Team members described in 34 CFR §300.321(a)(2) through (a)(5), one of which is the child's special education teacher or, where appropriate, the child's special education provider. Therefore, if a public agency designates the child's speech-language pathologist or other related services provider of the child as a required IEP Team participant, the public agency could only restrict that employee to providing written input, in lieu of attending the IEP Team meeting in person, if the employee is properly excused from attending the IEP Team meeting in person pursuant to 34 CFR §300.321(e). Written consent from the parent and the public agency would be required for the participant to be excused if the meeting involves modification to, or discussion of, the member's area of the curriculum or related services. **OSEP expects excusal decisions to be made on an individualized, case-by-case basis**, and would consider a public agency to be in noncompliance with the IDEA if it were to routinely or unilaterally excuse a required IEP Team member from attending an IEP Team meeting without obtaining parental consent or agreement, as required by the excusal provisions in §300.321(e). OSEP believes that it is critically important to the provision of FAPE that the public agency require individuals to attend IEP Team meetings who are in the best position to address the educational program for, and the unique needs of, each child with a disability.

Participation of Other IEP Team Members Invited by the Parent or Public Agency

If the public agency does not designate a related services provider employed by the public agency as a required IEP Team member pursuant to 34 CFR §300.321(a)(3), it may be possible for that employee to attend an IEP Team meeting pursuant to 34 CFR §300.321(a)(6). This regulatory provision permits the IEP Team to include "[a]t the discretion of the parent or agency, other individuals with knowledge or special expertise regarding the child, including related services personnel as appropriate." Under 34 CFR §300.321(c), the determination of the individual's knowledge or special expertise must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team. The excusal provisions in 34 CFR §300.321(e) are not applicable to individuals invited to attend IEP Team meetings at the discretion of the parent or the public agency.

While 34 CFR §300.321(a)(6) permits a parent to designate a public agency employee who possesses the requisite knowledge or special expertise regarding their child as a member of their child's IEP Team, the Part B regulations do not address the public agency's responsibility to make an employee of the agency available for IEP Team meetings when the public agency itself does not designate the individual as a required participant on the IEP Team. That determination may be addressed by State and/or local policy (See, the Analysis of Comments and Changes accompanying publication of the August 14, 2006 final Part B regulations (Analysis), 71 Fed. Reg. 46675 (Aug 14, 2006), (“[w]hether other teachers or service providers who are not the public agency’s required participants at the IEP Team meeting can attend an IEP Team meeting is best addressed by State and local officials.”) In addition, the Department has also stated that a parent does not have a legal right to require a public agency employee not invited by the public agency to attend his or her child’s IEP Team meeting, even though the individual is considered a member of the child’s IEP Team. (See, Analysis, 71 Fed. Reg. 46674 (Aug. 14, 2006)).

Nevertheless, OSEP expects that each public agency will ensure that each child’s IEP Team is composed of persons knowledgeable about the child and the child’s full range of educational needs, including the amount and type of special education and related services that the child needs in order to receive FAPE. Therefore, nothing in this response is intended to limit the right of a parent to bring another individual to their child’s IEP Team meeting who is not employed by the public agency, provided the parent demonstrates that the individual possesses the requisite knowledge or special expertise regarding their child, consistent with 34 CFR §300.321(c).

Additional Inquiries and Responses

You also have asked whether a school district may prohibit the participation of related services providers at resolution meetings, and you have requested that OSEP review the final decisions on State complaints filed with the Florida Department of Education (FDOE) pursuant to 34 CFR §§300.151 through 300.153 regarding the matters prompting your inquiry.

Participation of Related Service Providers at Resolution Meetings

Under 34 CFR §300.510(a)(1), an LEA (local educational agency, school district) must convene a resolution meeting with the parent and relevant member or members of the IEP Team who have specific knowledge of the facts identified in the parent’s due process complaint. The resolution meeting must occur within 15 days of the LEA receiving notice of the parent’s due process complaint and prior to the initiation of a due process hearing. Under 34 CFR §300.510(a)(4), the parent and the LEA determine the relevant members of the IEP Team to attend the resolution meeting.

If the related services provider is a member of the IEP Team pursuant to 34 CFR §300.321(a)(3) or (a)(6), the provider could attend the resolution meeting if the parent or LEA determines that the individual is a relevant member of the IEP Team. We urge LEAs and parents to work cooperatively to achieve agreement on which individuals are the relevant members of the IEP Team who should attend the resolution meeting.

Review of State Complaint Decisions

A State is responsible for resolving any signed, written complaint filed by an organization or individual, including a complaint filed by an organization or individual from another State alleging that a public agency has violated a requirement of Part B of the IDEA or the Part B regulations, consistent with 34 CFR §§300.151 through 300.153.

Under the prior regulations for this program, OSEP exercised discretionary review of final decisions on State complaints. The prior regulation providing for Secretarial review of Part B State complaints was removed as of May 11, 1999. Therefore, OSEP lacks the authority to review the final decisions on the State complaints that have been filed on the matters prompting your inquiry. The IDEA provides parents with the dispute resolution options of mediation under 34 CFR §300.506, or the filing of a due process complaint under 34 CFR §300.507, if the parent disagrees with the State's final complaint decision.

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.

If you have questions about the information contained in this response, please do not hesitate to contact Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

/s/

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: Bambi Lockman