



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

Dated March 11, 2008

Dr. John Copenhaver
Director
Mountain Plains Regional Resource Center
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112 Logan, Utah 84341

Dear Dr. Copenhaver:

This letter is in response to your electronic mail (email) communication dated January 8, 2008, regarding requirements for membership on the State Advisory Panel (SAP) under 34 CFR §§300.167-300.169 of the regulations for Part B of the Individuals with Disabilities Education Act (Part B). The regulations at 34 CFR §§300.167 through 300.169 governing the SAP implement the statutory provision at 20 U.S.C. 1412(a)(21) and contain language that is substantially identical to the statutory language. The purpose of the advisory panel is to provide policy guidance with respect to special education and related services for children with disabilities in the State. 34 CFR §300.167. Under 34 CFR §300.168, the advisory panel, whose members must be appointed by the Governor or any other individual under State law who is authorized to make such appointments, must be representative of the State population and must be composed of individuals involved in, or concerned with, the education of children with disabilities. With regard to membership, you ask the following three questions:

1. 34 CFR §300.168(a)(1) refers to "[p]arents of children with disabilities (ages birth through 26). Does this mean if a Panel member has a child that exceeds age 26, at that point the panel member does not meet qualifications?

Response: Under 34 CFR §300.168(a)(1), the SAP must include parents of children with disabilities (ages birth through 26). The parent of an adult child who is aged 27 or older would not meet the membership requirement under 34 CFR §300.168(a)(1). Such a parent could be appointed by the State to serve on the SAP, but the State would also be required to appoint parents of children who are ages birth through 26 in accordance with 34 CFR §300.168(a)(1), who along with other individuals with disabilities, must be a majority of the SAP's members. 34 CFR §300.168(b).

2. Does the "and" in [34] CFR 300.168(a)(5), (8), and (11) mean both? Or if a panel had at least one in each area, would this satisfy the requirements?

Response: The answer to your question cannot be provided based only on the language of these membership provisions. In light of the purpose of the SAP, States have some flexibility in appointing members based on the particular needs of children with disabilities in the State to ensure that the panel is representative of the State population and is composed of individuals involved in or concerned with the education of children with

disabilities. 34 CFR §300.168(a).

Under 34 CFR §300.168(a)(5), the SAP must include "State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinneyVento Homeless Assistance Act. (42 U.S.C. 1431 *et seq.*)." Therefore, to satisfy this membership requirement, the State and local education officials included on the SAP must include officials who carry out activities under Subtitle B of Title VII of the McKinneyVento Homeless Assistance Act. How a State otherwise chooses to allocate appointments to other State and local education officials to satisfy this membership requirement is a matter left to State discretion.

Under 34 CFR §300.168(a)(8), the SAP must include representatives of private schools and public charter schools. To satisfy this membership requirement, a State must appoint one or more representatives of each type of school.

Under 34 CFR §300.168(a)(11), the SAP must include representatives from the State juvenile and adult corrections agencies. Therefore, to satisfy this requirement, the SAP must include one or more representatives of both agencies.

3. Most membership citations use the plural rather than singular. Does this mean each category would need more than one representative or would one in each category be sufficient?

Response: The regulation specifies when the State must meet a membership category by having only one representative and when more than one representative is required. Compare 34 CFR §300.168(a)(9) and (a)(10) (requiring at least one representative) with 34 CFR §300.168(a)1) through (8) and (a)(11) through (14) (requiring individuals or representatives). However, the regulation does not otherwise specify how States allocate representatives if a membership category represents multiple constituencies. Accordingly, we believe that States have flexibility in this regard based on the particular needs of the children with disabilities in their State, and that assignment of representatives of specific constituencies is a matter of State discretion.

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 information is helpful to you. If you have further questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education
Programs