



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

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Perry A. Zirkel, Ph.D., J.D.
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Department of Education and Human Services
111 Research Drive
Bethlehem, Pennsylvania 18015-4793

Dear Dr. Zirkel:

This letter responds to your electronic mail (email) correspondence to me. In your emails, you ask for clarification regarding the status of dissenting opinions from individualized education program (IEP) Team members. Specifically, you have asked:

Is it permissible under the [Individuals with Disabilities Education Act] IDEA for a teacher or other district member on the IEP [Team] to enter a dissenting opinion on the IEP or elsewhere in the student's record? For example, if a general education teacher, who is on the IEP Team, objects to the placement of the student in his or her class based on behavioral and/or academic issues, may the teacher record a dissenting opinion about the placement if the [T]eam determines that it is appropriate for the child?

We note that section 607(d) of IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

The Office of Special Education Programs has previously addressed the situation in which an IEP Team member wishes to offer a dissenting opinion in *Letter to Anonymous* dated October 29, 1996 (*Letter to Anonymous*) regarding dissenting opinions of evaluation reports, and believes that this same analysis applies to your question.

Letter to Anonymous states, in part:

Part B does not address whether it is permissible for any member of the multidisciplinary team to file a dissenting opinion as part of the child's evaluation

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report, except in the case of evaluations of students suspected of having learning disabilities.¹

If a recommendation (whether written or verbal) constitutes only the views or opinions of an individual team member, and not the determination of the multidisciplinary team as a whole, the public agency is not responsible for implementing that recommendation.

The IDEA does not address how the public agency should handle dissenting opinions within the IEP Team in circumstances outside of an evaluation of a child suspected of having a learning disability. However, a State educational agency or local educational agency may have policies and procedures regarding how or whether differences of opinion that occur in other situations should be documented.

If you have any further questions, please do not hesitate to contact Lisa Pagano of my staff at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs

¹ The requirement that the documentation of the determination for a child suspected of having a specific learning disability include a statement whether the child has a specific learning disability is found in current 34 CFR §300.311(a). Current 34 CFR §300.311(c) requires that each group member who does not support the report's conclusion that the child has a specific learning disability must submit a separate statement presenting the member's conclusions.