

agency to invite other agencies that are likely to be responsible for providing or paying for transition services. A parent may not exclude any of the required members of the IEP Team.

*Changes:* None.

#### IEP Team Attendance (§ 300.321(e))

*Comment:* We received many comments from individuals expressing concern about allowing IEP Team members to be excused from attending an IEP Team meeting. A few commenters recommended that the regulations require all IEP Team members to attend all IEP Team meetings without exception. One commenter stated that excusing members from attending IEP Team meetings interrupts the flow of the meeting and takes away time from discussing the child's needs. Another commenter expressed concern that the integrity of the IEP Team meeting process depends on a discussion to determine the services that are necessary to meet the child's unique needs, and that the richness of this discussion may be diminished if IEP Team members are allowed to be excused too frequently and the IEP Team must rely on written input.

Several commenters recommended that the regulations acknowledge that, in most circumstances, interactive discussion in IEP Team meetings is preferable to written input. Many commenters requested that the multidisciplinary scope of the IEP Team meeting be maintained. One commenter stated that written input from an excused IEP Team member is not sufficient and will be burdensome for both the writer and the readers.

*Discussion:* Section 614(d)(1)(C) of the Act allows a parent of a child with a disability and the LEA to agree that the attendance of an IEP Team member at an IEP Team meeting, in whole or in part, is not necessary under certain conditions. Allowing IEP Team members to be excused from attending an IEP Team meeting is intended to provide additional flexibility to parents in scheduling IEP Team meetings and to avoid delays in holding an IEP Team meeting when an IEP Team member cannot attend due to a scheduling conflict.

*Changes:* None.

*Comment:* Many commenters stated that the excusal provisions in § 300.321 should be optional for States and that States should be allowed to require that all IEP Team members attend each IEP Team meeting. Several commenters recommended allowing States to determine the circumstances or conditions under which attendance at

the IEP Team meeting is not required. A few commenters recommended clarifying whether a State must have policies and procedures to excuse IEP Team members.

*Discussion:* Under section 614(d)(1)(C) of the Act, a State must allow a parent and an LEA to agree to excuse a member of the IEP Team. Section 300.321(e) reflects this requirement and we do not have the authority to make this optional for States. We also do not have the authority to allow a State to restrict, or otherwise determine, when an IEP Team member can be excused from attending a meeting, or to prohibit the excusal of an IEP Team member when the LEA and parent agree to the excusal. Whether a State must have policies and procedures to excuse IEP Team members from attending an IEP Team meeting will depend on whether such policies and procedures are required by a State to implement this statutory requirement. However, every State must allow a parent and an LEA to agree to excuse an IEP Team member from attending an IEP Team meeting.

*Changes:* None.

*Comment:* Several commenters recommended that the regulations clarify whether the excusal agreement must meet the standard for informed consent. Some commenters stated that Congress intended excusal agreements to mean informed written consent. Other commenters stated that parents, not the public agency, can provide consent and therefore, only parents should be allowed to provide consent for excusing IEP Team members from IEP Team meetings. A few commenters recommended simplifying § 300.321(e) by eliminating the different procedures for different types of excusals.

*Discussion:* Whether a parent must provide consent to excuse a member of the IEP Team from attending an IEP Team meeting depends on whether the member's area of the curriculum or related services is being modified or discussed at the IEP Team meeting. We cannot eliminate the different procedures for different types of excusals because section 614(d)(1)(C) of the Act clearly differentiates between circumstances in which parental consent is required and when an agreement is required to excuse an IEP member from attending an IEP Team meeting.

If the member's area is not being modified or discussed, § 300.321(e)(1), consistent with section 614(d)(1)(C) of the Act, provides that the member may be excused from the meeting if the parent and LEA agree in writing that the member's attendance is not necessary.

An agreement is not the same as consent, but instead refers to an understanding between the parent and the LEA. Section 614(d)(1)(C) of the Act specifically requires that the agreement between a parent and an LEA to excuse a member's attendance at an IEP Team meeting must be in writing. If, however, the member's area is being modified or discussed, § 300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent.

*Changes:* None.

