



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

January 19, 2016

Diana M. Savit, Esq.
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Dear Ms. Savit:

This is in response to your May 3, 2015 and June 8, 2015 letters to the Office of Special Education Programs (OSEP) requesting guidance regarding the District of Columbia Public Schools' (DCPS) policies concerning recording individualized education program (IEP) team meetings and criteria for psychologists permitted to conduct an independent educational evaluation (IEE) under 34 CFR §300.502(e). Specifically, you ask whether DCPS' respective policies are consistent with the Individuals with Disabilities Education Act (IDEA).

First, you raise concerns about DCPS' policy regarding recording IEP Team meetings. Part B of the IDEA is silent regarding the use of audio or video recording devices at IEP Team meetings. OSEP has previously stated in the *Letter to Anonymous* dated June 4, 2003 and in Appendix A to the 1999 IDEA Part B regulations (64 Fed. Reg. 12406, 12477 (Mar. 12, 1999)):

Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, an SEA [State educational agency] or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings. If a public agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B. An SEA or school district that adopts a rule regulating the tape recording of IEP meetings also should ensure that it is uniformly applied.

It remains OSEP's position that in the absence of IDEA requirements, a State is in the best position to decide the specific criteria it will use to permit audio or video recording devices at IEP Team meetings. However, requirements for parent participation at meetings of their child's IEP Team, which are found at 34 CFR §300.322, require public agencies to ensure that parents are notified of their child's IEP Team meeting early enough to ensure they have an opportunity to attend and to schedule such meetings at a mutually agreed on time and place. 34 CFR §300.322(a). If a public agency requires notice from the parent before permitting audio or video recording devices at IEP Team meetings, (e.g., five days before the date of a meeting),

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then the public agency would need to schedule the meeting at a time that allows the parent to meet that notice requirement so the parent can fully participate in the meeting.

Second, you ask whether it is permissible for DCPS to suspend recording of an IEP Team meeting based upon its assessment of whether the parent has had adequate opportunity to fully understand the meeting. As noted above, while the State has the discretion to determine the criteria for use, including the suspension of audio and video recording devices at IEP Team meetings, under 34 CFR §300.322(e), the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting. While the public agency could suspend recording of an IEP Team meeting, it must ensure that doing so will not interfere with the parent's understanding of the IEP, the IEP process, or other rights provided under Part B.

You also ask whether DCPS is permitted under IDEA to have different credential requirements for DCPS school psychologists than those for independent psychologists who may conduct an IEE. Specifically, you state that DCPS requires an independent psychologist who conducts an IEE under 34 CFR §300.502 to be licensed by the District of Columbia Department of Health or the locality of practice, which is a more rigorous credential standard than DCPS' requirement for a school psychologist to be licensed by the District of Columbia Office of the State Superintendent of Education (OSSE). As you correctly note, under 34 CFR §300.502(e), if an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE. OSEP has previously stated in its *Letter to Anonymous* dated August 13, 2010:

[A] public agency may establish qualifications that require an IEE examiner to hold or be eligible to hold a particular license when a public agency requires the same licensure for its own staff conducting the same types of evaluations. However, the agency is prohibited from imposing other conditions or timelines related to obtaining an IEE at public expense. 34 CFR §300.502(e)(2). In short, the IEE must meet the same criteria as the evaluation performed by examiners of the public agency, unless those criteria would result in the denial of an IEE to a parent. For example, children suspected of having a particular disability may require evaluations performed by clinical psychologists who would not meet the qualifications the State educational agency (SEA) requires for school psychologists to be licensed by the SEA.

In addition, OSEP stated in its *Analysis of Comments and Changes in the 2006 IDEA Part B regulations* (71 Fed. Reg. 46540, 46689 (Aug. 14, 2006)):

Consistent with applicable agency criteria, it would be appropriate for a public agency to require an IEE examiner to hold, or be eligible to hold, a particular license when a public agency requires the same licensure for personnel who conduct the same types of evaluations for the agency. In contrast, it would be inconsistent with a parent's right to an IEE for a public agency to require all evaluators to be licensed, if only individuals employed by a public agency may obtain a license.

Further, OSEP does not review an SEA or local educational agency's personnel qualifications, including qualification criteria for evaluators involved in identifying children with disabilities

eligible to receive special education and related services. The Department believes that States are in the best position to determine appropriate professional requirements for personnel necessary to comply with the IDEA in their States. Section 612(a)(14) of the IDEA and 34 CFR §300.156 clarify that the State is responsible for establishing and maintaining personnel qualifications to ensure that personnel have the knowledge and skills to serve children with disabilities under the IDEA and are appropriately and adequately prepared and trained.

With respect to both questions posed to OSEP, if, after reviewing this information, you believe DCPS has violated Part B of the IDEA, you may wish to file a State complaint with OSSE pursuant to 34 CFR §300.153. By copy of this correspondence, we are notifying Dr. Amy Maisterra, Assistant Superintendent, Elementary, Secondary, and Specialized Education, of your concerns.

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 Jennifer Wolfsheimer, of my staff, at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs

cc: Amy Maisterra, Assistant Superintendent