



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

January 7, 2010

Dorothy M. Richards
Special Education Advocate
Resource Center for Accessible Living, Inc.
727 Ulster Avenue
Kingston, NY 12401

Dear Ms. Richards:

This is in response to your August 5, 2009 letter to Patricia Guard, requesting clarification on whether the Chairperson of a Committee on Special Education can override the consensus of the Committee. It is our understanding that in New York a Committee on Special Education functions as an individualized education program (IEP) Team. We are responding to your request for clarification in the context of the development, review, and revision of IEPs.

Under the regulations implementing Part B of the Individuals with Disabilities Education Act (IDEA) at 34 CFR §300.320, the IEP team, including the child's parents, is responsible for developing, reviewing and, if appropriate, revising the child's IEP in accordance with 34 CFR §§300.320 through 300.324. In discussing a comment regarding modifications to the IEP in the Analysis of Comments and Changes section of the Part B regulations, we responded that, "consistent with §300.320(a)(4) and section 614(d)(1)(A)(i)(IV) of the Act [IDEA], the child's IEP Team determines the special education and related services, and supplementary aids, services, and other supports that are needed for the child to advance appropriately toward meeting the child's annual goals." (71 FR 46540, 46664 (August 14, 2006))

The IEP Team meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child. The IEP team should work towards a general agreement, but the public agency is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based on a majority "vote." If the team cannot reach agreement, the public agency must determine the appropriate services and provide the parents with prior written notice of the agency's determinations regarding the child's educational program and of the parents' right to seek resolution of any disagreements by initiating an impartial due process hearing or filing a State complaint.

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 Angela Tanner-Dean at 202-245-6320 or by email at Angela.Tanner-Dean@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is fluid and cursive, with the first name "Alexa" written in a larger, more prominent script than the last name "Posny".

Alexa Posny
Acting Director
Office of Special Education Programs

cc: Rebecca Cort
State Director of Special Education