

G. Emerson Dickman, Esq.
25 East Spring Valley Avenue
Maywood, New Jersey 07607

November 16, 2001

Robert H. Pasternack, Ph. D., Assistant Secretary
Office of Special Education and Rehabilitation Services
U.S. Department of Education
33 "C" Street Southwest, Room # 3006
Washington, D.C. 20202

Re: Letter of Clarification

Dear Dr. Pasternack:

On behalf of many of our clients I am seeking an OSEP letter of clarification. The particular issue is:

Do parents participating in an IEP meeting have the right to be informed as to the qualifications of the instructor designated to deliver the particular methodology or specifically designed instruction identified in the IEP?

Unfortunately, parents receive responses to their inquiries from the LEA such as: "We would not have selected her if we didn't think she was qualified." (without discussing qualifications), "Trust us." or "The teacher has met all state certifications required to be working with your child."

Although there is very little definitive case law on the subject, an argument to support the position that parents have the right to be informed as to the qualifications of the teacher assigned to deliver "specially designed instruction" may be fashioned considering the following:

"One factor that impedes effective instruction with children at risk for reading failure is current teacher preparation practices. Many teachers have not had the opportunity to develop basic knowledge about the structure of the English language, reading development, and the nature of reading difficulties."

"The amount of course work in the structure of spoken and written language required by teacher preparation programs and state certification standards are woefully inadequate for the demands of classroom life, particularly classrooms with low-readiness children and diverse range of learners."

"It is thus easy to see why teachers may obtain certification without acquiring knowledge of the language content and processes critical to reading and spelling acquisition."

"Teachers need to be knowledgeable about the research foundations of reading."

"Teachers need ongoing professional development that has topical continuity, practical application, and opportunities for collaboration with peers."

"[M]ost teachers are not being given the content and depth of training needed to enable them to provide appropriate instruction."

In *Essex Junction Sch. Dist.*, 22 IDELR 315, 324 (SEA, Vermont, 1995) Dr. Louisa Cook Moats is quoted as saying that:

"There are many published programs that can be used successfully, each with its strengths and weaknesses, but these are only tools in the hands of a skilled teacher who must be able to depart from the program format when necessary."

The Hearing Officer in *Gwinnett County Sch. Sys.*, 4 ECLPR ¶ 98, 419, 429 (SEA GEORGIA, 1999) related the parents' right to know to the need for informed parental consent:

"The parents were not able to access the information that they needed to make an informed decision and could not, therefore, give their 'informed consent.'" * * * IDEA places emphasis on the need for informed parental consent." 34 C.F.R. § 300.500(a)(1-3).

Providing information to parents is not equivalent to giving parents the right to choose a particular method or a particular teacher. If the method provided by the school district is appropriate and the training of the instructor is appropriate, the parents have no right to insist on an alternate method or teacher, even if the alternate method or teacher may be considered better. The parent, however, is entitled to sufficient information to judge whether the program offered is "reasonably calculated to enable the child to receive educational benefits."

Congress has clearly stated its position on the need for teacher training:

"Congress finds the following: (20 USC §1400(c)):

. . . the implementation of this Act has been impeded by . . . an insufficient focus on applying replicable research on proven methods of teaching and learning . . . [20 USC § 1400(c)(4)].

Over 20 years of research and experience has demonstrated that the education of children can be made more effective by -- . . .

supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them - [(20 USC § 1400(c)(5)(E)]
(1) to meet developmental goals . . ." [20 USC § 1412(a)(E)(1)]

In order to be eligible for IDEA Part B funding, a State must demonstrate that it has

"a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education . . . personnel that meet the requirements .

. . relating to personnel development in subsection (b)(2)(B) and (c)(3)(D) of Sec.1453."
[20 USC § 1412(a)(14)]

Sec. 1453(c)(3)(D), in turn, requires that such a CSPD shall

"ensure that all personnel who work with children with disabilities . . . have the skills and knowledge necessary to meet the needs of children with disabilities," [20 USC § 1453(c)(3)(D)(vii)]

The National Joint Committee on Learning Disabilities (NJCLD) in its 1999 position paper on Professional Development for Teachers has stated that:

"NJCLD strongly believes that professional development is an ongoing process of continuous improvement, not an event. * * * The very culture of the school must support continuous inquiry and reflection on the implementation and development of best practices."

The comprehensive system of personnel development (CSPD) is a federal and state mandate that recognizes the need for special education personnel that are qualified to meet the needs of children with disabilities. The law specifically addresses in-service (post certification) as well as pre-service preparation. In other words, the CSPD requirement in both federal and state law recognizes that certification alone is not enough to protect the needs of children with disabilities.

The practical implication of Congress' focus on replicable research and promising practices is reflected in changes to the IEP process contained in the reauthorized version of IDEA effective July 1, 1998.

(1) The IEP Team must include "an individual who can interpret the instructional implications of evaluation results. . . ." [20 USC § 1414(d) 1(B)(v)].

(2) The IEP must include "a statement of the program modifications or supports for school personnel that will be provided for the child - (1) to advance appropriately toward attaining annual goals; . . ." [20 USC § 1414(d)(1)(A)(iii)].

Parents cannot help to determine (as part of the IEP team) what supports should be provided "for school personnel on behalf of the child, if they are not permitted information as to the qualifications of the personnel involved.

In [*Evans v. The Bd. Of Educ. of the Rhinebeck Central School Dist.*](#), 24 IDELR 338 (S.D.N.Y. 1996) the court held that the facts demonstrated "that an integrated, multi-sensory, sequential method is a necessity rather than an optimum situation." *Evans* at 348. The *Evans* Court in 1996 anticipated the findings of Congress contained in the most recent reauthorization of the Individuals with Disabilities Education Act (IDEA) 20 USC § 1400 et seq., to wit:

"the implementation of this Act has been impeded by low expectations and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities." 20 USC § 1400(c)(4).

An important discussion of this issue can be found in the Federal Register at 64 FR 12552, March 12, 1999:

Case law recognizes that instructional methodology can be an important consideration in the context of what constitutes an appropriate education for a child with a disability. At the same time, these courts have indicated that they will not substitute a parentally-preferred methodology for sound educational programs developed by school personnel in accordance with the procedural requirements of the IDEA to meet the educational needs of an individual child with a disability.

In light of the legislative history and case law, it is clear that in developing an individualized education there are circumstances in which the particular teaching methodology that will be used is an integral part of what is 'individualized' about a student's education and, in those circumstances will need to be discussed at the IEP meeting and incorporated into the student's IEP. For example, for a child with a learning disability who has not learned to read using traditional instructional methods, an appropriate education may require some other instructional strategy.

Other students' IEPs may not need to address the instructional method to be used because specificity about methodology is not necessary to enable those students to receive an appropriate education. There is nothing in the definition of 'specially designed instruction' that would require instructional methodology to be addressed in the IEPs of students who do not need a particular instructional methodology in order to receive educational benefit. In all cases whether methodology would be addressed in an IEP would be an IEP team decision.

Specially designed instruction and appropriate teacher training are necessary in order for some children to receive an educational benefit. How can parents contribute as equal members of the "IEP team" if they are denied the information necessary to evaluate the appropriateness of the decisions made by the team?

As a member of the IEP team it would appear that parents are entitled to sufficient information to determine if the individual(s) assigned is qualified to deliver the goals, objectives, and the "instructional methodology addressed in the IEP."

Your assistance in clarifying this issue would be most appreciated.

Respectfully yours,

G. Emerson Dickman