



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

February 10, 2014

Diana M. Savit, Esq.
Savit & Szymkowicz, LLP
4520 East-West Highway, Suite 700
Bethesda, MD 20814-6907

Dear Ms. Savit:

This is in response to your April 12, 2013 letter to the Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education (Department), which was forwarded to the Office of Special Education Programs (OSEP) for response. In your letter, you ask for guidance regarding the District of Columbia Public Schools (DCPS) Chancellor's Directive concerning, "School Visitors, School Record Release, and Barring Notice Procedures." Please note that the responses below only pertain to the Individuals with Disabilities Education Act (IDEA) and its implementing regulations in 34 CFR Part 300.

In your letter, you also refer to two Federal laws prohibiting discrimination on the basis of disability, which are enforced by the Office for Civil Rights (OCR) within the Department. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act (Title II) prohibits discrimination on the basis of disability by State and local governmental entities, including public elementary and secondary school systems, regardless of their receipt of Federal funds. OCR and the U.S. Department of Justice share enforcement responsibility for Title II.

OCR determines if there has been a violation of a law that it enforces based on OCR's specific factual findings and legal conclusions in an OCR complaint investigation or compliance review. Information about filing a complaint is on OCR's web site, www.ed.gov/ocr. We suggest that you contact the OCR enforcement office with jurisdiction over the District of Columbia if you wish to file a complaint to allege a violation of a law that OCR enforces or if you have general questions about a law that OCR enforces. The contact information for that office is:

Washington DC (Metro)
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202-1475
Telephone: 202 453-6020
Email: OCR.DC@ed.gov

The following responds to your questions concerning the IDEA.

Question 1: Does the February 19, 2013 Chancellor's Directive issued by DCPS violate the IDEA? Specifically, you inquire about the particular provisions that: (1) bar third parties (including attorneys and educational advocates) who are not evaluators or parents from observing classrooms in public schools while children are in the classroom; and (2) limit evaluators to two-hours of observation time, which must be scheduled in advance, and grant additional time solely at DCPS's discretion.

OSEP's Response: Under the IDEA, parents of children with disabilities are expected to have an important role in the evaluation and educational placement of their children and be participants, along with school personnel, in developing, reviewing, and revising the individualized education programs (IEPs) for their children. However, the IDEA and its implementing regulations do not provide a general entitlement for third parties, including attorneys and educational advocates, to observe children in their current classrooms or proposed educational placements. The determination of which individuals may have access to classrooms may be addressed by State and/or local policy. See OSEP's *Letter to Mamas*, dated May 26, 2004 (42 IDELR 10).

OSEP also recognizes that independent educational evaluators may need to have access to classrooms if the parents of a child with a disability invoke their right to an independent educational evaluation (IEE) of their child under 34 CFR §300.502, and the evaluation requires observing the child in the educational placement. Under 34 CFR §300.502(e)(1), if an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE. Therefore, it would be inconsistent with the IDEA for a public agency to have a policy giving third party evaluators only a two hour observation window, because such a limitation may restrict the scope of the IEE and prevent an independent evaluator from fulfilling his or her purpose, unless the LEA also limits its evaluators to a two hour observation period.

Question 2: May DCPS bar parents or their representatives from recording resolution sessions, held pursuant to the IDEA, absent a written policy or uniform standards?

OSEP's Response: Part B of the IDEA is silent regarding the use of audio or video recording devices at meetings between parents of children with disabilities and school officials, including resolution meetings conducted pursuant to 34 CFR §300.510. OSEP has previously stated in the *Letter to Anonymous* dated June 4, 2003 (40 IDELR 70):

An SEA [State educational agency] or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings. If a State or public agency has a policy that limits or prohibits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process, or to implement other parental rights guaranteed under Part B.

The same guidance that OSEP has provided regarding the tape recording of IEP Team meetings applies to resolution meetings. See, *Letter to Walker* dated August 9, 2012 (59 IDELR 262).

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.

If you have any further questions, please do not hesitate to contact Rebecca Walawender, of my staff, at 202-245-7399 or by email at Rebecca.Walawender@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a long horizontal line extending to the right.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: State Director of Special Education