



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

FEB 28, 2005

Kristen M. Serwecki
Advocate
19 Holland Avenue
Westfield, Massachusetts 01085

Dear Ms. Serwecki:

This is in response to your letter dated November 22, 2004 written to the Office of Special Education Programs (OSEP), in which you request clarification pertaining to 34 CFR §300.347 of the regulations for Part B of the Individuals with Disabilities Education Act (IDEA). It appears from your inquiry that the specific regulatory provision that you are asking about is 34 CFR §300.344(a)(6), and we will respond based on that and other applicable provisions of the regulations for Part B of IDEA.

You explain that you are an advocate in Massachusetts and are advocating on behalf of the father of a six-year-old child at the father's request and with his signed consent. Because there is a temporary protective order prohibiting the father from having contact with the child's mother, you had attended two prior individualized education program (IEP) meetings without the father in attendance. However, because you state that the mother informed the school district "she no longer wanted [you] present during the meetings," the school district has notified you that you can no longer attend the meetings without the father in attendance.

The specific question you ask is: Does the father have to be present at the TEAM meeting in order for me to attend?

Both parents retain rights under Part B of IDEA unless State law or a court order provides otherwise. See 34 CFR §§300.500-300.515; 300.530-300.536; and 300.340-300.350. This means that both parents have the right to attend their child's IEP meeting, unless State law or a court order provides otherwise. You have described a situation where a temporary protective order restricts the father's ability to have contact with the mother. It is not clear from your inquiry what effect the protective order may have on the father's continued ability to make educational decisions on his child's behalf or whether the protective order limits the ability of the father or his representatives to have contact with the mother in this context. Since Part B does not govern the interpretation of the protective order, you may need to consult a local attorney regarding the interpretation of the scope of the protective order in connection with your inquiry.

Part B of IDEA makes the public agency responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a child's IEP. 34 CFR §300.343(a). Under 34 CFR §300.344, public agencies must ensure that IEP meetings include required participants, including the parents of the child. 34 CFR §300.344(a)(1).

In addition, under 34 CFR §300.344(a)(6), either the parent or the public agency, at their discretion, may invite other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, to be members of the child's IEP team. See also Appendix A to 34 CFR Part 300, questions 28 through 30. Under 34 CFR §300.344(c), the determination of whether an individual has knowledge or special expertise regarding the child is made by the parent or public agency inviting the individual to be a member of the IEP team. We find nothing in Part B that would require that a parent be present at the IEP meeting in order to have a person that the parent determines has special knowledge or expertise regarding the child at the meeting as a member of the IEP team. If the protective order does not restrict the father's ability to make educational decisions for the child, and the father wants someone with knowledge or special expertise at the IEP meeting, the father would have to make a determination as to whether that individual has knowledge or special expertise regarding the child.

Should this matter not be resolved to the father's satisfaction, and provided the protective order does not affect his continued ability to exercise his rights under IDEA, the father may choose to seek mediation or initiate an impartial due process hearing under 34 CFR §§300.506-300.514. Under the State complaint procedures applicable to Part B of IDEA at 34 CFR §§300.660-300.662, an organization or individual may file a signed written complaint alleging that a public agency has violated a requirement of Part B of the Act or the Part B regulations.

We hope that you find this information helpful.

Sincerely,

 for

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Marcia Mittnacht
Massachusetts Department of Education