

On January 5, 2005, Ms. XXXXXXXXXXXXXXX (“Parent”) filed a complaint on behalf of her daughter (“Student”) against the Cape Henlopen School District (“District”). The complaint alleges that the District has violated state and federal laws relating to children with disabilities. Specifically, Parent states that a union representative attended Student’s IEP meeting and that she was not informed that the union representative would be attending and that the union representative had no specialized knowledge about the Student.

Investigation of the complaint has been conducted, as required by the Individuals with Disabilities Education Act (IDEA) Regulations at 34 C.F.R. § 300.660 to 300.662, and according to the Department of Education’s regulations and procedures, including Sections 15.12 to 15.14 of the Administrative Manual for Special Education Services (“AMSES”). Specifically, the investigation included interviews with Ms. XXXXXXXXXXXXXXX Parent, and Ms. Liz Joynes, Special Education Supervisor, Cape Henlopen School District, Ms. XXXXXXX (Ms. “A”), Special Educator, Ms. XXXXXXXXXXX (Ms. “B”), Regular Educator, and Ms. XXXXXXX (Ms. “C”), Teacher and Union Representative. A copy of the meeting notice was reviewed.

Findings of Fact

1. Student is a fifth grade student receiving special education services as learning disabled in her local elementary school.
2. Parent states in her letter of complaint that an IEP meeting was scheduled for October 11, 2004.
3. Notice for the October 11, 2004 meeting indicated that the purpose of the meeting was to develop, review or revise the IEP, including all related components.
4. Parent supplied emails between District Special Education Director and herself regarding scheduling an IEP meeting the week of October 11, 2004.
5. An IEP meeting notice indicated the following people would attend the meeting on October 11: District Special Education Director, Administrator/Designee, Ms. “A”, Special Educator and Ms. “B”, Regular Educator.
6. Parent stated in her letter that all three indicated staff were present. In addition, Parent stated that Ms. “A” had brought her union representative, Ms. “C.”
7. Parent stated that, during the meeting, Ms. “C” questioned Student regarding her behaviors during the outing.
8. Parent believes that Ms. “C” had information regarding Student that was personal and that she should not have been at the meeting.
9. District staff state that, because the para educator could not be at the IEP meeting, the IEP meeting was cancelled and that a conference took place.
10. Ms. “A” stated that Parent had filed a complaint against her regarding a field trip and wanted to “clear the air” about the complaint and wanted her union representative with her.
11. Ms. “C” stated that she had never read any file or IEP or any other information regarding Student but simply knew Student because she was also a teacher in the school.

12. Ms. "C" stated that she did talk to Student and did ask questions such as, when Student stated she couldn't keep still, asked why she thought she couldn't keep still.
13. Ms. "A" stated that she did not consider the meeting an IEP meeting, that no one signed in for an IEP meeting, and she left her folder with the IEP in it closed.
14. District Special Education Director agrees in hindsight that the meeting should not have occurred the way it did.
15. There were no minutes taken or any other documentation provided for the meeting.
16. All three teachers agreed in separate interviews that 1, 2, 3 Magic, a behavior program, was discussed and all agreed that Student would not be touched for any reason.
17. Teachers were less sure regarding Student's Behavior Plan and what plan was in place.
18. Parent stated that 1, 2, 3, Magic and the provision for not touching Student are part of the Behavior Plan.

Conclusions

Although District maintains that the meeting held October 11, 2004 was not an IEP meeting, there is no evidence that it was not. The meeting occurred at the time, with the IEP team members indicated in the notice. A notice of an IEP meeting dated October 7, 2004 indicated that the purpose of the meeting to be held October 11, 2004 was to "Develop, review, or revise an Individualized Education Program (IEP), including all related components." District was unable to provide any other documentation that the meeting held October 11, 2004 at the time stated on the notice, in the room stated on the notice and with the individuals listed as participants, with the exception of Ms. "C", was anything but an IEP meeting.

District staff are in agreement that discussion took place about 1,2,3, Magic and when staff could touch Student. Staff were less clear about how the Behavior Plan was regarded, although the topics for discussion were elements in Student's Behavior Plan and IEP.

Because District failed to have participants sign in, take meeting minutes, or no changes were made to the IEP, does not mean that this meeting of the IEP team, discussing components of the IEP, was not an IEP meeting.

IDEA regulation 34 C.F.R. § 300.344 (a) (6) states that, "At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate," may be included as members of the IEP team.

In this case, the union representative had no special expertise regarding the child and was inappropriately invited to the IEP meeting, thus violating IDEA regulation 34 C.F.R. § 300.344 (a) (6).

In addition, Parent was not notified of all parties who would be in attendance at the IEP meeting, thus violating the requirements for proper notice. [IDEA regulations 34 C.F.R. 300.345 (b) (1) (i) (ii)].

Finally, District must understand that the purpose of the IEP meeting is to develop, review or revise the IEP of a child with a disability, and the meeting is in the interests of the child. Appendix A of the IDEA, question # 28, discusses who may be invited to be a participant on the IEP team. In this discussion is stated “Part B does not provide for including individuals such as representatives of teacher organizations as part of an IEP team unless they are included because of knowledge or special expertise regarding the child.”

If a meeting is to occur in which a union representative is to be invited, Parent at the very least, should have information prior to the meeting regarding the purpose of the meeting.

I find that District violated IDEA regulations 34 C.F.R. §§ 300.344 (a) (6) and 300.345 (b))1) (i) (ii)

Parent has informed me, through the course of this investigation, that there are other issues around which she has concerns. Specifically, she has concerns about the removal of supports that she believes Student needs to follow directions and stay on task. Additionally, there are clarifications about accommodations and specificity about IEP goals that Parent believes should be part of the IEP.

Although detailed below as part of the Corrective Action, Parent and District have tentatively agreed as of January 28, 2005, to move forward with IEP facilitation to address these issues through the IEP process. Parent has been informed that participation in IEP facilitation does not affect the procedural safeguards available to her if she believes that there is a violation of special education law.

Corrective Action

Having found a denial of services, the State Department of Education, through its authority at IDEA regulation 34 CFR §300.660(b), must address (1) how to remediate the denial of services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and (2) appropriate future provision of services for all children with disabilities.”

1. If Parent agrees, District should convene an IEP meeting regarding any changes in accommodations or anything else that may be needed.
2. If Parent agrees, District should contact the Conflict Resolution Program and contract with this program for IEP facilitation for the IEP meeting.
3. Within 30 calendar days of receiving this Letter of Finding, District will provide written guidance to all staff who are members of IEP teams regarding:

- Proper notice to Parents regarding the purpose, time, location and who will be in attendance and any information about other members who may have specialized knowledge or expertise about the child.
- The inappropriateness of having teacher union representation at an IEP meeting

District should send a copy of the written guidance and a written description of the method used to inform all staff who are members of IEP teams to me no later than 30 calendar days after receiving this Letter of Finding.