*Comment:* One commenter asked whether parents must be provided any information when asked to excuse IEP Team members. A few commenters recommended that the request for an excusal include the reason for the request to excuse a member of the IEP Team, that it be written in the chosen language of the parent, and accompanied by written evaluations and recommendations of the excused IEP Team member.

A few commenters recommended that no IEP Team member should be excused from attending an IEP Team meeting until the parent is informed about the purpose of the meeting for which the public agency proposes to excuse the IEP Team member; the IEP Team member's name and position; the reason(s) the public agency wants to excuse the IEP Team member; the parent's right to have the IEP Team member present; and the parent's right to discuss with the IEP Team member any issues in advance of the meeting so the parent is adequately informed. The commenters stated that this notice should be included in any statement of parent's rights that is distributed.

Numerous commenters recommended that the regulations include specific language to clarify that, before agreeing to excuse an IEP Team member, serious consideration must be given to determining if written input will be sufficient to thoroughly examine what services are needed and whether changes to the current IEP are necessary. A few commenters recommended that parents be informed of the roles and responsibilities of the excused member prior to giving consent for the excusal. Some commenters stated that parents must understand that they have the right to disagree and not excuse a member of the IEP Team who the parents believe may be essential to developing or revising an IEP. One commenter recommended that the written agreement be required to include information that the parent was informed of the parent's right to have all IEP Team members present.

One commenter recommended permitting States to establish additional procedural safeguards that guarantee that parents who consent to excuse an IEP member from a meeting do so freely and are aware of the implications of their decisions. Some commenters expressed concern that a parent could be pressured to agree to excuse an IEP Team member for what, in reality, are economic or staffing reasons. One commenter stated that parents should have the right to consent to excusal only after conferring with the individual to be excused. Some commenters recommended that parents be informed that they have a legal right to require an IEP Team member to participate in the meeting.

A few commenters expressed concern that the permission to excuse IEP Team members from attending IEP Team meetings will be abused, particularly with language-minority parents who are often misinformed or misled by school districts. Some commenters stated that parents do not understand the roles of the various members and could easily be pressured into excusing vital members of the IEP Team.

A few commenters recommended that the regulations include requirements to guard against excessive excusals. Some commenters stated that an LEA that routinely prevents general or special education teachers, or related services providers, from attending IEP Team meetings using the excusal provisions should be subject to monitoring and review.

*Discussion:* When an IEP Team member's area is not being modified or discussed, § 300.321(e)(1), consistent with section 614(d)(1)(C) of the Act, provides that the member may be excused from the meeting if the parent and LEA agree in writing that the member's attendance is not necessary. We believe it is important to give public agencies and parents wide latitude about the content of the agreement and, therefore, decline to regulate on the specific information that an LEA must provide in a written agreement to excuse an IEP Team member from attending the IEP Team meeting when the member's area of the curriculum or related services is not being modified or discussed.

When an IEP Team member's area is being modified or discussed, § 300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent. Consistent with § 300.9, consent means that the parent has been fully informed in his or her native language, or other mode of communication, and understands that

the granting of consent is voluntary and may be revoked at any time. The LEA must, therefore, provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse an IEP Team member from attending an IEP Team meeting in which the member's area of the curriculum or related services is being changed or discussed and that if the parent does not consent the IEP Team meeting must be held with that IEP Team member in attendance.

We believe that these requirements are sufficient to ensure that the parent is fully informed before providing consent to excuse an IEP Team member from attending an IEP Team meeting in which the member's area of the curriculum will be modified or discussed, and do not believe that it is necessary to include in the regulations the more specific information that commenters recommended be provided to parents.

We also do not believe it is necessary to add a regulation permitting States to establish additional procedural safeguards for parents who consent to excuse an IEP Team member, as recommended by one commenter, because we believe the safeguard of requiring consent will be sufficient to prevent parents from feeling pressured to excuse an IEP Team member. Furthermore, parents who want to confer with an excused team member may ask to do so before agreeing or consenting to excusing the member from attending the IEP Team meeting, but it would be inappropriate to add a regulation that limited parent rights by requiring a conference before the parent could agree or consent to the excusal of an IEP Team member.

