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Letter to Copenhaver

Office of Special Education Programs

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Related Index Numbers

470.075 State Advisory Panel

Judge / Administrative Officer

William W. Knudsen, Acting Director

Ruling

Although the Part B regulations set specific requirements for membership on a state advisory panel, states still have some leeway with regard to appointments. OSEP explained that the exact composition of a state advisory panel should depend on the needs of the state's children.

Meaning

States must establish and maintain advisory panels to provide policy guidance on special education and related services for children with disabilities. 20 USC 1412(a)(21). The Part B regulation found at 34 CFR 300.168(a) identifies mandatory members of the state advisory panel. These individuals include parents of children with disabilities (ages birth through 26), state and local education officials, representatives of private schools and public charter schools, and representatives from state juvenile or adult correction agencies. While the presence of these individuals is required, the number of appointees in each category is up to the state's discretion.

Case Summary

Membership on a state advisory panel is not just a question of regulatory compliance -- it's also a question of which individuals will help the state to meet the needs of students with disabilities. OSEP observed that the panel's composition should reflect the state's unique circumstances. For example, OSEP noted that the advisory panel must include parents of children with disabilities ages birth through 26. 34

CFR 300.168(a)(1). Although the parent of a 27-year-old individual with a disability would not meet the regulatory requirement, the state could appoint that parent to serve on its advisory panel if it also appointed the parents of children with disabilities ages birth through 26. "In light of the purpose of the [panel], states have some flexibility in appointing members based on the particular needs of children with disabilities in the state to ensure that the panel is representative of the state population and is composed of individuals involved in or concerned with the education of children with disabilities," Acting Director William W. Knudsen wrote. Similarly, OSEP explained that the use of the word "and" in certain provisions did not prohibit states from assigning additional panel members who satisfied only one of the listed qualifications. So long as a panel includes at least one private school representative and at least one public charter school representative, the state has fulfilled its obligation to include "representatives of private schools and public charter schools." 34 CFR 300.168(a)(8).

Full Text

Dear Dr. Copenhaver:

This letter is in response to your electronic mail (email) communication dated January 8, 2008, regarding requirements for membership on the State Advisory Panel (SAP) under 34 CFR §§ 300.167-300.169 of the regulations for Part B of the Individuals with Disabilities Education Act (Part B). The regulations at 34 CFR §§ 300.167 through 300.169 governing the SAP implement the statutory provision at 20 U.S.C. 1412(a)(21) and contain language that is substantially identical to the statutory language. The purpose of the advisory panel is to provide policy guidance with respect to special education and related services for children with disabilities in the State. 34 CFR § 300.167. Under 34 CFR § 300.168, the advisory panel, whose members must be appointed by the Governor or any other individual under State law who is authorized to make such appointments, must be representative of the State

population and must be composed of individuals involved in, or concerned with, the education of children with disabilities. With regard to membership, you ask the following three questions:

1. 34 CFR § 300.168(a)(1) refers to "[p]arents of children with disabilities (ages birth through 26). Does this mean if a Panel member has a child that exceeds age 26, at that point the panel member does not meet qualifications?

Response: Under 34 CFR § 300.168(a)(1), the SAP must include parents of children with disabilities (ages birth through 26). The parent of an adult child who is aged 27 or older would not meet the membership requirement under 34 CFR § 300.168(a)(1). Such a parent could be appointed by the State to serve on the SAP, but the State would also be required to appoint parents of children who are ages birth through 26 in accordance with 34 CFR § 300.168(a)(1), who along with other individuals with disabilities, must be a majority of the SAP's members. 34 CFR § 300.168(b).

2. Does the "and" in [34] CFR § 300.168(a)(5), (8), and (11) mean both? Or if a panel had at least one in each area, would this satisfy the requirements?

Response: The answer to your question cannot be provided based only on the language of these membership provisions. In light of the purpose of the SAP, States have some flexibility in appointing members based on the particular needs of children with disabilities in the State to ensure that the panel is representative of the State population and is composed of individuals involved in or concerned with the education of children with disabilities. 34 CFR § 300.168(a).

Under 34 CFR § 300.168(a)(5), the SAP must include "State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act. (42 U.S.C. 1431 et seq.)." Therefore, to satisfy this membership requirement, the State and local education officials included on the SAP must include officials who carry out activities under Subtitle B of

Title VII of the McKinney-Vento Homeless Assistance Act. How a State otherwise chooses to allocate appointments to other State and local education officials to satisfy this membership requirement is a matter left to State discretion.

Under 34 CFR § 300.168(a)(8), the SAP must include representatives of private schools and public charter schools. To satisfy this membership requirement, a State must appoint one or more representatives of each type of school.

Under 34 CFR § 300.168(a)(11), the SAP must include representatives from the State juvenile and adult corrections agencies. Therefore, to satisfy this requirement, the SAP must include one or more representatives of both agencies.

3. Most membership citations use the plural rather than singular. Does this mean each category would need more than one representative or would one in each category be sufficient?

Response: The regulation specifies when the State must meet a membership category by having only one representative and when more than one representative is required. Compare 34 CFR § 300.168(a)(9) and (a)(10) (requiring at least one representative) with 34 CFR § 300.168(a)(1) through (8) and (a)(11) through (14) (requiring individuals or representatives). However, the regulation does not otherwise specify how States allocate representatives if a membership category represents multiple constituencies. Accordingly, we believe that States have flexibility in this regard based on the particular needs of the children with disabilities in their State, and that assignment of representatives of specific constituencies is a matter of State discretion.

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.

We hope this information is helpful to you. If you have further questions, please do not hesitate to

contact Dr. Deborah Morrow at 202-245-7456.

Statutes Cited

20 USC 1412(a)(21)