



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

AUG 28 2003

Ms. Rita Byrd  
Assistant Superintendent  
Fort Thomas Independent Schools  
28 North Fort Thomas Avenue  
Fort Thomas, Kentucky 41075-1555

Dear Ms. Byrd:

I am writing in response to your letter requesting clarification of the Part B regulations under the Individuals with Disabilities Education Act (IDEA) as it relates to the individualized education program's (IEP) team membership. Specifically, you inquire whether a public agency is required to ensure attendance at an IEP meeting of an individual who the parent invites and who is an employee of the public agency, including a former teacher who has not worked with the student in several years.

Under Part B of the IDEA, 20 U.S.C. §1400 *et. seq.*, and its implementing regulations at 34 C.F.R. Part 300, 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 meeting. Under the Part B regulations, the public agency must ensure that the IEP team for each child with a disability includes-

- “(1) The parents of the child;
  - (2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
  - (3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child;
  - (4) 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 curriculum; and
    - (iii) Is knowledgeable about the availability of resources of the public agency;
  - (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 (6) of this section;
  - (6) 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; and
  - (7) If appropriate, the child.”
- 34 CFR §300.344(a).


The regulations now require that if the parents or the public agency invite other individuals to the IEP meeting, those individuals must have “knowledge or special expertise regarding the child.” 34 C.F.R. §300.344(a)(6). This is a change from prior law, which provided, without qualification, that parents or agencies could have other individuals as members of the IEP team at the discretion of the parents or agency. See 34 CFR Part 300, Appendix A, Question 28. The determination as to whether an individual has knowledge or special expertise, within the meaning of 34 C.F.R. §300.344(a)(6), shall be made by the parent or public agency who has invited the individual to be a member of the IEP team, and that determination must be made on a case-by-case basis. See 34 C.F.R. §300.344(c). The Federal regulations, however, do not address the public agency’s responsibility to make an employee of the agency, including a student’s former teacher, available for IEP meetings. That determination may be addressed by the State and/or local policy.

If you have any questions about how the requirements of Part B are implemented in Kentucky, you may contact the State educational agency at the following address and telephone number:

Ms. Judy Mallory  
Director  
Division of Exceptional Children’s Services  
Kentucky Department of Education  
Capital Plaza Tower, 8<sup>th</sup> Floor  
500 Mero Street, Room 801  
Frankfort, Kentucky 40601  
Telephone Number: (502) 564-4970

Again, thank you for sharing your concerns with us. If this Office can be of assistance in the future, please feel free to contact Mr. Martin Benton, OSEP’s Part B contact for Kentucky, at (202) 205-9028.

Sincerely,



for Stephanie Smith Lee  
Director  
Office of Special Education  
Programs

cc: Judy Mallory