



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

AUG - 5 1999

Suzanne Faustini, LSW
Ohio Protection and Advocacy Association
5350 Brookpark Road
Cleveland, Ohio 44134

Dear Ms. Faustini:

This is in response to your letter written to the Office of Special Education Programs (OSEP), regarding requirements of Part B of the Individuals with Disabilities Education Act (Part B) governing notice to parents when agreement cannot be reached on all aspects of a child's individualized education program (IEP). Specifically, you ask whether public agencies are required to inform parents of recommendations that were not adopted by the IEP team.

This response summarizes the points made by a member of my staff in a telephone conversation with you that took place several months ago. Please excuse the delay in issuing this response.

As was indicated to you during the telephone conversation, there is no requirement that recommendations that are not adopted by the IEP team be made part of a child's IEP. The language that you cite in your inquiry, which formerly was part of Appendix C to 34 CFR Part 300, Question 35, has been superseded by Appendix A to 34 CFR Part 300. Appendix A to 34 CFR Part 300, Notice of Interpretation on IEP and Other Requirements, contains similar language. Question 9 of Appendix A contains the following pertinent explanation:

9. What is a public agency's responsibility if it is not possible to reach consensus on what services should be included in a child's IEP?

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the (1) child's needs and appropriate goals; (2) extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and (3) services needed to support that involvement and participation and to

achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs (300.343 (c) (2) (iii) and 300.346 (a) (1) and (b)) .

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resort to a due process hearing. However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B.

64 Fed. Reg. at 12473 (Mar. 12, 1999).

Part B also provides that parents of children with disabilities must have their concerns and the information that they provide regarding their child considered in developing and reviewing their child's IEPs. 34 CFR §300.343(c)(2)(iii) and 34 CFR §300.346 (a) (1) (i) and (b) .

Each child's IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child. 34 CFR §300.347(a)(3). Therefore, there is no requirement that recommendations of the parents, or of other team members, that were not adopted as part of the child's IEP be included in the IEP. However, Part B also requires public agencies to give parents of children with disabilities written prior notice of an agency's proposal or refusal to initiate or change the identification , evaluation, or educational placement of the,

child, or the provision of a free appropriate public education to the child. 34 CFR §300.503(a). This written notice, among other matters, must contain "[a]n explanation of why the agency proposes or refuses to take the action;" and "[a] description of any other options that the agency considered and the reasons why those options were rejected." 34 CFR §300.503(b)(2)-(3). If prior written notice under 34 CFR §300.503(a) is required, following an IEP meeting, a public agency would explain why any recommendations of the parents or other IEP team members were not adopted.

We hope that you find this explanation helpful. If you would like further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of OSEP at (202) 205-5507 or (202) 205-9053, respectively, or Ms. Nell Eano, the Ohio Part B State contact in the Monitoring and State Improvement Planning Division at (202) 205-9583.

Sincerely,

Patricia J Guard
Acting Director
Office of Special Education
Programs

CC: Mr. John Herner

Ohio Department of
Education