

Subject: Written Notice/Guidance from OSEP

Source: Heidi Atkins Lieberman, Assistant Commissioner

Intended Audience: Directors of Special Education, Coordinators of Special Education, Special Education Contacts

Date: September 17, 2008

As you know, last winter there were many questions about when written notice was triggered under the "free and appropriate public education (FAPE)" category. Remember, written notice is required any time you refuse or propose to change or initiate the evaluation, identification, placement, or provision of FAPE.

We attempted to provide guidance on the FAPE category by posting examples on our webpage, and at the same time committed to submitting the question, along with our examples, to the U. S. Department of Education, Office of Special Education Programs (OSEP), to ensure we were not requiring more than that required under the federal regulations implementing the Individuals with Disabilities Education Act (IDEA).

That question was submitted to OSEP on March 25, 2008. That letter is posted on our website at <http://dese.mo.gov/divspeced/NOAssistance.htm>.

We have now received a written response. The response is also posted at the website listed above.

The written response makes clear that a parent agreement and participation in a decision does not relieve a school district from the obligation of providing written notice, if written notice is required.

The rest of the letter was not so clear; in particular, the letter indicates an inability to address the specific examples submitted (those that have been posted on our website since March).

I followed up with staff from OSEP to discuss the specific examples.

Based on that discussion, it does appear we have been requiring written notice more often than necessary. Here is what I know:

Present Level - changes made to the present level do NOT trigger written notice.

Special Considerations - changes made to special considerations do NOT trigger written notice.

Goals - changes made to an existing goal, that does not involve deleting the existing goal, do NOT trigger written notice; changes to goals that involve deleting an existing goal or adding a goal in an area that did not have an existing goal, do trigger written notice (e.g. adding a math goal when there had not been a math goal before or deleting a reading goal that had been in the IEP before).

Services - any change in the type, amount, or location of a service does trigger written notice (always).

Accommodations/Modifications - changes in accommodations/modifications do NOT trigger written notice.

MAP/MAP-A - changes related to the state assessment do NOT trigger written notice.

Behavior Intervention Plan - development of a BIP requires written notice; Revision of an existing BIP does NOT trigger written notice unless focusing on a completely new behavior with new consequences.

Extended School Year (ESY) - adding ESY to the IEP requires written notice; A decision that a child is not to receive ESY does NOT trigger written notice unless the parent has requested ESY.

Please submit any additional examples you would like addressed, and we will attempt to respond to these in a timely manner. You can address those directly to me.

Also, keep in mind that providing a written notice when in doubt, will not raise a compliance concern. You may want to consult with your school district's lawyer to see if there are times they would rather you provide written notice (for litigation purposes), even though DESE does not require it (for compliance purposes).