



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

Dated March 31, 2008

Dear:

This letter is in response to your correspondence, dated December 12, 2007, to Patty Guard, former Acting Director of the Office of Special Education Programs (OSEP). In particular, you ask whether 34 CFR §300.322(b)(1)(i), which concerns the notification requirements for an individualized education program (IEP) Team meeting, means that the school district must provide parents with written notification of any individual invited by the school district, including the school district's attorney. In addition you ask if a parent may request that an individual, who was not previously invited by the district in accordance with 34 CFR §300.322(b)(1)(i), leave the meeting or ask that the meeting be rescheduled with proper notification.

Under section 614(d)(1)(B) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR §300.321(a) of the Part B regulations, the public agency must ensure that the IEP Team for each child with a disability includes the parents of the child, not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment), and not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child. The IEP Team also must include a representative of the public agency who (1) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (2) is knowledgeable about the general education curriculum; and (3) is knowledgeable about the availability of resources of the public agency. 34 CFR §300.321(a). In addition, an individual who can interpret the instructional implications of evaluation results must be a member of the IEP Team. This individual also may be one of the other members mentioned above. Section 614(d)(1)(B)(vi) of IDEA and 34 CFR §300.321(a)(6) of the regulations allow, at the discretion of the parent or the public agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate, to be invited to the IEP Team meeting. The determination of the knowledge or special expertise of any individual described in 34 CFR §300.321(a)(6) must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team. 34 CFR §300.321(c). The public agency also must ensure that each IEP Team includes the child with a disability, whenever appropriate. 34 CFR §300.321(a)(7).

Under 34 CFR §300.322 of the Part B regulations, a public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate. The public agency must notify parents of the meeting early enough to ensure that they will have an opportunity to attend and must schedule the meeting at a mutually agreed on time and place. In

addition, under 34 CFR §300.322(b)(1)(i), the notice must indicate the purpose, time, and location of the meeting and who will be in attendance. The notice must inform the parents of the provisions in 34 CFR §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child). 34 CFR §300.322(b)(1)(ii). As a general matter, if a public agency fails to fulfill the notice requirements in 34 CFR §300.322, the parent may request that the IEP Team meeting be rescheduled. Historically, OSEP has interpreted the predecessor regulation to 34 CFR §300.322(b)(1)(i) (regarding notice of IEP Team meeting participant) to mean that if possible, the agency should give the name and position of each person who will attend the IEP Team meeting. However, OSEP has advised that a public agency can satisfy this requirement by indicating the positions, and not the names, of those individuals.

The list of required participants at an IEP Team meeting does not include attorneys. An attorney would not generally be invited to an IEP Team meeting unless the party inviting their attorney, the public agency or the parents, can demonstrate that their attorney possesses the requisite knowledge or special expertise regarding the child. If the public agency has invited someone with knowledge or special expertise about the child and failed to inform the parents of that person's attendance, the parents may request that the meeting be rescheduled until the public agency provides the parent the required notice of "who will be in attendance." Alternatively, the public agency may choose to conduct the IEP team meeting without that individual/s attendance to avoid rescheduling the meeting.

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 that you find the responses to your questions helpful. If you need further assistance, please feel free to contact Laura Duos in the Office of Policy and Planning at 202-245-6772.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education
Programs

cc: Heidi Atkins-Lieberman, Assistant Commissioner,
Division of Special Education, Missouri Department
of Elementary and Secondary Education