



Office of the



State Superintendent of Education

August 30, 2011

Dear LEA Leaders,

Welcome to the start of the 2011-2012 school year! I am thrilled to continue building a strong partnership between OSSE and your LEA – our collaboration is critical to ensuring the success of the children and families that we all serve.

I am very pleased to share with you OSSE's Individualized Education Program (IEP) Process Policy, our first policy release of the year. This policy, effective today, is designed to assist LEAs with addressing concerns identified by both the federal Office of Special Education Programs (OSEP) and the Blackman Jones Evaluation Team regarding current rates of local education agency (LEA) compliance with the Individual with Disabilities Education Act (IDEA). Audited data revealed that student records did not consistently demonstrate that IEP Teams included all of the participants required by the IDEA, and furthermore, that convened IEP Teams did not understand the legal obligations involved in developing compliant IEPs. The attached policy provides the clarifications necessary to improve compliance by:

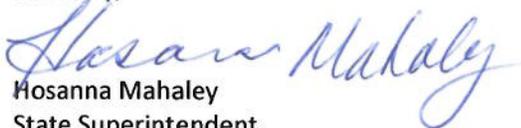
- Restating federally mandated factors of consideration when developing, reviewing and revising an IEP, 34 CFR §300.324(a)(1) and (2) (p. 1-2);
- Distinguishing between IEP Team participation and the legal requirement for parental consent prior to the initial provision of services as required by 34 CFR §300.300(b) (p. 2);
- Specifying explicit categories for mandatory and additional IEP Team participants that align to the intent of 34 CFR §300.321 (p. 2-5);
- Affirming the responsibility of the LEAs to participate in IEP Team meetings convened by nonpublic schools, 34 CFR §300.325(b)(2) (p. 3);
- Restating prior written notice requirements for changes to an IEP, 34 CFR §300.503 (p. 5-6); and
- Establishing standards for the demonstration of sufficient documentation of IEPs, which improves accuracy of student records and supports requirements for the timely transmittal of student records, 34 CFR §300.323(g) (p.7).

Issuance of this policy allows for LEAs to:

- 1) Improve overall compliance with IEP development and implementation;
- 2) Ensure alignment between practice and the upcoming SEDS release;
- 3) Address concerns raised by the Blackman Jones court monitor; and
- 4) Address key Corrective Action Plan (CAP) elements required by OSEP.

I hope that you will circulate the attached policy to all staff upon receipt.

Sincerely,


Hosanna Mahaley
State Superintendent



Office of the
State Superintendent of Education



AUGUST 30, 2011

(X) ACTION REQUIRED
() INFORMATIONAL

TO: Local Educational Agencies

CC: Public Charter School Board
De'Shawn Wright, Deputy Mayor of Education

FROM: Hosanna Mahaley, State Superintendent of Education 

RE: Individualized Education Program (IEP) Process Policy

CONTACT: Amy Maisterra, Interim Assistant Superintendent for Special Education
Division of Special Education
Email: Amy.Maisterra@dc.gov
(202) 481-3757
OR
Grace Chien, LEA Policy and Charter Implementation Specialist
Division of Special Education
Email: Grace.Chien@dc.gov
(202) 741-5089

INTRODUCTION

The purpose of this Memorandum is to assist local educational agencies (LEAs) with the implementation of the Part B requirements of the Individuals with Disabilities Education Act (IDEA) regarding individualized education programs (IEPs) for students with disabilities. It is the expectation of the Office of the State Superintendent of Education (OSSE) that all LEAs ensure that IEP Teams engage annually in the IEP process to develop compliant IEPs that are timely and include the participation of all appropriate IEP Team members.

MONITORING AND COMPLIANCE

The U.S. Department of Education's Office of Special Education Programs (OSEP) requires that every state education agency (SEA) monitor LEAs to ensure compliance with Part B of the IDEA. A finding of LEA noncompliance by OSSE will result in the requirement to submit an improvement plan containing corrective actions for each area of noncompliance. OSSE may also recommend or require training and technical assistance for LEA staff when crafting corrective actions. All items of noncompliance shall, by federal law, be corrected within one year of the finding; sustained noncompliance by an LEA may result in sanctions that include potential withholding of Part B grant funding.¹ All LEAs shall comply with monitoring requirements established annually by OSSE, which include the collection and submission of both quantitative and qualitative data that support monitoring for regulatory compliance and programmatic quality. Additionally, a subset of LEAs will be selected for OSSE's annual focused monitoring process.