With regard to the recommendation that the notice state that the parent has a legal right to require an IEP Team member to participate in an IEP Team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency's required participants at the IEP Team meeting. A parent does not have a legal right to require other members of the IEP Team to attend an IEP Team meeting. Therefore, if a parent invites other public agency personnel who are not designated by the LEA to be on the IEP Team, they are not required to attend.

An LEA may not routinely or unilaterally excuse IEP Team members from attending IEP Team meetings as parent agreement or consent is required in each instance. We encourage LEAs to carefully consider, based on the

individual needs of the child and the issues that need to be addressed at the IEP Team meeting whether it makes sense to offer to hold the IEP Team meeting without a particular IEP Team member in attendance or whether it would be better to reschedule the meeting so that person could attend and participate in the discussion. However, we do not believe that additional regulations on this subject are warranted.

An LEA that routinely excuses IEP Team members from attending IEP Team 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.

*Changes:* None.

*Comment:* A few commenters requested clarification on whether excusals from IEP Team meetings apply to only regular education teachers, special education teachers, and related services providers, or to all individuals whose curriculum areas may be discussed at an IEP Team meeting. One commenter recommended clarifying that all IEP Team members, as defined in § 300.321, must be represented at the IEP Team meeting unless excused by the parents and the LEA.

One commenter stated that § 300.321(e) can be read to require that each individual invited to the IEP Team meeting by the parent or the public agency (who has knowledge or special expertise) must attend the meeting unless the parent and the agency agree in writing that they need not attend. The commenter recommended that the regulations clarify that the attendance of the other individuals invited to attend the IEP Team meeting by the parent and public agency is discretionary and that no waiver is needed to hold the IEP Team meeting without them. The commenter recommended revising § 300.321(e)(1) to refer to "mandatory" members of the IEP Team. Another commenter expressed concern that it is not possible to pre-determine the areas of the curriculum that may be addressed at an IEP Team meeting, and recommended that excusals be permitted only for the IEP Team members identified by the public agency in § 300.321(a).

One commenter recommended that the regulations allow teachers with classroom responsibilities to attend an IEP Team meeting for 15 to 20 minutes and leave the meeting when necessary. Some commenters requested clarification regarding situations in which there is more than one regular education teacher at an IEP Team meeting and whether one or both

teachers must have a written excusal to leave before the end of an IEP Team meeting.

One commenter stated that it is unclear whether consent must be obtained if a speech pathologist or occupational therapist cannot attend a meeting because speech pathologists and occupational therapists are not required members of an IEP Team.

*Discussion:* We believe that the excusals from IEP Team meetings apply to the members of the IEP Team in paragraphs (a)(2) through (5) in § 300.321, that is, to the regular education teacher of the child (if the child is, or may be participating in the regular education environment); not less than one special education teacher of the child (or where appropriate, not less than one special education provider of the child); a representative of the public agency who meets the requirements in § 300.321(a)(4); and an individual who can interpret the instructional implications of evaluation results. We do not believe it is necessary to require consent or a written agreement between the parent and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the parent or the public agency because such individuals are not required members of an IEP Team. We will add new language to § 300.321(e) to clarify the IEP Team members for whom the requirements regarding excusals apply.

With regard to situations in which there is more than one regular education teacher, the IEP Team need not include more than one regular education teacher. The regular education teacher who serves as a member of a child's IEP Team should be a teacher who is, or may be, responsible for implementing a portion of the IEP so that the teacher can participate in discussions about how best to instruct the child. If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, the LEA may designate which teacher or teachers will serve as the IEP member(s), taking into account the best interest of the child. An LEA could also agree that each teacher attend only the part of the meeting that involves modification to, or discussion of, the teacher's area of the curriculum.

Section 300.321(a)(3) requires the IEP Team to include not less than one special education teacher or where appropriate, not less than one special education provider of the child. As explained earlier, a special education provider is a person who is, or will be, responsible for implementing the IEP. Therefore, if a speech pathologist, occupational therapist, or other special

education provider, other than the child's special education teacher is on the IEP Team, written consent from the parent would be required for the speech pathologist, occupational therapist, or other special education provider to be excused from attending an IEP Team meeting, in whole or in part, when the IEP Team meeting involves a modification to, or discussion of, the IEP Team member's related service or area of the curriculum.

