

**51 IDELR 224**

**108 LRP 65843**

**Letter to Thomas**

**Office of Special Education Programs**

N/A

**June 3, 2008**

**Related Index Numbers**

**265.025 Participants in/Procedures for IEP Meeting**

**Judge / Administrative Officer**

**William W. Knudsen, Acting Director**

**Case Summary**

The fact that a district has a collective bargaining agreement or other agreement that precludes it from holding meetings after hours does not relieve the district of its obligation to facilitate parental participation in IEP meetings. OSEP advised a special education attorney that after-hours meetings are appropriate if necessary to ensure a parent's participation. It is not unreasonable for districts to schedule IEP team meetings only during regular business hours, OSEP observed, as those are the times most suitable for staff members. Moreover, the IDEA's parent participation provision does not restrict LEAs from entering into contractual arrangements requiring meetings to occur during the daytime. However, when parents cannot attend during school hours due to their work schedules or other circumstances, districts "should be flexible in scheduling IEP team meetings to accommodate reasonable requests from parents," OSEP observed. If the district and the parents cannot arrange a suitable meeting time, the district must take other steps to ensure parent participation. Finally, OSEP determined that districts are not obligated to schedule an evening IEP meeting to accommodate a parent's expert. In such a situation, the parent and district could find an alternative means to ensure that the expert's input is communicated to the IEP team.

**Full Text**

**Appearances:**

Dear Mr. Thomas:

This is in response to your letter dated February 15, 2008 to Patricia J. Guard, former Acting Director of the Office of Special Education Programs (OSEP), regarding scheduling meetings of the individualized education program (IEP) Team under Part B of the Individuals with Disabilities Education Act (Part B). Specifically, you ask two questions:

1. Does the Individuals with Disabilities Education Act (IDEA) allow local educational agencies (LEAs) to unilaterally limit the times for conducting IEP meetings to normal "school hours" (e.g., 8:00 a.m. to 3:00 p.m.), or to normal "business hours" (e.g., 8:00 a.m. to 4:30 p.m.), based upon the LEA's administrative convenience in staffing, such as the work hours the LEA has already agreed to provide teachers in union contracts?

2. If the same LEAs regularly conduct "Parent Teacher Conferences" for parents of children with and without disabilities as late as 7:30 p.m., does the IDEA allow the LEAs to refuse to conduct IEP meetings that late in the evening?

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). However, Part B does not address times when public agencies can schedule IEP Team meetings. Although Part B does not prohibit public agencies from scheduling IEP Team meetings in the evening, it does not require that they do so. Therefore, it is not unreasonable for public agencies to schedule meetings of the IEP Team only during regular school hours or regular business hours because it is likely that these times are most suitable for public agency personnel to attend these meetings.

On the other hand, there may be circumstances where a parent cannot attend an IEP Team meeting that is scheduled during the day because their

employment situation restricts their availability during school hours or business hours. In such a circumstance, public agencies should be flexible in scheduling IEP Team meetings to accommodate reasonable requests from parents. Where public agencies and parents cannot schedule meetings to accommodate their respective scheduling needs, public agencies must take other steps to ensure parent participation, consistent with 34 CFR § 300.322(c). These include individual or conference telephone calls or videoconferencing, consistent with 34 CFR § 300.328 (related to alternative means of meeting participation).

You also question whether an LEA, may, by contractual arrangement or collective bargaining agreement, limit the times when public agencies can schedule IEP Team meetings. We assume that these contracts address when public agencies can make their staff members available for attendance at IEP Team meetings, consistent with their other responsibilities. We do not believe that the parent participation provisions for IEP Team meetings restrict public agencies from entering into such contractual arrangements or agreements, specifying that public agency employees will attend meetings of the IEP Team only during regular working hours. Although the terms of such agreements will necessarily vary across agencies and States, public agencies still must ensure that they take other steps to ensure parent participation if the parents are unable to attend during school hours or business hours.

In the situation prompting your inquiry, we recognize that the difficulty arises because the parent's expert is unable to attend an IEP Team meeting during regular school hours or regular business hours, and the parent believes that their expert possesses important information which must be shared at the meeting. Nonetheless, we do not believe that Part B requires the public agency to schedule the IEP Team meeting outside of regular school hours or regular business hours to accommodate participation of the parents' expert. In this situation, the parent and public agency could consider using alternative means

to ensure that the information of the parents' expert is communicated to the IEP Team if the public agency is unable, for administrative or contractual reasons, to schedule the IEP Team meeting outside of regular school hours or regular business hours. Even though it may be the practice of this public agency to routinely conduct parent-teacher conferences in the evening, we do not believe that this practice alone would compel the public agency to schedule IEP Team meetings in the evening.

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 further questions or concerns, please do not hesitate to contact Lynne Fairfax, of my staff, at 202-245-7337.

**Regulations Cited**

- 34 CFR 300.322
- 34 CFR 300.322(a)
- 34 CFR 300.322(c)
- 34 CFR 300.328