FEDERALLY MANDATED FACTORS OF CONSIDERATION WHEN REVIEWING AND REVISING AN IEP

The IEP process is an opportunity for parents, teachers, LEA personnel, evaluators, and related services providers to pool their collective team knowledge and expertise to ensure that students with disabilities are

¹ 34 C.F.R. §300.604(a)



provided a free appropriate public education (FAPE) in the least restrictive environment (LRE). Where appropriate, students should be encouraged to participate as members of their IEP Teams in order to contribute feedback and ideas to the design of their programs. Together, IEP Team members develop an effective educational program, enumerated in the IEP document, which results in the delivery of specialized instructional supports, appropriate accommodations, and related services to help a student with disabilities access the curriculum and make meaningful educational progress.

IEP Teams shall consider the following factors when developing, reviewing, and revising an IEP:

- The strengths of the student;
- The concerns of the parents for enhancing the education of the student;
- The results of the initial or most recent evaluation of the student; and
- The academic, developmental, and functional needs of the student.²

When appropriate, the IEP Team shall consider the following additional factors:

- The use of positive behavioral interventions, supports, and other strategies to address student behavior that impedes the student's learning or that of other students;
- The language needs of a student with limited English proficiency as those needs relate to the student's IEP;
- The appropriateness of instruction in Braille or the use of Braille for a student who is blind or visually impaired; the comprehensive language and communication needs of a student who is deaf or hard of hearing; and
- The use of assistive technology devices and services.³

IEP TEAM MEMBER PARTICIPATION AND PARENTAL CONSENT

For the purposes of this policy, the term *participation* is defined as an opportunity for an individual to attend an IEP Team meeting and provide input toward IEP Team consensus. The term *input*, used in the context of an IEP Team meeting, refers to recommendations based on relevant historic and current student data derived from familial, academic, or service-based interactions. In the context of IEP Team meetings, the opportunity to provide input is distinct from unilateral decision-making. Decisions regarding eligibility or designation of special education and related services under Part B shall be made through IEP Team consensus. The term *consensus*, used in the context of an IEP Team meeting, refers to broad agreement reached through group decision-making such that the opinions of all IEP Team members are considered. However, no one team member can prevent the IEP Team from proceeding as a whole if there is general consensus.

IEP Team members demonstrate their participation in the IEP Team meeting by signing the IEP Meeting Participants Section of the IEP document. The signature of any participant, including the parents, does not constitute agreement or disagreement, in whole or in part, with the content of the resulting IEP document. Individual participant disagreement with the IEP Team consensus on any single issue does not prevent the IEP Team from proceeding with the IEP process as a whole or completing the IEP document. LEAs may not begin to provide special education and related services if the parent has not provided consent for the initial provision of services following the initial determination of eligibility.

² 34 C.F.R. §300.324(a)(1)

³ 34 C.F.R. §300.324(a)(2)



Office of the



State Superintendent of Education

PARENTAL DISAGREEMENT AND DISPUTE PROCEDURES

The terms set forth in an annual IEP review are not invalidated, in whole or in part, by disagreement from any participant, including the parent. A parent who disagrees with an IEP Team decision regarding the student's eligibility, evaluation, placement, or terms of service may challenge the decision by exercising the rights afforded to all parents under the Part B procedural safeguards including dispute resolution options such as the state complaint process, due process complaints, and impartial mediation to resolve any disagreements at the LEA level. If disagreement about an IEP Team decision arises after the parent's consent to the initial provision of services and development of the IEP, a parent may revoke consent.⁴ A parent who revokes consent for Part B services does so fully for all special education and related services listed on the student's IEP.⁵

IEP TEAM PARTICIPATION REQUIREMENTS

Mandatory Participants

The term *mandatory participant* refers to an individual whom the LEA shall ensure is included as a member of the IEP Team because he or she fulfills a team role explicitly identified by the IDEA.⁶ The following individuals are mandatory participants:

Parents of the student:⁷ Parents are important members of the IEP Team because, typically, they can offer unique insight regarding the student's strengths and needs, interests, and learning style. Parents can also enhance the student's overall learning experience and performance by providing an educational structure within the family home that is consistent with and builds upon the skills and curriculum that the student is learning at school. To adequately facilitate parent participation, the LEA shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend and schedule the IEP Team meeting at a mutually agreed on time and place.⁸ If neither parent can attend an IEP Team meeting, the meeting may be conducted without parent participation if the LEA exercises reasonable efforts to secure the parent's agreement to participate. *Reasonable efforts* are defined as a minimum of three attempts using multiple modalities (e.g. phone, mailed correspondence, and in-person) by the LEA.⁹ The LEA shall document all attempts to contact the parent in the Special Education Data System (SEDS). The LEA shall also take whatever action necessary to ensure that the parent can understand the discussion and content of the IEP Team meeting, including arranging and providing translation services when needed.¹⁰

General education teacher of the student:¹¹ The general education teacher is an important member of the IEP Team because he or she can serve as a primary resource for information regarding the general education curriculum, positive behavioral interventions and supports, strategies for annual goal attainment, and potential opportunities for inclusion both inside and outside of the classroom.¹² A

⁴ 34 C.F.R. §300.300(b)(4). Note that disagreement about an IEP Team decision is not necessary in order for a parent to revoke consent; a parent may revoke consent at any time for any reason.

