



Attendance of Attorneys and Non-Attorney Representatives at IEP Team Meetings

It has come to the New Hampshire Department of Education's (NHDOE) attention, including through parent testimony at public hearings, that attorneys and non-attorney representatives of law firms are attending IEP team meetings without the notification or consent of a parent of a child with a disability.

An IEP team meeting is any meeting that is called to discuss a child with a disability's IEP, including to discuss eligibility, review progress monitoring, conduct an annual review, and any other meetings related to the provision of supports and services for a child with a disability. Each child with a disability's IEP is developed at a meeting of the IEP team which includes the child's parent, relevant school officials, and, whenever appropriate, the child (20 U.S.C. § 1414(d)(1)(B) and 34 C.F.R. § 300.321(a)).

As stated in the *Individuals with a Disability Education Act* (IDEA), individuals who are not a part of an IEP team may be invited to an IEP team meeting at the discretion of a parent of a child with a disability or a local educational agency (LEA) only if those individuals have knowledge or special expertise regarding the individual child with a disability, including related services personnel as appropriate (34 CFR 300.344). Individuals with special expertise may include professionals in evaluation or special education and related services who have been directly involved with the child, as well as those who do not know the child personally, but who have expertise in, for example, an instructional method or procedure, or in the provision of a related service that the parents or agency believe can be of assistance in developing an appropriate IEP for the child.

The determination of whether an attorney or a non-attorney representative of law firms possess knowledge or special expertise regarding the individual child with a disability is made on a case-by-case basis by a parent or an LEA.

Absent parental consent, an individual who does not have knowledge and special expertise regarding the child with a disability and who is not requested to be present at the IEP team meeting by the parent or LEA would not be permitted to attend the IEP team meeting as an observer unless he or she meets one of the parental consent exceptions (34 C.F.R. § 300.622 or 34 C.F.R. § 99.31).^{1 2 8 9}

Even with parental or LEA consent, the presence of an attorney or non-attorney representative of a law firm representing either a parent of a child with a disability or LEA may contribute to an adversarial atmosphere at an IEP team meeting that may not be in the best interest of the child with a disability. **The attendance of attorneys at IEP team meetings who do not possess knowledge or special expertise regarding the child and without the notification and consent of either a parent or LEA is strongly discouraged, consistent with U.S. Department of Education regulation.**³

¹ Please see Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 FR 46540, 46670-46671 (Aug. 14, 2006): <https://sites.ed.gov/idea/idea-files/aug-14-2006-71-fr-46540/>.

² Please see OSEP Letter to Gran (November 12, 2012): <https://sites.ed.gov/idea/idea-files/policy-letter-november-30-2012-to-judith-a-gran-and-catherine-merino-reisman/>

³ Please see: <https://www.govinfo.gov/content/pkg/CFR-1998-title34-vol2/pdf/CFR-1998-title34-vol2-sec300-344.pdf>.

With regard to the participation of noncontributing observers at IEP Team meetings, including non-attorney representative of a law firm, attendance at IEP Team meetings generally should be limited to individuals who would contribute to decisions about the appropriate services to be included in the child's IEP.⁴ **Therefore, the attendance of non-attorney representatives of law firms at IEP team meetings is strongly discouraged, consistent with U.S. Department of Education guidance.**^{5 6}

IDEA also includes confidentiality of information provisions (34 C.F.R. §§ 300.611 through 300.626) that require parental consent before an LEA or other public agencies can release personally identifiable information to third parties, other than officials of participating agencies (34 C.F.R. § 300.622(b)(1)), unless permitted to do so without parental consent (34 C.F.R. Part 99. 34 C.F.R. § 300.622(a) and 34 C.F.R. § 99.31).⁷

In determining whether an attorney or non-attorney representative of a law firm who does not satisfy the criteria in 34 C.F.R. § 300.321(a)(6) could be an observer at an IEP team meeting, a parent or LEA should be mindful of the best interests of the child with a disability, including the confidential and sensitive nature of discussions that occur and the personally identifiable information that is exchanged during those meetings.

If you have questions, please reach out to Rebecca Fredette, State Special Education Director, at 603-271-6693 or Rebecca.A.Fredette@doe.nh.gov.

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⁴ Further, the legislative history of the *Education for All Handicapped Children's Act*, the predecessor statute to IDEA, Part B, states "attendance at IEP meetings should be limited to those who have an intense interest in the child." Cong. Rec. § 10974 (June 18, 1975) (remarks of Sen. Randolph).

⁵ Please see: <https://sites.ed.gov/idea/idea-files/policy-letter-may-2-2019-haller/>

⁶ Please see: <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2008-1/redactedb033108iep1q2008.pdf>

⁷ Please see the Family Educational Rights and Privacy Act and its implementing regulations in 34 C.F.R. Part 99.