



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

THE ASSISTANT SECRETARY

JUN - 6 2006

Luther Jones, Esq.  
Attorney at Law  
1800 N. Stanton, No. 806  
El Paso, Texas 79902-3538

Dear Mr. Jones:

This is in response to your April 25, 2006 letter to me regarding “policy interpretation questions”. Listed below are your questions and my response to each.

*1. Can the El Paso Independent School District and the parent(s) of a Special Education Program student mutually agree to amend the Student's “Individualized Education Plan (sic)”? If so, can they make the applicable “Amendment” retroactively effective?*

Section 614(d)(3)(D) of the Act now provides for amendments to the individualized education program (IEP) if the school and the parent agree. That is, in making changes to a child’s IEP after the annual IEP meeting for a school year, the parent of the child with a disability and the local educational agency may agree not to convene an IEP meeting for the purpose of making such changes and, instead, may develop a written document to amend or modify the child’s current IEP. IEPs describe how services should be provided in the future and would not have retroactive effect.

*2. Does a prior IEP automatically remain in full force and effect unless/until it is replaced by a subsequent IEP?*

The answer to this question will depend on the specific facts and circumstances. IEPs are to be updated at least annually. However, if pendency has attached pursuant to section 615(j) of the Act and 34 CFR §300.514, the school will be required to continue services that the child was receiving at the time pendency attached.

Also, please be reminded that we have not yet published final regulations implementing the changes to the statute in 2004 and further clarification may be included in the final regulations when they become available.

This response regarding a policy, question, or interpretation under Part B of the Individuals with Disabilities Education Act is provided as informal guidance, is not legally binding, is issued in compliance with the requirements of 5 U.S.C. 553, and represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

Please do not hesitate to contact my office if you have any further questions.

Sincerely,

A handwritten signature in black ink that reads "John Hager". The signature is written in a cursive style with a large, sweeping initial "J" and a long horizontal flourish extending to the right.

John H. Hager