



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

Dated November 30, 2007

Ms. Kathy Clayton
Special Programs
Texas Education Agency
W.B. Travis Building, Room 6-127
1701 N. Congress Avenue
Austin, TX 78701-1494

Dear Ms. Clayton:

In an October 17, 2007 e-mail message, you inquired about the Procedural Safeguards notice model form developed by the Office of Special Education Programs (OSEP) that was posted on the Department's website at <http://www.ed.gov/policy/speced/guid/idea/modelform-safeguards.pdf> on August 11, 2006. Specifically, you asked, "Are all of the elements in the OSEP Procedural Safeguards model document legally required?"

Pursuant to Section 617(e) of the Individuals with Disabilities Education Act (IDEA), the Department published the model form for the procedural safeguards notice required under section 615(d) of the IDEA. This model form reflects the statutory and regulatory requirements for a State to include in the copy of procedural safeguards available to the parents of a child with a disability. Under 34 CFR §300.504(a), a copy of the procedural safeguards available to the parents of a child with a disability that reflects the information contained in 34 CFR §300.504(c) must be given to the parents only one time a school year, except that a copy must also be given to parents under the additional circumstances specified in 34 CFR §300.504(a), including upon receipt of the first State complaint or due process complaint in a school year.

The Department provided the following explanation of the model form in the Analysis of Comments and Changes accompanying publication of the final regulations for the Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities program in the Federal Register:

We are aware of the fact that over the years there has been much confusion about exactly what must be included in the procedural safeguards notice. To help clear up this confusion, the Department is publishing a model procedural safeguards notice on its Website today in accordance with section 617(e) of the Act. In addition to making this model procedural safeguards notice available on the Department's Web site, we also are amending the cross-references in §300.504(c) to identify the specific regulatory provisions that include procedural safeguards for

which an explanation must be provided in the procedural safeguards notice. 71 Fed. Reg. 46540, 46693 (Aug. 14, 2006).

As indicated in the model form itself, some aspects of a State's model procedural safeguards notice would need to be tailored to State-specific conditions, i.e., a State that has a one-tier due process system would not need to include information about the right of an aggrieved party to appeal to the State educational agency (SEA) if the second tier of review is not available in that State. Similarly, a State's procedural safeguards notice form would not have to include information about the 90-day Federal timeline that a party has to bring a civil action when the State has established an explicit limitation for bringing a civil action.

Although States are not required to use the model procedural safeguards notice form itself, each State must ensure that the information contained in the Department's model form, which is cross-referenced in 34 CFR §300.504(c), is communicated to parents when a State is required by 34 CFR §300.504(a) to provide a copy of the procedural safeguards available to the parents of a child with a disability. A State that chooses not to use the Department's model form for its procedural safeguards notice must ensure that the method selected for providing a copy of the procedural safeguards available to the parents of a child with a disability provides the information that reflects the requirements in section 615(d) of the IDEA and 34 CFR §300.504(c) that is included in the Department's Procedural Safeguards model form.

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.

We hope that you find this explanation helpful and look forward to our continued collaboration with the Texas Education Agency to support your work to improve results for children with disabilities and their families. If you have any further questions, please contact Matthew Schmeer at (202) 245-6755.

Sincerely,

/s/

Patricia J. Guard
Acting Director
Office of Special Education
Programs