

September 6, 2005

Troy R. Justesen, Ph.D.
Deputy Assistant Secretary, OSERS
U.S. Department of Education
400 Maryland Avenue, SW
Potomac Center Plaza, Room 5126
Washington, DC 20202-2641

Dear Dr. Justesen:

The recent reauthorization of the Individuals with Disabilities Education Act (IDEA) contains a provision that will allow parents and school districts to exclude members of the Individualized Education Program (IEP) team from meetings where those members' curriculum areas or related services are discussed. The Notice of Proposed Rulemaking (*Federal Register*, June 21, 2005) on the IDEA regulations reiterates verbatim this section of the statute. The proposed regulation and statute will also permit school officials and parents to amend a child's IEP without an IEP meeting. This provision is subject to many of the same concerns. The undersigned organizations want to ensure that the implementation of this provision will not compromise the level and quality of services for children with disabilities. Therefore, we request that the Department clarify that States have the flexibility and authority to meet this provision as outlined below.

The IEP meeting represents the best opportunity for school personnel and parents to have a meaningful discussion and to make decisions about the services and supports the child needs to be successful in school. For some families, the IEP meeting may be the only occasion when they can meet to discuss their child's learning and behavioral needs. It is often difficult for parents to be absent from work or to find child care to attend meetings.

In addition, and perhaps more important, since there is no federal requirement that IEPs be translated for parents who do not speak English, the formal IEP meeting may be the only time that school districts can provide interpreters for families who are not fluent in English, making the IEP meeting even more critical. Communication with the school on regular matters is already difficult enough for those families.

The statute and proposed regulations do not distinguish among the various team members who may be excused. For example, since most students with disabilities spend the majority of their day in the general education classroom, excusing the general education teacher may deny the team critical observations about the child's participation in the general education curriculum. Likewise, excusing the special education teacher or related service providers, who have specialized training in observing students, in isolating specific educational needs, and in determining the most appropriate services may also hamper the team's decision-making.

Therefore, the Department should clarify that States may establish a higher standard of participant involvement, including requiring the full team's attendance for development

and review of the initial IEP. Those instances require the richest discussion possible to ensure that the student's needs are identified and services are designed to help the student progress toward mastery of IEP goals, including maximum participation in the general education curriculum. States are better situated to address the needs of all stakeholders by providing for public participation via IDEA's State Advisory Panels and other state level procedures.

Another question that should be addressed is whether the decision to excuse a team member must be made in advance of the meeting, and, if so, how far in advance. Team members should be given sufficient notice of their excusal to allow time to prepare written input. Further guidance should also be given about the nature of that input, which might include information such as present levels of academic achievement and functional performance and recommended changes to or continuation of current annual goals. Before a member is excused, serious consideration should be given to whether written input, rather than active meeting participation, is sufficient to make decisions about the student's progress toward meeting IEP goals and possible changes in services that will assist the student to progress.

States should develop procedures that ensure parents understand the purpose of the member's participation, so that they can make informed decisions about that member's excusal. Parents should also be told how their questions will be addressed if the member with the expertise to respond has been excused from the meeting. It is essential that the excusal provision, designed with the intention to make the process more efficient and effective, not result in additional paperwork and time away from direct instruction. Therefore, before a member is excused, parents and the LEA should try to anticipate what questions will be raised and whether the member's direct participation would result in a more productive use of everyone's time.

Finally, we request that the Department clarify that certain situations are not legitimate reasons to excuse a member. These situations include the cost of providing coverage for the classroom teacher, disagreement between the administration and the teacher or related service provider about the appropriate program or level of support for the student, or difficulties in scheduling the attendance of IEP team members. Members should only be excused if it is agreed that written input about their service or curriculum area will be sufficient to ensure a discussion of the scope and depth to determine the appropriate services to meet the child's unique needs.

The undersigned organizations believe that the excusal provision must be used judiciously. The most important guiding factor in determining a member's excusal must always be to ensure the integrity of the IEP team and its task of designing a program of services, supports, and accommodations that will help the student to achieve academic success.

We urge your serious consideration of these recommendations.

AFL-CIO
American Association of People with Disabilities
American Association on Mental Retardation
American Counseling Association
American Dance Therapy Association
American Federation of Teachers
American Music Therapy Association
American Occupational Therapy Association
American School Counselor Association
American Society for Deaf Children
The Arc of the United States
Bazelon Center for Mental Health Law
Brain Injury Association of America
Children & Adults with Attention-Deficit/Hyperactivity Disorder
Council for Learning Disabilities
Easter Seals
Federation of Families for Children's Mental Health
Helen Keller National Center
Higher Education Consortium for Special Education
Lawyers' Committee for Civil Rights Under Law
Learning Disabilities Association of America
MALDEF
National Alliance for the Mentally Ill
National Association for the Advancement of Colored People
National Association of School Psychologists
National Association of Councils on Developmental Disabilities
National Coalition on Deaf-Blindness
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
National Education Association
National Mental Health Association
National PTA
School Social Work Association of America
TASH
Tourette Syndrome Association
United Cerebral Palsy