



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

September 9, 2019

Dear XXXXXXXXXX:

This letter is in response to your correspondence to the Office of Special Education and Rehabilitative Services. In your letter, you asked whether it is permissible under the Individuals with Disabilities Education Act (IDEA) to exclude a transition aged student with a disability from an Individualized Education Program (IEP) Team meeting when results of assessments will be reviewed as well as discussion of the student's transition service needs. You also asked whether copies of assessment reports should be provided to members of the IEP Team, including the parent, student, and school staff, prior to the IEP Team meeting in which the reports will be discussed.

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.

Question 1: In the case of an (IEP Team) meeting held to discuss education testing and possible change in the student's identified disability category and transition service needs, is it a violation of law and/or regulation for a service provider who conducted testing to exclude the student from that meeting in which the other IEP Team members are to be present?

OSEP Response: We assume from your question that the meeting you are referring to in your inquiry involved consideration of three topics, including student testing, the student's disability category, and the student's transition services. While it is not appropriate for OSEP to address whether the student should have been invited to this particular meeting, we will provide information about relevant IDEA requirements for your consideration. IDEA does not address student participation at meetings to discuss the results of testing, the student's evaluation or reevaluation, or the student's disability category. IDEA does address parent participation at meetings regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education to the child (34 C.F.R. §300.501(b)), and also specifically addresses parent involvement in placement decisions (34 C.F.R. §300.501(c)). IDEA is silent as to the student's participation in such meetings, and the public agency may, but would not be required to, permit the student to attend at the parent's request.

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With regard to meetings involving transition services, if the purpose of the IEP Team meeting is to consider the child's postsecondary goals and the transition services needed to assist the child in reaching those goals, the public agency must invite the child to attend the meeting. 34 C.F.R. § 300.321(b)(1); see also 71 Fed. Reg. 46540, 46671 (Aug. 14, 2006).¹ If the child does not attend the IEP Team meeting to discuss postsecondary goals and transition services, the public agency must take steps to ensure that the child's preferences and interests are considered. 34 C.F.R. § 300.321(b)(2). We also note that until the child reaches the age of majority under State law, unless the rights of the parent to act for the child are extinguished or otherwise limited, only the parent has the authority to make educational decisions for the child under Part B of the Act, including whether the child should attend an IEP Team meeting. 71 Fed. Reg. 46753. If the rights accorded to parents under Part B of IDEA are transferred to a child with a disability once the child reaches the age of majority under State law, the child has the authority to make educational decisions under Part B of the Act.

Questions 2 and 3: Is it best practice to withhold an educational report from the student, parent, guardian, a special education teacher, or another IEP Team member until the IEP or other meeting in which the results are going to be discussed is convened? Is there a legal obligation or requirement for a service provider conducting an evaluation to provide the report to members of the IEP Team, specifically the parents, student, or the special education teacher, prior to any meeting in which the report will be discussed?

OSEP Response: Under 34 C.F.R. §300.306(a), a copy of the evaluation report must be provided at no cost to the parents. However, neither IDEA nor its implementing regulations establish a timeline for providing a copy of the evaluation report or the documentation of determination of eligibility to parents. Likewise, IDEA does not prescribe a timeline for sharing the results of assessments conducted as part of the child's evaluation or reevaluation. Whether parents receive all evaluation reports prior to the IEP Team meeting is a decision that is left to State and local officials to make. 71 Fed. Reg. 46645.

It is important to ensure that parents have the information they need to participate meaningfully in IEP Team meetings, which may include reviewing their child's records. The public agency must comply with a parent's request to inspect and review existing educational records, including an evaluation report, without unnecessary delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made. This includes the right to a response from the public agency to reasonable requests for explanations and interpretations of the records. 34 C.F.R. § 300.613.

We note that some States have established procedures that require public agencies to provide parents with copies of assessment reports prior to the IEP Team meeting. You may wish to check with your State educational agency for any applicable procedures.

¹ This citation is to Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, which accompanied publication of the final part B regulations on August 14, 2006.

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

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs