



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

May 21, 2013

Christopher Northrop, President
New England Juvenile Defender Center
246 Deering Avenue
Portland, Maine 04102

Dear Mr. Northrop:

This is in response to your October 8, 2012 letter to me requesting clarification of the Office of Special Education Program's (OSEP) position regarding requirements for parental input into individualized education programs (IEPs) under Part B of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask if there are limits on how, or in what manner, a parent may participate as a member of the IEP Team and if the rights and responsibilities of parent members of the IEP Team related to raising concerns differ from those of the other team members, as it relates to parents providing written notice of their concerns a specific time before the IEP Team meeting is held.

Your questions arise from a recently-adopted local educational agency (LEA) policy that requires parents to provide a copy of their concerns to the members of their child's IEP team, in writing, three days before an IEP meeting in order for their concerns to be addressed at the meeting. Your letter states that it appears the LEA based this policy on OSEP's *Letter to Anonymous* dated January 19, 2011 (*Letter to Anonymous*), which includes the following:

“We believe it would be reasonable for a public agency to establish criteria, including a requirement that it receive the entire evaluation report and not just the scaled scores by a certain time, to give the public agency the opportunity to review the report prior to scheduling an IEP Team meeting to discuss that evaluation.”

The analysis in *Letter to Anonymous* was specific to the facts presented by the writer. The letter provides guidance to public agencies developing criteria specific to the introduction at IEP meetings of a privately-obtained evaluation, as the information in that evaluation could be complex and may require significant review by the public agency prior to any discussions regarding its utility. As discussed below, we do not believe that the analysis in *Letter to Anonymous* is applicable to the situation you describe.

As you know, the IDEA gives deference to the parents' rights and role in the development of IEPs. For example, the LEA must take steps to ensure that the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, through notification of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. (See 34 CFR §300.322(a); 71 FR 46540, 46678, August 14, 2006.) In addition, the LEA must provide the parents prior written notice a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (See 34 CFR §300.501.)

In response to comments regarding the development of draft IEPs prior to an IEP meeting, the *Analysis of Comments and Changes* to the IDEA 2004 final regulations states that “parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs.” (See 71 FR 46678, August 14, 2006.)

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It may be helpful for parents to raise concerns to the IEP Team prior to the meeting, particularly if resolving the concern would require extensive research or attendance at the meeting by a person who would not otherwise be in attendance. However, we believe that it would be inconsistent with the intent and requirements of the IDEA for an LEA to adopt a blanket policy requiring parents to provide a written copy of their concerns to the IEP Team three days before an IEP meeting in order to have their concerns addressed at that 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.

If you have any further questions, please do not hesitate to contact Frank Miller, of my staff, at 202-245-7065 or by email at Frank.E.Miller@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Melody Musgrove". The signature is fluid and cursive, with the first name "Melody" and last name "Musgrove" clearly legible.

Melody Musgrove, Ed.D
Director
Office of Special Education Programs

cc: State Director of Special Education