



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

February 2, 2010

Ms. Mary C. Lawson
Assistant Attorney
Miami-Dade County Public Schools
School Board Administration Building
1450 N.E. 2nd Avenue
Miami FL 33132

Dear Ms. Lawson:

This is in response to your letter sent via electronic mail (email) on November 18, 2009 to Patty Guard, former acting director of the Office of Special Education Programs. In your letter, you ask whether it is permissible for a school board attorney to attend a special education resolution meeting when the parent chooses to bring a "qualified representative" who, under State law, is designated to represent the parent and student at the due process hearing.

The Individuals with Disabilities Education Act (IDEA or Act) and its implementing regulations include requirements that address the participation of attorneys in resolution meetings and the participation of non-attorney advocates in due process hearings. 34 CFR §§300.510(a) and 300.511-512. Section 300.510(a)(ii) of the Part B regulations, consistent with section 615(f)(1)(B)(i)(III) of the Act, states that an attorney of the local educational agency (LEA) may not attend a resolution meeting unless the parent is accompanied by an attorney. This requirement also is consistent with language in the Conference Report (H.R. 108-779, at 217 (2003)) that prevents the LEA from bringing an attorney to the resolution meeting "unless the parent brings their attorney." Different requirements, however, apply to due process hearings. Section 615(h)(1) of the Act is clear that parties to a due process hearing may be accompanied and advised by counsel and by individuals, such as non-attorney advocates, who have special knowledge or training regarding the problems of children with disabilities. Similar language, however, is not included in the resolution meeting requirements, and therefore, attendance by an LEA attorney is expressly limited to instances where the parent brings an attorney, not a non-attorney advocate or other qualified individual, to the resolution meeting.

While the IDEA states that parties to a due process hearing may be accompanied and advised by non-attorneys, the issue of whether non-attorneys may "represent" parties to a due process hearing is a matter that is left, by the Act, to each State to decide. 34 CFR §300.512(a)(1) and 73 Fed. Reg. 73006, 73017 and 73027 (December 1, 2008). As you state in your letter, Florida allows parties to be represented by a "qualified representative" in any State administrative hearing, including special education due process hearings. Because Florida allows non-attorneys to represent parties in due process hearings, there may be instances when a non-attorney

advocate or qualified representative may accompany a parent to a resolution meeting and subsequently represent that parent at the due process hearing. In these circumstances, consistent with section 615(f)(1)(B)(i)(III) of the Act and 34 CFR §300.510, because the qualified representative is not an attorney, an LEA attorney would not be allowed to attend the resolution meeting. In such situations, the LEA's non-attorney representative to the resolution meeting should be equipped with the knowledge and skills needed to properly represent the interests of the school district.

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.

We hope this explanation is helpful. If you have further questions, please do not hesitate to contact Laura Duos in the Office of Policy and Planning at 202-245-6772 or by email at Laura.Duos@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is written in a cursive, flowing style.

Alexa Posny, Ph.D
Acting Director
Office of Special Education Programs

cc: Pamela Y. Carter