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Timelines for Evaluations

Referral: Parent or professional identifies a child as possibly needing special education and related services.

Consent: Within 5 school days of the receipt of a referral, the school district notifies the parent and asks for written consent to evaluate.

Evaluation: Within 30 school days of written parental consent, credentialed trained specialists complete the evaluation.

Team Meeting within 10 school days from receiving the evaluations

How often can I ask the school to evaluate?

34 CFR §300.303 Reevaluations.

(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved

academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(Authority: 20 U.S.C. 1414(a)(2))

Services must start when school starts

If your school district tells you that your child's services won't begin right away as the school year commences, share the following Office for Civil Rights information with them:

“A complaint alleged that a school district failed to provide to a student the occupational therapy and paraprofessional services specified in the student's Individualized Education Program. In investigating this allegation, OCR discovered that the school district's practice was to delay the start of these services at the beginning of the school year for all students with disabilities. The district agreed to take steps to ensure that, when education plans required related aids and services, the plans would be implemented and services and aids be delivered as soon as the school year began.”

U.S. Department of Education Annual Report to Congress - Office for Civil Rights

Washington, DC. 2007 ALSO

Schools are required to start services on the FIRST DAY of school, and if they are unable to do so they must advise you (the parent) of this IN WRITING.

Another common school district game is when the teacher or therapists claim to be unaware of the specific IEP services that the child must receive. For example, the IEP says the child is to receive 1-to-1 speech therapy and yet the speech therapist provides group therapy. Or the IEP says the child is to receive pull-out therapy and yet the therapy is provided in the classroom. In such cases, the excuse that is frequently given is the teacher or therapist has not seen the IEP and this somehow absolves them or the school district of any responsibility.

Federal special education law clearly states that the school district must make the IEP available to each staff person responsible for its implementation. The applicable regulation is 34 CFR 300.323(d) and states that each public agency must ensure that:

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

I have had some questions around "having" to give out medical insurance info to schools. Below are the IDEA 2004 regulations on this topic.

34 CFR 300.154

(d) *Children with disabilities who are covered by public benefits or insurance.*

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv)(A) Must obtain parental consent, consistent with §300.9, each time that access to public benefits or insurance is sought; and

(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) *Children with disabilities who are covered by private insurance.* (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with §300.9.

(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must—

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(f) *Use of Part B funds.* (1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

(g) *Proceeds from public benefits or insurance or private insurance.* (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.

(h) *Construction.* Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(12) and (e))

Special Education

Memorandum on the Implementation of 603 CMR 28.05(7): Parent response to proposed IEP and proposed placement

To: Special Education Administrators, Directors of Charter Schools, Parents of Students with Disabilities, Directors of Approved Special Education Schools, and Other Interested Parties

From: Marcia Mittnacht
State Director of Special Education

Date: December 1, 2006

Department of Education staff in the Program Quality Assurance Services office and the Special Education Planning and Policy Development office have received numerous questions related to implementation standards regarding providing an IEP "immediately following" its development in a Team meeting. Although verbal guidance has been provided regarding the "immediate" standard, the Department is issuing this best practice guidance to school districts and parents to address these questions.

Background: Former state special education regulations in effect prior to 2000 provided ten school working days from development of the IEP to delivery of the IEP to the parent. In the 1998 monitoring of Massachusetts by the USDOE Office of Special Education Programs (OSEP), OSEP found that the IEP development and delivery process in Massachusetts was resulting in implementation delays and misunderstandings regarding the agreements of the IEP meeting and the subsequently-delivered IEP. Massachusetts addressed this finding through training, technical assistance, corrective actions in districts, and a change to the regulation on the period of time between the development and delivery of the IEP, incorporating the word "immediately" into the regulation at 603 CMR 28.05(7) in amendments adopted in 2000.

Current Practice: Since 2000, an IEP provided to a parent within 3-5 days of the Team meeting fulfills the requirement for "immediate" delivery of the IEP to the parent, and the parent has an additional 30 days to respond to the proposed IEP.

Guidance: Currently, most districts have the technology or resources that make it possible to present at least the key service components of an IEP to the parents as they leave the IEP development Team meeting. This is referred to as a "summary." At a minimum, this summary of the decisions and agreements reached during the Team meeting must include:

- (a) a completed IEP service delivery grid describing the types and amounts of special education and/or related services proposed by the district, and
- (b) a statement of the major goal areas associated with these services.

By providing parents with this summary at the conclusion of the Team meeting, in the Department's opinion the district has complied with the requirement to provide the parent with the key decisions and agreements immediately. The district may then take no more than two calendar weeks (this reflects the former ten school working days standard) to prepare the complete IEP for the parent's signature and for the student's records (both home and school).

The role of the parent: The parent is under no obligation to wait to receive the complete IEP to begin considering whether to consent to the proposed IEP services and goals. We urge parents to begin their consideration while developing the IEP in the Team meeting, and to respond to the district's request for consent as soon as they are ready to do so. The district's delivery of a summary at the IEP meeting, and any additional time needed to deliver the complete IEP, does not delay the parent's right and opportunity to respond promptly to the proposed IEP.

The district's use of a summary report prior to providing the complete IEP *must* be acceptable to the parent. There may be circumstances when the parent is ready to accept the IEP immediately in order to begin services for the student. In this case, parents may ask the district for the completed IEP in order to begin implementation of IEP services as soon as possible. Districts must respond to such requests with a complete IEP within 3-5 days of the Team meeting at which it was developed. However, since we encourage districts and parents to schedule IEP development meetings in advance of the time period of the proposed IEP service delivery, we believe that in most cases the immediate provision of a summary with a complete IEP provided shortly thereafter will be acceptable to the parent.

If the above approach is used, the Department will consider that the district has met the requirement under 603 CMR 28.05(7) to provide the parent with the IEP immediately following its development.

Last Updated: December 4, 2006

30 days to sign IEP

The Mass regulation on parent response is:

603 CMR 28.05(7)

"(a) No later than 30 days after receipt of the proposed IEP and proposed placement, the parents shall: Accept or reject the IEP in whole or in part; request a meeting to discuss the rejected portions of the IEP or the overall adequacy of the IEP; or if mutually agreed upon, accept an amended proposal; and accept or reject the proposed placement.

The Mass regulation on "day" is:

603 CMR 28.02(5)

"Day shall mean calendar day unless the regulation specifies school day, which shall mean any day, including a partial day, that students are in attendance at school for instructional purposes. "

34 CFR 300-321

(e) IEP Team attendance. (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Evaluation reports

Massachusetts regulation

603 CMR 28.04(2)(c)

Reports of assessment results. Each person conducting an assessment shall summarize in writing the procedures employed, the results, and the diagnostic impression, and shall define in detail and in educationally relevant and common terms, the student's needs, offering explicit means of meeting them. The assessor may recommend appropriate types of placements, but shall not recommend specific classrooms or schools. Summaries of assessments shall be completed prior to discussion by the Team and, upon request, shall be made available to the parents at least two days in advance of the Team discussion at the meeting occurring pursuant to 603 CMR 28.05(1).

IDEA 2004 Regulations

34 CRF 300.321(e)

IEP Team attendance.

(1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the

curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

(Authority: 20 U.S.C. 1414(d)(1)(B)-(d)(1)(D))

IEP STAY PUT

603 CMR 28.08(7) Student's right to IEP services and placement.

In accordance with state and federal law, during the pendency of any dispute regarding placement or services, the eligible student shall remain in his or her then current education program and placement unless the parents and the school district agree otherwise.