



**UNITED STATES DEPARTMENT OF EDUCATION**

**OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES**

June 9, 2010

Mr. Eric Broussides, Esc.  
Carney, Kelehan, Bresler, Bennett and Scherr, LLP  
Attorneys at Law  
10715 Charter Drive, Suite 200  
Columbia, MD 21044

Dear Mr. Broussides:

This is in response to your March 29, 2010 letter to Patricia Guard, former Acting Director of the Office of Special Education Programs at the U.S. Department of Education. In your letter, you ask whether Part B of the Individuals with Disabilities Education Act (IDEA) requires a public agency to maintain contemporaneous written documentation that the services, accommodations, and modifications contained in a child's individualized education program (IEP) are delivered, and whether a school district's failure to maintain such documentation would constitute noncompliance with the IDEA.

Under Part B of the IDEA, States and their public agencies (including local school districts) must ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing in the State in mandatory age ranges, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d). 34 CFR §§300.101(a) and 300.201. Under 34 CFR §300.17, FAPE includes, among other elements, special education and related services, provided at public expense, under public supervision and direction, and without charge, in conformity with an individualized education program (IEP) that meets the requirements in 34 CFR §§300.320 through 300.324.

Part B does not contain specific requirements for public agencies to document that a child with a disability has been provided with FAPE in accordance with the child's IEP. However, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 and 80 are applicable to the Part B program. Section 76.731 requires that a State and a subgrantee must keep records to show its compliance with Federal legal requirements. Section 80.42(b) specifies that financial and programmatic records must be retained for three years.

Consistent with the EDGAR provisions cited above, States and public agencies must maintain documentation sufficient to ensure that a public agency provides FAPE to a child with a disability in accordance with the child's IEP. A State determines the form of documentation deemed sufficient to demonstrate whether its public agencies are in compliance with this requirement. Thus, whether a school district is required to maintain "contemporaneous written documentation" to demonstrate that a child with a disability received the services in the child's IEP would be determined by the State.

Page 2 — Mr. Eric Brousaides, Esq.

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 to you. If you have further questions, please do not hesitate to contact Dwight Thomas at 202-245-6238 or by email at [Dwight.Thomas@ed.gov](mailto:Dwight.Thomas@ed.gov).

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive style with a large, looped initial "A".

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

cc: State Director of Special Education