



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

AUG 28 2003

I am writing in response to your letters to Dr. Gregg Corr in the United States Department of Education's Office of Special Education Programs (OSEP) concerning [redacted]. In your letters you request clarification on the obligation of a local education agency (LEA), specifically the [redacted] District, to ensure the presence of specific teachers at the individualized education program (IEP) meeting for [redacted]. In your letters, you state that you feel that the teachers in question, [redacted], have knowledge and expertise about [redacted] that would be important in developing the IEP. After requesting that the teachers attend the IEP meeting, you learned that the school administration requested that the teachers discuss their "leave options" if they planned to attend the meeting. Your letter does not state whether these teachers presently teach or provide supplementary aids and services to your child. I would like to provide you with the following information concerning the Federal requirements for IEP meeting participants.

Under Part B of the Individuals with Disabilities Education Act (Part B), 20 U.S.C. §1400 et. seq., and its implementing regulations at 34 C.F.R. Part 300, a public agency must ensure that all individuals participate in the child's IEP meeting who are necessary to develop an IEP that will meet the child's unique needs and ensure the provision of a free appropriate public education (FAPE) to the child. Under the Part B regulations, the public agency must ensure that the IEP team for each child with a disability includes-

- “(1) The parents of the child;
- (2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child;
- (4) A representative of the public agency who -
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general curriculum; and
 - (iii) Is knowledgeable about the availability of resources of the public agency;
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section;

- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
 - (7) If appropriate, the child.”
- 34 CFR §300.344(a).

The current regulations permit the IEP team to include, at the discretion of the parent or the agency, “other individuals who have knowledge or special expertise regarding the child...” See 34 C.F.R. §300.344(a)(6). This is a change from prior law, which provided, without qualification, that parents or agencies could have other individuals as members of the IEP team at the discretion of the parents or agency. See 34 CFR Part 300, Appendix A, Question 28. The determination as to whether an individual has knowledge or special expertise, within the meaning of §300.344(a)(6), shall be made by the parent or public agency who has invited the individual to be a member of the IEP team, and that determination must be made on a case by case basis. See 34 C.F.R. §300.344(c).

The Part B regulations do not address the public agency’s responsibility to make an employee of that agency who is not a required participant in the IEP meeting available for IEP meetings, nor do the regulations address the question as to whether an individual employed by the school district who is not a required participant in the IEP meeting may be charged for leave if that individual attends the IEP meeting at the request of the parent. Thus, whether or not an employee of the school district who is not required by 34 C.F.R. §300.344(a) to be part of the IEP team may be required to attend or be charged leave to attend the IEP meeting is a matter of State and/or local policy.

If you have any questions about how the requirements of Part B are implemented in Kentucky or the requirements of Kentucky law and regulations, you may contact the State educational agency at the following address and telephone number:

Ms. Judy Mallory
Director
Division of Exceptional Children’s Services
Kentucky Department of Education
Capital Plaza Tower, 8th Floor
500 Mero Street, Room 801
Frankfort, Kentucky 40601
Telephone Number: (502) 564-4970

Page 3 -

Again, thank you for sharing your concerns with us. If this Office can be of assistance in the future, please feel free to contact Mr. Martin Benton, OSEP's Part B contact for Kentucky, at (202) 205-9028.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Swann".

for Stephanie Smith Lee
Director
Office of Special
Education Programs

cc: Judy Mallory