



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

February 17, 2016

Mr. David Anandel
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

Dear Mr. Anandel:

This letter responds to your September 18, 2015 correspondence to Dr. Melody Musgrove, former Director, Office of Special Education Programs (OSEP), U.S. Department of Education (Department). In that letter you request guidance regarding the Individuals with Disabilities Education Act (IDEA) requirements related to individualized education program (IEP) Team membership contained in 34 CFR §300.321.

You ask that if a parent is accompanied to an IEP meeting by an individual/attorney without notifying the public agency of this fact prior to the meeting, would it be appropriate or allowable for the public agency to: (1) inform the parent that the IEP meeting could proceed without the attorney; and/or (2) postpone the IEP meeting specifically because the individual invited was an attorney so that the meeting could be rescheduled for a time and date when the public agency could also have legal representation. You also ask whether a parent's right to invite an individual of his or her choosing is hindered if the public agency cancels and reschedules an IEP meeting because an attorney accompanies the parent to the meeting without giving advance notice to the public agency.

In accordance with 34 CFR §300.321(a)(6), at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the child may attend the IEP meeting. The determination of the knowledge or special expertise of these individuals must be made by the party (parent or public agency) who invited the individual to be a member of the IEP Team. 34 CFR §300.321(c).

Under 34 CFR §300.322(b), the public agency must inform parents in advance of the IEP meeting, including the purpose, time, and location of the meeting and who will be in attendance. There is no similar requirement in the IDEA for the parent to inform the public agency, in advance, if he or she intends to be accompanied by an individual with knowledge or special expertise regarding the child, including an attorney.

We believe that in the spirit of cooperation and working together as partners in the child's education, a parent should provide advance notice to the public agency if he or she intends to bring an attorney to the IEP meeting. However, there is nothing in the IDEA or its implementing regulations that would permit the public agency to conduct the IEP meeting on the condition that the parent's attorney not participate, and to do so would interfere with the parent's right under 34

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The Department of Education's mission is to promote student achievement and preparedness for global competitiveness by fostering educational excellence and ensuring equal access.

CFR §§300.321(a) and 300.322(a). It would be permissible for the public agency to reschedule the meeting to another date and time if the parent agrees so long as the postponement does not result in a delay or denial of a free appropriate public education to the child.

Finally, we would like to note that, even if an attorney possessed knowledge or special expertise regarding the child, an attorney's presence could have the potential for creating an adversarial atmosphere that would not necessarily be in the best interest of the child. Therefore, OSEP's longstanding position is that the attendance of attorneys at IEP meetings should be strongly discouraged. See Assistance to States for the Education of Children with Disabilities and Early Intervention Programs for Infants and Toddlers with Disabilities, Final Regulations, *Analysis of Comments and Changes*, 64 FR 12478 (Mar. 12, 1999).

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 Department of the IDEA in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Lisa Pagano of my staff, at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs