



Missouri Department of Elementary and Secondary Education

— Making a positive difference through education and service —

March 25, 2008

Dr. William W. Knudsen, Acting Director
Office of Special Education Programs
U. S. Department of Education
550 12th Street S.W., Room 4109/5138
Washington, DC 20202-2600

Dear Dr. Knudsen:

As you know, the language in IDEA and implementing regulations provide for when written notice is triggered (i.e. any time the district proposes or refuses to initiate or change the evaluation, identification, placement, or the provision of FAPE). We are seeking clarification of what types of things are covered under the category of "provision of FAPE" for purposes of the written notice requirement.

I am attaching a document in which we have attempted to provide technical assistance on this issue to school districts. We are requesting review of the specific examples provided on that document by OSEP and an indication if each is correct.

In addition to having each of the attached examples addressed, I would appreciate clarification on the following as we are getting many questions regarding this and want to ensure we are not requiring more than IDEA requires, especially given the paperwork burden concerns in the field:

- Is a notice required regarding a change that is requested by a parent? In the circumstance where an LEA is not proposing a change but rather agreeing with a change that has been proposed by a parent, would the LEA be required to provide a notice?
- Is a notice required regarding a change with which the parent agrees, e.g. if during an IEP meeting the team, including the parent, agrees to a change in the student's services, would the LEA be required to provide a notice?
- More generally, is the notice requirement intended to provide the parent with notice of a proposed change with which the parent does not or may not, agree?
- What does a proposal to change the "provision of FAPE" mean in the context of 34 CFR 300.503, i.e. does "provision" refer to the type/amount/location of the service (special education, OT speech, etc.) or is an IEP goal or statement in the present level considered to be a "provision?"

- The comments to the regulations indicate the IEP could be used to satisfy the notice requirement at least in part. Would an LEA meet the requirements of 300.503 if it used its notice form (assuming it met the other requirements) and referenced the IEP document for the change(s)?

Thank you in advance for addressing these questions; there is much interest in the anticipated responses in our state.

Sincerely,

Heidi Atkins Lieberman, Assistant Commissioner
Division of Special Education

lmb

Attachment

c: Marion Crayton, State Contact, OSEP
Larry Ringer, Team Leader, OSEP
Cynthia Quetsch, Legal Counsel, DESE
Pam Williams, Coordinator, DESE
Margaret Strecker, Director, Compliance Section, DESE
Janet Hoskins, Assistant Director, Compliance Section, DESE

When is a Notice of Action Required Under the Category of Free Appropriate Public Education (FAPE)?

Examples that Trigger a Notice of Action

- Changes made to the present level – since the present level is the basis for decision making for the IEP goals, etc, it would be necessary to complete a NOA for changes to present level
- Changes made to special considerations
- Changes made to annual goals, objectives, and benchmarks
- Changes made in services including accommodations and modifications
- Changes made in placement
- Changes related to the provision of alternate state or district-wide assessments (e.g. changing from MAP to MAP-A)
- Developed or revised a Behavior Intervention Plan (BIP)
- Decisions about Extended School Year services (ESY)

Examples that Do Not Trigger a Notice of Action

- Any change that is not a required IEP component does not require a notice of action including:
- Changes made when the MAP test will be given at a different grade and for a different subject
- Changes made when the child has changed grade levels or has had a birthday and his/her age has changed
- Changes made because child's address or phone number has changed
- Change made to the type of IEP (initial or annual)