

April 26, 2012

Cindy E. Chandler  
Executive Director  
Family Soup  
1650 Sierra Avenue, Suite 106  
Yuba City, California 95993

Dear Ms. Chandler:

This is in response to your November 3, 2011 letter to Mr. Larry Ringer in the Office of Special Education Programs (OSEP) asking whether prior written notice is required when a school district proposes or refuses the provision of a free appropriate public education (FAPE) in an individualized education program (IEP) meeting, or when a child moves from elementary school to high school.

Under 34 CFR §300.503(a), written notice that meets the requirements of 34 CFR §300.503(b) 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 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. This notice must be provided in either of these circumstances, irrespective of whether or not the proposal or refusal is made during the course of an IEP Team meeting, pursuant to 34 CFR §§300.320-300.324.

A local educational agency (LEA) must provide prior written notice when a school district proposes or refuses to initiate or change the provision of FAPE in an IEP Team meeting. There is no requirement in the Individuals with Disabilities Education Act (IDEA) regarding the point at which the written notice must be provided as long as it is provided a reasonable time *before* the LEA actually implements the action. This provides parents, in the case of a proposal or refusal to take action, a reasonable time to fully consider the change and respond to the action before it is implemented. Providing prior written notice in advance of an IEP team meeting could suggest, in some circumstances, that the public agency's proposal or refusal was determined before the meeting and without parental consent.<sup>1</sup> Some LEAs provide prior written notice following the IEP Team meeting. Other LEAs include the prior written notice when they send a copy of the IEP to the parents, recognizing that action cannot be taken until the parents have a reasonable time to respond to the proposal or refusal before it is implemented.

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<sup>1</sup> See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46691 (August 14, 2006).

Under 34 CFR §300.503(b)(1) and (b) (2), the prior written notice must include a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action. Prior written notice must also include a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of the other options that the IEP Team considered; the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal. See 34 CFR §300.503(b)(3),(6) and (7).

You have also asked if an LEA must provide prior written notice when the placement changes from elementary school to high school. As most children do not go from elementary school to high school, we are assuming that you are asking about placement changes from elementary school to middle school. It is the Department's longstanding position that maintaining a child's placement in an educational program that is substantially and materially similar to the former placement is not a change in placement.<sup>2</sup> Therefore, if the child's educational program in the middle school is substantially and materially similar to the child's educational program in the elementary school, and the child is moving from elementary school to middle school because that is the normal progression for all students, there would be no requirement to provide prior written notice under 34 CFR §300.503. There may be occasions when prior written notice would be required if, for example, the child would not be attending the middle school he or she would normally attend, pursuant to the decision of the group of persons responsible for determining the child's educational placement. See 34 CFR §300.116(c). Additionally, under 34 CFR §300.102(a)(3)(iii), graduation from high school with a regular high school diploma constitutes a change in placement, requiring prior written notice in accordance with 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, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

*/s/ Melody Musgrove*

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Melody Musgrove, Ed.D.

Director

Office of Special Education Programs

cc: State Director of Special Education

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<sup>2</sup> See *Id.*, at 46588-46589.