



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

May 2, 2019

Craig A. Haller
Haller Advocacy
44 Franklin Street
Brookline, Massachusetts 02445

Dear Mr. Haller:

This letter responds to your correspondence to Ruth Ryder, former Acting Director of the Office of Special Education Programs (OSEP), regarding the Public Schools of Brookline's policies concerning the membership of an individualized education program (IEP) Team and the criteria surrounding school administrators attending the meeting as non-contributing observers. You noted that the school district revised its Special Education – Standard Operational Procedural Manual to state, “Any person who is invited to the Team meeting by Brookline must be included on the invitation sheet. If a district’s administrator’s participation is required as a contributing member or not of the IEP Team, their name must be included on the meeting notification.” Given this language, you asked whether it is appropriate to invite an administrator to the IEP Team meeting with the intent or predetermined knowledge that the administrator will not be contributing to the IEP process (e.g., an observer). We apologize for the delay in providing this response.

We note that section 607(d) of the Individuals with Disabilities Education Act (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.

Under IDEA, in order to make a free appropriate public education available to each eligible child with a disability, the responsible public agency must ensure that an appropriate IEP is developed and implemented for the child. Each child’s IEP is developed at a meeting of the IEP Team which includes the child’s parents and relevant school officials, and whenever appropriate, the child. 20 U.S.C. § 1414(d)(1)(B) and 34 C.F.R. § 300.321(a). Also, the IEP Team could include, 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. 20 U.S.C. § 1414(d)(1)(B)(vi) and 34 C.F.R. § 300.321(a)(6). Individuals with special expertise could include professionals in evaluation or special education and related services who have been directly involved with the child, as well as those who do not know the child personally, but who have expertise in (for example) an instructional method or procedure, or in the provision of a related service that the parents or agency believe can be of assistance in developing an appropriate IEP for the child. [*Assistance to States for the Education of Children with Disabilities*](#)

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and the Early Intervention Program for Infants and Toddlers with Disabilities, Final Rule, Analysis of Comments and Changes, 64 Fed. Reg. 12406, 12585 (March 12, 1999). The determination of the knowledge or special expertise of any individual described in 34 C.F.R. § 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 C.F.R. § 300.321(c).

With regard to the participation of noncontributing observers at IEP Team meetings, generally, attendance at IEP Team meetings should be limited to individuals who would contribute to decisions about the appropriate services to be included in the child’s IEP. The legislative history of the Education for All Handicapped Children’s Act, the predecessor statute to IDEA Part B, suggests that “attendance at IEP meetings should be limited to those who have an intense interest in the child.” Cong. Rec. § 10974 (June 18, 1975) (remarks of Sen. Randolph).

IDEA also includes confidentiality of information provisions. *See* 34 C.F.R. §§ 300.611 through 300.626 and the Family Educational Rights and Privacy Act and its implementing regulations in 34 C.F.R. Part 99. In general, these provisions require parental consent before public agencies can release personally identifiable information to third parties, other than officials of participating agencies in accordance with 34 C.F.R. § 300.622(b)(1), unless permitted to do so without parental consent under 34 C.F.R. Part 99. 34 C.F.R. § 300.622(a) and 34 C.F.R. § 99.31.

Absent parental consent, a person who does not have knowledge and special expertise regarding the child and who is not requested to be present at the IEP Team meeting by the parent or public agency would not be permitted to be a member of the IEP Team or be permitted to attend the IEP Team meeting as an observer unless he or she meets one of the parental consent exceptions in 34 C.F.R. § 300.622 or 34 C.F.R. § 99.31. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, Final Rule, Analysis of Comments and Changes, 71 FR 46540, 46670-46671 (Aug. 14, 2006) and OSEP [Letter to Gran](#) (November 12, 2012).¹ In determining whether an administrator who does not satisfy the criteria in 34 C.F.R. § 300.321(a)(6) could be an observer at an IEP Team meeting, a public agency should be mindful of the interests of the child, including the confidential and sensitive nature of discussions that occur and the personally identifiable information that is exchanged during those meetings.

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

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs

¹ A copy of this letter is available at: <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/12-015702r-pa-gran-dph-11-30-12.doc>.