

HANDOUT 1




PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | June St. Clair Atkinson, Ed.D., *State Superintendent*

WWW.NGPUBLICSCHOOLS.ORG

October 15, 2010

TO: Directors, Exceptional Children Programs
Directors, Charter Schools

FROM: Mary N. Watson, Director 

PRIOR WRITTEN NOTICE

Attached is a *Questions and Answers* document issued by the United States Department of Education, Office of Special Education Programs (OSEP) which gives guidance and examples related to the provision of the prior written notice. This document was provided at the 2009 Exceptional Children Division Conference Administrators' Institute and has been provided at Regional Meetings. School systems and school teams should review each question and answer, with particular attention given to question four (4) that addresses the proposal or refusal to change the provision of a free appropriate public education (FAPE). A change in the provision of FAPE usually means a change in the Individualized Education Program (IEP).

As noted in the examples of the changes in the provision of FAPE, a situation in which the team changes the goals in a particular skill area would not require prior written notice, i.e., a change in a particular goal for Basic Reading Skills. However, adding or removing a particular skill or domain would require prior written notice, i.e. removing a goal for Basic Reading Skills or adding a goal for Reading Fluency. A change in the frequency, location or duration of services would also require prior written notice.

Please ensure that school staff receive a copy of this *Questions and Answers* document. If there are questions or concerns, please contact Ira Wolfe at 919.807.3976 or iwolfe@dpi.state.nc.us; or Kate Neale at 919.807.3979 or kneale@dpi.state.nc.us.

Attachment

MNW/IBW:iw

EXCEPTIONAL CHILDREN DIVISION

Mary N. Watson, *Director* | mwatson@dpi.state.nc.us

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AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER



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

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.

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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

HANDOUT 2: This information was taken from pages 3-5 of the following document. The complete document is located at <http://idea.ed.gov/>

**IDEA PART B SUPPLEMENTAL REGULATIONS ISSUED DECEMBER 1, 2008 AND
EFFECTIVE DECEMBER 31, 2008**

NON-REGULATORY GUIDANCE

April 2009

**Office of Special Education Programs
Office of Special Education and Rehabilitative Services
U.S. Department of Education**

PURPOSE OF THIS GUIDANCE

This guidance provides State educational agencies (SEAs), local educational agencies (LEAs), parents and advocacy organizations with detailed information, including implementation considerations, concerning the Part B final supplemental regulations published in the Federal Register on December 1, 2008 and effective on December 31, 2008.

The final supplemental regulations clarified and strengthened current regulations in 34 CFR Part 300 governing the Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities Program, as published in the Federal Register on August 14, 2006, in the following areas:

(1) parental revocation of consent for continued special education and related services; (2) positive efforts to employ and advance qualified individuals with disabilities; (3) non-attorney representation in due process hearings; (4) State monitoring and enforcement; (5) State use of targets and reporting; (6) public attention; and (7) sub-grants to LEAs, base payment adjustments, and reallocation of LEA funds.

The changes that were made to the regulations were necessary for the effective implementation and administration of the programs. This non-regulatory guidance does not impose any requirements beyond those required under applicable law and regulations. The Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA or Act), its implementing regulations, and other important documents related to the IDEA and the regulations can be found at <http://idea.ed.gov>.

I. Parental Revocation of Consent for Continued Special Education and Related Services (§§300.9 and 300.300)

Sections 300.9 and 300.300 have been amended to permit parents to unilaterally withdraw their children from further receipt of special education and related services by revoking their consent for the continued provision of special education and related services to their children. Under these final supplemental regulations, a public agency is not able, through mediation or a due process hearing, to challenge the parent's decision or seek a ruling that special education and related services must continue to be provided to the child. These provisions require that parental revocation of consent must be **in writing** and upon revocation of consent a public agency must provide the parent with prior written notice in accordance with §300.503 before ceasing the provision of special education and related services. (Authority: 20 U.S.C. 1414(a)(1)(D))

These regulations implement provisions of the IDEA only. They do not attempt to address any overlap between the protections and requirements of the IDEA and those of Section 504 of the Rehabilitation Act of 1973, as amended, and Title II of the Americans with Disabilities Act, as amended.

Implementation considerations:

- Amendment of records: Section 300.9(c)(3) (providing that a public agency is not required, because a parent revokes consent for continued services, to amend a child's education records to remove references to the child's receipt of special education and related services) does not affect the rights provided to parents in the confidentiality provisions in §§300.618 through 300.621, including the opportunity to request amendments to information in education records that is inaccurate or misleading, or violates the privacy or other rights of a child.
- Procedures: States may choose to establish additional procedures for implementing §300.300(b)(4) (concerning a public agency's response to a parental revocation of consent for continued services), such as requiring a public agency to offer to meet with parents to discuss concerns for their child's education. However, States must ensure that any additional procedures are voluntary for the parents, do not delay or deny the discontinuation of special education and related services, and are otherwise consistent with the requirements under Part B of the Act and its implementing regulations.
- Age of Majority: If State law grants a child who has reached the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law) all rights previously granted to parents, then the parents' rights are transferred to the child as provided in §300.520(a), enabling that child to revoke consent for special education and related services under §300.300(b)(4). In accordance with section 615(m)(1) of the Act and §300.520(a)(1)(i), the public agency must provide any notice required under Part B of the Act to both the child and the parents. Therefore, the parents would receive prior written notice, consistent with §300.503, of the public agency's proposal to discontinue special education and related services based on receipt of the written revocation of consent from a child to whom rights transferred under §300.520(a).
- Revocation of consent for a particular service: If a parent disagrees with the provision of a particular special education or related service and the parent and public agency agree that the child would be provided with a free appropriate public education (FAPE) if the child did not receive that service, the public agency should remove the service from the child's individualized education program (IEP) and, since it does not disagree with the parents, would not have a basis for using the procedures in Subpart E of the regulations to require the service be provided to the child. If, however, the parent and public agency disagree about whether the child would be provided FAPE if the child did not receive a particular special education or related service, the parent may use the due process procedures in Subpart E of the regulations to obtain a ruling that the service with which the parent disagrees is not appropriate for their child.
- Subsequent parental request for evaluation: After revoking consent for his or her child, a parent always maintains the right to subsequently request an initial evaluation to determine if the child is a child with a disability who needs special education and related services. If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, an LEA must treat this request as a request for an initial evaluation under §300.301 (rather than a reevaluation under §300.303).
- Discipline: When a parent revokes consent for special education and related services under §300.300(b), the parent has refused services as described in §300.534(c)(1)(ii); therefore, the public

agency is not deemed to have knowledge that the child is a child with a disability and the child may be disciplined as a general education student and is not entitled to the IDEA's discipline protections.

- Accommodations: Nothing in §300.300(b)(4) would prevent a general education teacher from providing a child whose parent has revoked consent for the continued provision of special education and related services with accommodations that are available to non-disabled children under relevant State standards. However, once a parent revokes consent under §300.300(b)(4), a teacher is not required to provide the previously identified IEP accommodations in the general education environment.
- Accountability: A child whose parent has revoked consent for special education and related services is considered a general education student who has exited special education for purposes of accountability determinations under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. States may continue to include a child whose parent has revoked consent for special education and related services in the students with disabilities subgroup for purposes of calculating adequate yearly progress for two years following parental revocation of consent under the provisions of 34 CFR §200.20(f)(2)(i).
 - States may continue to include a child whose parent has revoked consent for special education and related services in the students with disabilities subgroup for purposes of calculating adequate yearly progress for two years following parental revocation of consent under the provisions of 34 CFR §200.20(f)(2)(i).