



Missouri Department of Elementary and Secondary Education

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GUIDANCE LETTER

To: SPOE, Service Coordinators

From: CJ Hubbard, Assistant Director, Part C Special Education Compliance

Subject: Notices of Action

Date: REVISED September 22, 2010

Federal and state regulations implementing Part C of the Individuals with Disabilities Education Act (IDEA) require that the parent of a child birth to three (3) years of age receive **prior written notice** a reasonable time before an agency changes, initiates or refuses to initiate certain activities (i.e., identification, evaluation or placement of the child, or the provision of appropriate early intervention services). Additionally, there are certain activities that cannot be initiated without obtaining the parent's prior written consent.

Clearly written Notices of Action:

- Ensure the parent is informed of proposed decisions;
- Help families take an active role in the decisions that are made on behalf of the child and family; and,
- Ensure the First Steps system is in compliance with the prior written notice requirements of IDEA.

Missouri has two (2) separate Notice of Action Forms:

1. **Notice of Action** (no consent required)
2. **Notice of Action/Consent** (written consent required)

The following two sections provide information regarding the appropriate circumstances in which the First Steps Service Coordinator will utilize each form.

1. **Notice of Action** (No Consent Required)

Service coordinators must provide the parent with a written Notice of Action (no consent required):

- If the parent's request for a service is refused;

- If ongoing assessments are proposed* or the parent’s request for an ongoing assessment is refused;
- If the SPOE refuses to proceed with initial evaluation;
- If the child is found ineligible for First Steps services; or,
- If there is a change in eligibility.*

*Requires waiting period of ten (10) days before implementing the proposed action, unless the parent waives the 10-day requirement. [See Ten-Day Waiver section]

Example “Reason for the Action” on NOA (No Consent Required)

It is important to clearly state the reason(s) for the Notice of Action.

When proposing an ongoing assessment the following reason is appropriate, as applicable:

- To complete an ongoing assessment (list the areas/domains of assessment).

When refusing a parental request the following reasons are appropriate, as applicable:

- To refuse a request for a Nebulizer because it is a medical device and not considered assistive technology;
- To refuse a request for increase in an IFSP service (list the service);
- To refuse a request for an initial evaluation because there is no reason to suspect a half-age delay; or,
- To refuse a request for an ongoing assessment (list the area of assessment).

When notifying the parent their child is ineligible for First Steps the following reason is acceptable, as applicable:

- To inform the parent that after reviewing child’s information s/he does not meet the eligibility criteria for First Steps.

NOTE: A NOA - change in eligibility is used when a child has initially been found eligible for First Steps and subsequently it is determined (e.g., through DESE monitoring or SPOE self assessment) that the decision was made in error, and the child is no longer eligible for First Steps. While rarely used/needed for this purpose, a Notice of Action would be provided to inform the family of the intent to discontinue services due to the fact the child does not meet eligibility requirements.

2. Notice of Action/Consent (Written Consent Required)

Parental consent must be obtained in conjunction with provision of the Notice of Action in these circumstances:

- Prior to conducting the initial evaluation and assessment of a child
- Prior to initiating the provision of any early intervention service, and
- Prior to changing any early intervention service.

Consent means:

- a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication.
- b. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought.
- c. The parent understands that the granting of consent is voluntary on the part of the parent and may be withdrawn at any time.

Consent for initial evaluation and consent for initiation of early intervention (EI) services should **not** be included on the same form. The Service Coordinator must obtain consent for initial evaluation **prior to** conducting the evaluation. On the other hand, the Service Coordinator must obtain consent for initiation of services **after** the IFSP team has determined the need for EI services and **prior** to the services starting.

If in a subsequent meeting (i.e., after the initial IFSP meeting) a new EI service and a change in EI services occur at the same time, consent may be included on the same form since the Service Coordinator must obtain consent for both the initiation of the new service and the proposed change to EI services **after** the IFSP team decision.

If the parent refuses to give consent for the initial evaluation, initiation of EI services or proposed changes to EI services, the SPOE must make reasonable efforts to ensure the parent:

- Is fully aware of the nature of the **evaluation and assessment**, and understands that the child will NOT be able to receive the evaluation and assessment unless consent is given;
- Is fully aware of the nature of the **initiation of the EI service(s)** and understands that the child will NOT be able to receive the new service unless consent is given;
- Is fully aware of the nature of the proposed **change in EI service(s)** and understands that the proposed change will not be implemented unless consent is given.

