



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG - 5 2010

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

Dear Ms. Atkins-Lieberman:

This is in response to your March 22, 2010 letter to Patty Guard, former Acting Director of the Office of Special Education Programs (OSEP) at the U.S. Department of Education. In your letter, you ask whether a responsible public agency is required to include the specific category of eligibility in a written notice of action when proposing to initiate services or placement in special education. You also ask whether, if the written notice of action does not require the category of disability to be listed, must a written notice of action be provided when a public agency denies a request from the parent to change the eligibility category.

OSEP understands that the "notice of action" to which you refer is Missouri's form that functions as the Prior Written Notice required under 34 CFR §300.503. This regulation requires that written notice that meets the requirements of 34 CFR §300.503(a) must be given to the parents of a child with a disability a reasonable time before the public agency: (1) proposes 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; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. One of the required elements of this notice is "a description of the action proposed or refused by the agency." 34 CFR §300.503(b)(1).

The Analysis of Comments and Changes to the final Part B of the Individuals with Disabilities Education Act (IDEA) regulations on August 14, 2006 noted that "the prior written notice [must be] provided a reasonable time before the public agency implements the proposal or refusal described in the notice." 71 FR August 14, 2006, p. 46691. The purpose of such advance notice is to provide the parent sufficient time to consider the proposal or refusal and respond prior to implementation of the proposed action, or in response to a refusal to take a requested action. In order for the parent to make his or her decision, she or he must be clear on the action being proposed or refused. In the case of a proposal to identify a child as having a disability under 34 CFR §300.8 (eligibility for special education and related services in your question), OSEP would expect that the Prior Written Notice, in order to fully explain the actions being proposed would include the proposed category of disability, if applicable (some States have noncategorical identification), along with the proposal to initiate services or placement in special education.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Additionally, if the parent requests a change in identification (category of disability or from a child with a disability to a child without a disability) and the public agency refuses the parent's request, Prior Written Notice must be provided and must include a description of the action being refused which, in the case of identification, would include the category of disability being refused and could include, as part of the explanation of reasons for the refusal, the category of disability under which the public agency believes the child remains eligible.

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.

I hope this information is helpful. If you have further questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive, flowing style.

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs