

U. S. Department of Education

Dated July 23, 2001

Honorable Hillary Rodham Clinton
United States Senator
780 Third Avenue, Suite 2601
New York, NY 10017-2024

Dear Senator Clinton:

This letter is in response to an inquiry from your constituent, x, who contacted you regarding the attendees at the individualized education program (IEP) meetings held to determine special education and related services. Specifically, x believes that the local school district is inappropriately inviting the district's attorney to the IEP meetings, which in New York are called Committee on Preschool Special Education (CPSE) meetings. He has requested your assistance regarding his rights under the Individuals with Disabilities Education Act (IDEA).

The regulations implementing the Individuals with Disabilities Education Act (IDEA) are found at 34 CFR Part 300 (March 12, 1999). Section 300.344 addresses the membership of the IEP team. X has highlighted §300.344(a)(6) which allows attendance at the IEP meeting, "at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate."

The language at §300.344(a)(6) adopts verbatim the statutory language at section 614(d)(1)(B)(vi) of the IDEA. Under this section, parents and public agencies have the discretion to bring to IEP meetings as IEP team members other individuals who have knowledge or special expertise regarding the child. Under this statutory provision, the parent's and public agency's right to bring other individuals to the IEP meeting at their discretion must be exercised in a manner that ensures that all members of the IEP team have the knowledge or special expertise regarding the child to contribute meaningfully to the IEP. Paragraph (c) of §300.344 provides that the determination of the knowledge or special expertise of any individual described in paragraph (a)(6) shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team. The Federal rules pertaining to this situation do not disallow the school district from inviting the district's attorney to the IEP meeting.

However, as the answer to question 29 to Attachment A to the IDEA '97 regulations at 34 C.F.R. Part 300 explains:

The presence of an attorney could contribute to a potentially adversarial atmosphere at the meeting. The same is true with regard to the presence of an attorney accompanying the parents at the IEP meeting. Even if the attorney possessed knowledge or special expertise regarding the child (§ 300.344(a)(6)), an

attorney's presence would have the potential for creating an adversarial atmosphere that would not necessarily be in the best interests of the child.

Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged.

64 Fed. Reg. 12478.

Further information or assistance can be obtained from the New York State Department of Education by contacting the State Director of Special Education:

Mr. Lawrence Gloeckler
Deputy Commissioner for Vocational and
Educational Services for Individuals with
Disabilities
State Education Department
1 Commerce Plaza
Albany, NY 12234
Telephone: (518) 474-2714

Please contact this Office if we can be of further assistance.

Sincerely,

/signed Patricia J. Guard/

Patricia J. Guard
Acting Director
Office of Special Education Programs