NOTE: The parent may decline a proposed EI service without jeopardizing other EI services. They may withdraw from a service at any time, even after accepting it, without affecting other EI services.

Example “Reason for the Action” on NOA (Written Consent Required)

When requesting parental consent to conduct the initial evaluation/assessment of a child, the following reason(s) is appropriate:

- To determine eligibility for the First Steps program by conducting initial evaluation of the child's level of functioning in each of the developmental areas: cognitive, communication, social-emotional, physical, adaptive; and
- Assessment of the unique needs in each developmental area for an eligible child.

The Service Coordinator must have the parent's signature and date of consent **prior to** conducting the initial evaluation/assessment activities.

NOTE: For subsequent ongoing assessment(s) parental consent is not required [See NOA (no consent required) example].

When requesting parental consent to *initiate* the provision of early intervention (EI) services, the following reason is appropriate:

- To begin early intervention services listed below.

Note: Be sure to list the EI service(s) on the notice.

Parent will check “consent” or “decline” for each proposed service, and sign.

The Service Coordinator must have the parent’s signature and date of consent **prior to** initiating any early intervention services for the child or the child’s family.

When proposing a *change* in EI services the following examples are appropriate, as applicable:

- To change location of EI services (list the service) from a Special Purpose Center to the home;
- To increase EI services (list the service) from once a week to twice a week;
- To decrease EI services (list the service) from 45 minutes a week to 30 minutes a week.

The Service Coordinator must have the parent’s signature and date of consent **prior to** initiating the proposed change in early intervention services for the child or the child’s family.

Notice of Action is not required when:

- Compensatory services have been authorized for services previously determined necessary in the IFSP, but not provided due to system problems or delays.
Instead: Use case notes and the IFSP to document.
- A funding source is changing.
- A provider is changing.
- A new provider is being added to the IFSP after No Provider Available (NPA) status.
Instead: Use case notes and the IFSP to document.
- A child “ages out” of First Steps.
- An IFSP team meeting or IFSP transition meeting is being scheduled.
Instead: Use the meeting notification form.

Language of Notice of Action

The Notice of Action must be provided in the native language of the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the service coordinator must take steps to ensure that:

- The notice is translated orally or by other means to the parent in the parent’s native language or other mode of communication;
- The parent understands the notice; and
- There is written evidence that the requirements of this paragraph have been met.

If a parent is deaf or blind, or has no written language, the mode of communication normally used by the parent must be provided (such as sign language, Braille, or oral communication).

The Notices of Action have been translated into several languages. These translations may be found at the following link: <http://dese.mo.gov/divspced/FirstSteps/IFSPforms.html>

Parental Rights

State and federal regulations require that a copy of “Parental Rights” be provided each time the parent is given a Notice of Action (see 34 CFR 303.403), and a verbal explanation should accompany the written statement. Parental Rights alert the family to their legal rights related to the proposed or refused action. Therefore, it is important to provide Notices of Action only at times required by IDEA, and not provide them for actions that do not afford the right to challenge the decision through due process.

Ten-Day Waiver

The IDEA requirement to provide written notice **prior** to initiating an action is designed to allow the maintenance of *status quo* (i.e., the conditions or situations which existed) for ten (10) days after a parent receives a Notice of Action (NOA). The parent has the opportunity to decide if they want to request a due process hearing because they disagree with the proposed action. Therefore, if a parent receives a NOA and they request a due process hearing within 10 days of the date of the NOA, the action proposed cannot be initiated until a decision is rendered following the due process hearing. The child’s status remains the same until that decision is rendered, or the due process is withdrawn or resolved through mediation.

The waiver section of the NOA form provides the opportunity for the family to waive this 10-day waiting period if they are in agreement; the proposed activity may then commence immediately. This may be documented by the parent’s signature or by the signature of the Service Coordinator who received the waiver permission from the parent by telephone. In the latter case, the Service Coordinator should document to whom they spoke, the date permission was given, and sign the form.

The Department of Elementary and Secondary Education does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities. Inquiries related to Department programs and to the location of services, activities, and facilities that are accessible by persons with disabilities may be directed to the Jefferson State Office Building, Civil Rights Compliance (Title VI/Title IX/504/ADA/Age Act), 5th Floor, 205 Jefferson Street, Jefferson City, MO 65102-0480; telephone number 573-526-4757 or Relay Missouri 800-735-2966.