⁵ "Under § 300.300(b)(1), parental consent is for the initial provision of special education and related services generally, not for a particular service or services." 73 Fed. Reg. 73011 (December 1, 2008)

⁶ 34 C.F.R. §300.321(a) and (b)

⁷ 34 C.F.R. §300.321(a)(1); the definition of parent can be found at 34 C.F.R. §300.30. The definition of a foster parent is augmented by District of Columbia law at 5 DCMR §E-3001.1.

⁸ 34 C.F.R. §300.322(a)

⁹ 34 C.F.R. §300.322(d); OSSE's Part B Initial Evaluation/Reevaluation Policy (March 22, 2010)

¹⁰ 34 C.F.R. §300.322(e)

¹¹ The LEA must ensure that the IEP Team for each student with a disability includes not less than one regular education teacher of the student if the student is, or may be, participating in the regular education environment. 34 C.F.R.

§300.321(a)(2)

¹² 34 C.F.R. §300.320(a)(4); 34 C.F.R. §300.324(a)(3)



Office of the



State Superintendent of Education

general education teacher's participation is especially important when the IEP Team is considering eligibility under the specific learning disability (SLD) category or a change to the student's existing level of service.

Special education teacher of the student:¹³ The special education teacher is an important member of the IEP Team because he or she can contribute both specific information regarding the individualized needs of the student, and more general information on how to educate students with disabilities based on past teaching experiences. The special education teacher may provide suggestions on how to modify the general curriculum, utilize supplementary aids and services, monitor student progress, and identify appropriate testing accommodations. Additionally, the special education teacher often provides specialized instruction, including instruction that is designated as extended school year (ESY) services.

LEA representative: The LEA representative is an important member of the IEP Team because he or she is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of the student, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the LEA.¹⁴ The LEA representative is often the head administrator of the LEA's special education program or his or her designee. The LEA representative should have the authority to commit resources and ensure that the services designated in the IEP are provided. (Note: District Charters¹⁵ shall invite a representative from the District of Columbia Public Schools (DCPS) to participate in all IEP Team meetings. DCPS shall respond to a District Charter invitation by participating as the LEA representative or by designating¹⁶ an LEA representative at the District Charter to serve on its behalf. A nonpublic school, serving a District of Columbia student, shall invite the LEA to participate in all the student's IEP Team meetings.¹⁷ The LEA shall participate in all IEP Team meetings for students served by nonpublic schools by attending or at minimum designating an LEA representative at the nonpublic school or program to serve on its behalf.¹⁸)

Individual who can interpret the instructional implications of evaluation results:¹⁹ This individual is an important member of the IEP Team because he or she can accurately assess student's current level of performance, identify the student's areas of need, and make suggestions regarding appropriate strategies to address the student's needs. This individual's participation is especially important when the IEP Team is considering decisions regarding eligibility or a change to the student's educational program due to recent evaluation results.

¹³ The LEA must ensure that the IEP Team for each student with a disability includes not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student. 34 C.F.R. §300.321(a)(3)

¹⁴ 34 C.F.R. §300.321(a)(4)

¹⁵ District Charters are public charter schools that have elected DCPS as the LEA for special education purposes. D.C. Code §38-1802.02(19)

¹⁶ LEA designated representative must be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; knowledgeable about the general education curriculum; and knowledgeable about the availability of resources of the LEA. 34 C.F.R. §300.321(a)(4).