*Changes:* We have added language in § 300.321(e)(1) to refer to paragraphs (a)(2) through (a)(5), and a reference to paragraph (e)(1) in § 300.321(e)(2) to clarify the IEP Team members for whom a parent and public agency must consent or agree in writing to excuse from an IEP Team meeting.

*Comment:* A few commenters stated that excusal of the regular education teacher is already built into the requirements and questioned the circumstances under which a State might exceed these requirements.

*Discussion:* Section 300.321(a)(2) does not require a regular education teacher to be part of the IEP Team for a child who is not participating in the regular education environment or is not anticipated to participate in the regular education environment. **The excusals from IEP Team meetings in § 300.321(e) apply to a regular education teacher who is part of the IEP Team by virtue of the fact that the child with a disability is participating, or may be participating, in the regular education environment.**

*Changes:* None.

*Comment:* Some commenters recommended setting a limit as to how often teachers can be excused from IEP Team meetings. A few commenters recommended prohibiting the excusal of IEP Team members for initial IEP Team meetings. One commenter recommended allowing an IEP Team meeting to occur only if there is one person who cannot attend the meeting.

Many commenters opposed the excusal of teachers, therapists, speech providers, and other experts who work with a child on an ongoing basis. A few commenters stated that regular education teachers should not be excused from IEP Team meetings because they have the content expertise that is critical to the IEP process. One commenter stated that the excusal of an LEA representative should not be allowed.

A few commenters requested guidance to make it more difficult for IEP Team members to be excused from IEP Team meetings. Some commenters stated that excusing IEP Team members should only be done in limited

circumstances and only when absolutely necessary.

Some commenters recommended that the regulations provide an opportunity for the parents to challenge a public agency's attempt to exclude staff members who believe their attendance is necessary at an IEP Team meeting. A few commenters suggested that the regulations prohibit excusal of personnel based on the cost of providing coverage in the classroom for a teacher to attend the IEP Team meeting, disagreements over appropriate services among staff, or scheduling problems. One commenter recommended that the regulations clearly state that teachers cannot be barred from attending an IEP Team meeting.

*Discussion:* We decline to make the changes requested by the commenters because it would be inconsistent with section 614(d)(1)(C) of the Act to set a limit on the number of times an IEP Team member could be excused; prohibit excusals for initial IEP Team meetings; restrict the number of excusals per meeting; prohibit certain IEP Team members from being excused from attending an IEP Team meeting; or otherwise restrict or limit parents and LEAs from agreeing to excuse IEP Team members from attending an IEP Team meeting. Likewise, it would be inconsistent with section 614(d)(1)(C) of the Act for an LEA to unilaterally excuse an IEP Team member from attending an IEP Team meeting.

The public agency determines the specific personnel to fill the roles for the public agency's required participants at the IEP Team meeting. Whether other teachers or service providers who are not the public agency's required participants at the IEP Team meeting can attend an IEP Team meeting is best addressed by State and local officials.

*Changes:* None.

*Comment:* A few commenters asked whether the regular teacher, the special education teacher, principal, or the LEA makes the decision with the parent to excuse an IEP member. Some commenters recommended that the regulations require the excused IEP Team member to agree to be excused from an IEP Team meeting. Other commenters stated that a teacher should be included as one of the parties that decide whether a teacher should be excused from attending the IEP Team meeting.

Numerous commenters recommended that, before an IEP Team member is excused from attending an IEP Team meeting, sufficient notice must be given so that other IEP Team members can consider the request. Some commenters requested that the regulations clarify

whether the entire IEP Team must meet and then agree on whether a member's attendance at the IEP Team meeting is needed.

*Discussion:* It would not be appropriate to make the changes recommended by the commenters. There is no requirement that the excused IEP Team member agree to be excused from the IEP Team meeting, that a teacher be included as one of the parties that decides whether a teacher should be excused from attending the IEP Team meeting, or that other IEP Team members agree to excuse a member's attendance. 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 an IEP Team member from attending an IEP Team 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.

*Changes:* None.

