UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAY 26 2000

Robert B. Cormany, Ed.D.
Executive Director
Pennsylvania School Counselors Association
1883 Douglas Drive
Carlisle, Pennsylvania

Dear Dr. Cormany:

This is in response to your letter to this Office dated December 9, 1999 and postmarked March 11, 2000. A copy of your letter was also forwarded to this Office by the Office of Congressman Bill Goodling by letter of March 15, 2000. Please excuse the delay in issuing this response, but unfortunately, your original letter of December 9, 1999 was never received in this Office prior to the receipt of your letter with the postmark date of March 11, 2000.

Your inquiry was prompted by what you refer to as the "common practice" of using school counselors as the public agency representative of the individualized education program (IEP) team. You seek clarification from this Office regarding whether it is permissible for school counselors to assume that responsibility.

The regulation at 34 CFR §300.344(a)(4) provides that the IEP team must include:

> (4) A representative of the public agency who--
> (i) Is qualified to, provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
> (ii) Is knowledgeable about the general curriculum; and
> (iii) Is knowledgeable about the availability of resources of the public agency.
> 34 CFR §300.344(a)(4).

In addition, paragraph (d) of 34 CFR §300.344 permits a public agency to designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in 34 CFR §300.344(a)(4) are satisfied. 34 CFR §300.344(d).

Appendix A to 34 CFR Part 300, question 22, also clarifies that the public agency has the discretion to determine the individual who should serve as the public agency representative, provided that the criteria in 34 CFR §300.344(a)(4) are satisfied. Question 22 also notes that it is important that "the agency representative have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided." The Part B regulations, however, do not specify further which individuals may or may not serve as a "representative of the public agency" on the IEP team. Therefore, so long as the Part B regulatory requirements are met, Part B leaves to a public agency the determination of which individual will serve as the public agency representative on the IEP team.

Based on the concerns set out in your letter, if you believe that the requirements set out at 34 CFR §300.344(a)(4) are being violated by the practice of having school counselors serve as public agency representatives on IEP teams, you may wish to consider filing a complaint with the Pennsylvania Department of Education (PDE), if you have not already done so, under the State complaint procedures at 34 CFR §§300.660-300.662 of the Part B regulations. A copy of these regulations is enclosed for your constituent's information. Consistent with these regulations, a State educational agency (SEA), among other duties, must, within 60 calendar days of receiving a complaint:

> (1) conduct an independent on-site investigation if it determines such an investigation is necessary;
> (2) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
> (3) review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B; and
> (4) issue a written decision to the complainant that addresses each allegation in the complaint and contains (i) findings of fact, conclusions, and (ii) the reasons for the decision.
> 34 CFR §300.661(a)

In addition, if a violation of Part B of IDEA is found, a State must have procedures for effective implementation of its final decision, including, if necessary, corrective actions to achieve compliance. 34 CFR §300.661(b)(2)(iii).

For more information about the filing of a Part B complaint in Pennsylvania, you should contact the named PDE official at the following address and telephone number:

Dr. Fran Warkomski, Director
Bureau of Special Education
Pennsylvania Department of Education
333 Market Street, Seventh Floor
Harrisburg, Pennsylvania 17126
Telephone: 717-783-2311

We hope that you find this explanation helpful. If you would like further assistance, please contact Ms. Diane DeMaio, the Pennsylvania State contact in the Monitoring and State Improvement Planning Division, at (202) 205-5716.

Sincerely,

Kenneth R. Warlick/K

Kenneth R. Warlick
Director
Office of Special Education Programs

Enclosure