UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 21 2008

AUG 15 2008

Heidi Atkins Lieberman
Assistant Commissioner
Division of Special Education
Missouri Department of Elementary and Secondary Education
P.O. Box 480
Jefferson City, MO 65102-0480

Dear Ms. Lieberman:

This is in response to your letter of March 25, 2008. Your questions and OSEP's responses are below.

1. Is a notice required regarding a change that is requested by a parent? In the circumstances where an LEA [local educational agency] 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?

OSEP's Response: Yes. Under 34 CFR §300.503, public agencies are required to give the parents of a child with a disability written notice, that meets the requirements of 34 CFR §300.503(b), a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child. The purpose of the written notice requirement is to inform parents of a public agency's final action on a proposal or refusal to initiate or change the identification, evaluation, or educational placement, or the provision of FAPE to a particular child. Regardless of how a change to the above factors is suggested, it is the responsibility of the public agency to make a final decision and actually implement any determined change. Therefore, in the circumstances where a public agency is not proposing a change, but rather agreeing with a change that has been proposed by a parent, the public agency would be required to provide prior written notice to the parent, consistent with 34 CFR §300.503.

2. Is a notice required regarding a change with which the parent agrees, e.g., if during an IEP [individualized education program] meeting the team, including the parent, agrees to a change in the student's services, would the LEA be required to provide a notice?

OSEP's Response: Yes. If, during an IEP meeting, the team, including the parent, agrees to a change in the child's services, the public agency must provide written notice in accordance with 34 CFR §300.503. Providing such notice following an IEP Team meeting where such a change is proposed – or refused – allows the parent time to fully consider the change and determine if he/she has additional suggestions, concerns, questions, and so forth.

3. 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?

OSEP's Response: Nothing in the statute or regulations indicates that the notice is related to a parent's attitude toward any changes proposed or refused by the public agency.

4. 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 services (special education, OT, speech, etc.) or is an IEP goal or statement in the present level considered to be a "provision?"

OSEP's Response: Under 34 CFR §300.17(d), FAPE means, among other things, special education and related services that are provided in conformity with an IEP that meets the requirements of §§300.320 through 300.324. Therefore, a proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of the special education and related services being provided to a child, would trigger notice under 34 CFR §300.503.

5. 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 34 CFR §300.503 if it used its notice form (assuming it met the other requirements) and referenced the IEP document for the change(s)?

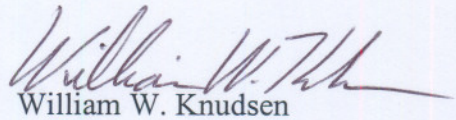
OSEP's Response: Written notice required under 34 CFR §300.503 must meet the content requirement in 34 CFR §300.503(b). The Analysis of Comments and Changes to the regulations indicate that nothing in the IDEA or the regulations would prohibit a public agency from *using* the IEP *as part of* the prior written notice so long as the document(s) the parent receives meets all the requirements in 34 CFR §300.503. (See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46691 (Aug. 14, 2006)).

As noted above, the standard in the regulations is that a prior written notice must be provided a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child. The examples in the guidance document, attached to your questions, do not provide sufficient context for us to answer whether they would trigger the notice requirement in 34 CFR §300.503.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions regarding prior written notice, please do not hesitate to contact Marion Crayton, of my staff, at 202-245-6474.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education
Programs