*Comment:* A few commenters recommended that the regulations specifically state that parents retain the right to change their mind to excuse an IEP Team member and have full IEP Team member participation, if it becomes apparent during the IEP Team meeting that the absence of an excused IEP Team member inhibits the development of the IEP. One commenter expressed concern that parents will be informed of excusals at the beginning of a meeting or be given a note, report, or letter from the absent IEP Team member.

*Discussion:* 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, consistent with the requirements of the Act and these regulations. 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.

*Changes:* None.

*Comment:* Several commenters recommended that the regulations specify the amount of time prior to an IEP Team meeting by which notice must

be received by the parent about the LEA's desire to excuse an IEP Team member from attending an IEP Team meeting. A few commenters recommended that an LEA's request for excusal of an IEP Team member be provided to the parent 10 business days prior to the date of the IEP Team meeting and other commenters recommended five business days before an IEP Team meeting.

One commenter recommended that the regulations specify when the parent's written consent to excuse IEP Team members from the meeting must be received by the agency. Many commenters recommended that the regulations include language requiring that any agreement to excuse an IEP Team member from attending the IEP Team meeting be done in advance of the meeting. Some commenters stated that requiring an agreement in advance of an IEP Team meeting would allow the parent to review the IEP Team member's written input prior to the IEP Team meeting and ensure that parental consent is informed. A few commenters recommended that the Act prohibit a written agreement from being signed before the meeting occurs.

*Discussion:* The Act does not specify how far in advance of an IEP Team meeting a parent must be notified of an agency's request to excuse a member from attending an IEP Team meeting or when the parent and LEA must sign a written agreement or provide consent to excuse an IEP Team member. Ideally, public agencies would provide parents with as much notice as possible to request that an IEP Team member be excused from attending an IEP Team meeting, and have agreements or consents signed at a reasonable time prior to the IEP Team meeting. However, this might not always be possible, for example, when a member has an emergency or an unavoidable scheduling conflict. To require public agencies to request an excusal or obtain a signed agreement or consent to excuse a member a specific number of days prior to an IEP Team meeting would effectively prevent IEP Team members from being excused from IEP Team meetings in many situations and, thus, be counter to the intent of providing additional flexibility to parents in scheduling IEP Team meetings. Furthermore, if an LEA requests an excusal at the last minute or a parent needs additional time or information to consider the request, the parent always has the right not to agree or consent to the excusal of the IEP Team member. We, therefore, decline to regulate on these matters.

*Changes:* None.

*Comment:* One commenter requested that the regulations clarify the timeframe in which the written input must be provided to the parent and the IEP Team. Another commenter expressed concern that without knowing whether the information submitted is sufficient to answer any of the parent's questions, the parent could not agree, in any informed way, to excuse an IEP Team member from attending the IEP Team meeting.

Several commenters recommended that written input be provided to parents a reasonable amount of time prior to the meeting and not at the beginning of the meeting. One commenter recommended requiring that parents receive written evaluations and recommendations from the excused member at least 10 business days before the IEP Team meeting. Another commenter recommended that written input be provided at least 10 school days in advance of the meeting; another commenter suggested no later than seven days before the meeting; a few commenters recommended at least five days in advance of the meeting; and some commenters recommended at least three business days before the meeting.

A few commenters recommended requiring public agencies to send parents the written input of excused IEP Team members as soon as they receive it so that parents have sufficient time to consider the input. One commenter recommended that the regulations require the written input to be provided to IEP Team members and parents at the same time.

*Discussion:* Section 614(d)(1)(C)(ii)(II) of the Act requires that input into the development of the IEP by the IEP Team member excused from the meeting be provided prior to the IEP Team meeting that involves a modification to, or discussion of the member's area of the curriculum or related services. The Act does not specify how far in advance of the IEP Team meeting that the written input must be provided to the parent and IEP Team members. For the reasons stated earlier, we do not believe it is appropriate to impose a specific timeframe for matters relating to the excusal of IEP Team members. Parents can always reschedule an IEP Team meeting or request that an IEP Team meeting be reconvened if additional time is needed to consider the written information.

*Changes:* None.

*Comment:* A few commenters recommended language clarifying that IEP Team members who submit input prior to an IEP Team meeting may still attend the meeting. Other commenters requested that the regulations specify