

IEP Components Series

Excusing a Member from an IEP Meeting

Certain members of the IEP team may be excused from an IEP meeting **under specific conditions**. These conditions will vary depending on whether or the the team member's area of expertise is going to be discussed or modified in the meeting.

When the member's area of expertise is not going to be discussed or modified. The chief condition for excusing a member of the team whose area of expertise is not going to be discussed or modified at the meeting is this: The parent **and** the school system must **both** agree in writing that the member's attendance is not necessary.

This is a new provision in **IDEA**. It was added during the 2004 reauthorization.

Interestingly, the provision only applies to certain members of the team—the ones who are **required** IEP team members:

- the child's regular education teacher (if the child is, or may be participating in the regular education environment);
- the child's special education teacher, or where appropriate, the child's special education provider;
- a representative of the public agency, who is qualified to provide, or supervise the provision of, specially designed instruction; and
- an individual who can interpret the instructional implications of evaluation results.

A written agreement between the parent and school is not required to excuse an IEP team member who has knowledge or special expertise regarding the child, such as a related service provider. This is because that individual attends the meeting at the discretion of the parents or the public agency and is not a required team member.

When the member's area of expertise is going to be discussed or modified. Even though a member's area of expertise is going to be discussed at the meeting, it may still be possible for that member to be excused from attending. But certain conditions must be met—specifically:

- The parent, in writing, and the public agency consent to the excusal; and
- The member submits input into the development of the IEP prior to the meeting. This input must be in writing and is submitted to the parent and the IEP team [§300.321(e)(2)]

Note that, here, **IDEA** requires consent—not merely agreement. There's a critical difference between the two terms. "Consent" in **IDEA** refers to "written informed consent"—which has a precise meaning under the law. **IDEA** defines **consent** as follows:

§300.9 Consent.

Consent means that—

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

This level of consent for excusal is only required when a member's area of expertise is going to be discussed or modified at the meeting. If it's not, then only written agreement is required.

Agreement is less formalized than consent in that it does not trigger **IDEA's** procedural safeguards and the requirements that must be met as part of requesting consent.

What Happens if the Member's Absence Inhibits Development of the IEP?

The Department of Education (2006) offers an instructive perspective on how excusal is intended to work, including how to avoid having a member's absence slow down or inhibit IEP development.

The IEP Team is expected to act in the best interest of the child. As with any IEP Team meeting, if additional information is needed to finalize an appropriate IEP, there is nothing in the Act that prevents an IEP Team from reconvening after the needed information is obtained, as long as the IEP is developed in a timely manner...

The parent can request an additional IEP Team meeting at any time and does not have to agree to excuse an IEP Team member. Likewise, if a parent learns at the IEP Team meeting that a required participant will not be at the meeting, the parent can agree to continue with the meeting and request an additional meeting if more information is needed, or request that the meeting be rescheduled. (71 Fed. Reg. at 46676)

Additionally, as the Department points out:

Parents who want to confer with an excused team member may ask to do so before agreeing or consenting to excuse the member from attending the meeting. (71 Fed. Reg. at 46674)

School systems may not routinely or unilaterally excuse IEP team members from meetings as parent agreement or consent is required in each instance.

Schools systems need to carefully consider whether it makes sense to offer to hold the IEP team meeting when a particular member isn't attending or whether it would be better to reschedule the meeting so that person could attend and participate in the discussion. (*Id.*)

An LEA that routinely excuses team members from attending IEP meetings would not be in compliance with the requirements of the Act, and, therefore, would be subject to the state's monitoring and enforcement provisions. (*Id.*)

It is up to each public agency to determine the individual in the LEA with the authority to make the agreement (or provide consent) with the parent to excuse a team member for the meeting. The designated individual must have the authority to bind the LEA to the agreement with the parent or provide consent on behalf of the LEA. (71 Fed. Reg. at 46676)