¹⁷ An IEP meeting may be initiated and conducted by a nonpublic school at the discretion of the LEA. 34 C.F.R. §300.325(b)

¹⁸ D.C. Code §38-2561.06; 34 C.F.R. §300.325(a) and 5 DCMR §E-3019.9

¹⁹ When appropriate, this participant role may be fulfilled by the general education teacher, special education teacher, LEA representative, a qualified evaluator, related service provider, or other persons with knowledge or expertise regarding the child. 34 C.F.R. §300.321(a)(5)



Office of the



State Superintendent of Education

Permitted Excusal of Mandatory Participants

Mandatory participants may be excused, in whole or in part, from the IEP Team meeting only if the parent and the LEA agree, in writing, that the attendance of the participant is not necessary because the participant's area of the curriculum or related services is not being modified or discussed in the meeting.²⁰ When the meeting involves a modification to or discussion of a mandatory participant's area of the curriculum or related services, the participant may be excused from attending the IEP Team meeting, in whole or in part, only if the parent and the LEA consent to the excusal in writing and the participant submits written input into the development of the IEP prior to the IEP Team meeting.²¹ The LEA is responsible for ensuring that all written input is received prior to the IEP Team meeting, and that all the required documentation is included in the student's special education file in SEDS.

Additional Participants

The term *additional participant* refers to an individual who does not fulfill a team role explicitly identified by the IDEA, but who may become a mandatory participant due to individual student factors or specific circumstances (*i.e.* IEP Team meeting purpose includes specific topics such as: transition; discussion regarding a change to a specific special education service or related service; or discussion about services provided by a nonpublic school or specialized program outside the LEA). If any of these circumstances applies, the LEA shall, with the consent of the parent when necessary, invite the following additional participants to the IEP Team meeting as appropriate:

Student: Generally, a student should be invited, and encouraged to, participate in the IEP Team meeting whenever he or she has input to provide, or whenever otherwise deemed appropriate by the IEP Team.²² The student becomes a mandatory participant if a purpose of the IEP Team meeting is to consider postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.²³ If the student does not attend the IEP Team meeting to discuss secondary transition, the LEA shall take other steps to ensure that the student's preferences and interests are considered, such as allowing the student to submit written input to the IEP Team prior to the occurrence of the meeting.²⁴ Under District of Columbia law, educational rights under IDEA transfer from the parents to the student at age 18, unless there has been a determination under District of Columbia law that the student is not competent.²⁵ The student takes the place of the parent upon the transfer of rights, becoming a mandatory participant thereafter.

Early childhood transition participant: In the case of a student who was previously served under Part C of the IDEA, an invitation to the initial IEP Team meeting shall, 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 to Part B services.²⁶

Secondary transition participant: If a purpose of the IEP Team meeting is to consider postsecondary goals for the student and the transition services needed to assist the student in reaching those goals,

²⁰ 34 C.F.R. §300.321(e)(1)

²¹ 34 C.F.R. §300.321(e)(2)

²² 34 C.F.R. § 300.321(a)(7)

²³ IEP Team consideration of appropriate postsecondary goals and transition services for a student with a disability must begin no later than the first IEP to be in effect when the student turns 16 years old or sooner if determined appropriate by the IEP Team. 34 C.F.R. §300.320(b); 34 C.F.R. §300.321(b)(1); 34 C.F.R. §300.322(b)(2)

²⁴ 34 C.F.R. § 300.321(b)(2)

²⁵ 34 C.F.R. § 300.520(a)(1)(ii); 5 DCMR §E-3023

²⁶ 34 C.F.R. §300.321(f)



Office of the



State Superintendent of Education

the LEA shall, with the consent of the parents or a student who has reached the age of majority,²⁷ invite a representative of the Rehabilitation Services Administration (RSA)²⁸ and any other participating agency that is likely to be responsible for providing or paying for postsecondary transition services.²⁹

Related service provider:³⁰ A related service provider's participation is critical when the IEP Team is considering a change to the student's service hours. The LEA shall invite the appropriate special education or related service provider to fulfill the mandatory role of the individual who can interpret the instructional implications of evaluation results if the proposed change to service hours is due to recent evaluation or assessment results in that specific service area.

Individual with knowledge and special expertise: At the discretion of the parent or LEA, the IEP Team shall include any individual who the parent or LEA has determined has knowledge or special expertise regarding the student.³¹

PARTICIPATION THROUGH THE IEP AMENDMENT PROCESS

A student's special education needs may change throughout the year. If it becomes necessary to make changes to the IEP after the annual IEP Team meeting occurs during the school year, the IEP Team may decide to convene an IEP Team meeting to amend the IEP, or the parent and the LEA may agree to amend the student's current IEP through written agreement without convening an IEP Team meeting.³²

To amend the IEP through written agreement, the LEA and parent shall complete the Standard IEP Amendment Form found in SEDS to indicate that both parties consent to amending the IEP without convening an IEP Team meeting.³³ A refusal of consent by either party or parent non-responsiveness to an LEA's attempts to obtain parent agreement to amend without convening an IEP Team meeting constitutes a request that the IEP Team convene for the purposes of considering the proposed change. In such circumstances, the LEA shall follow the same invitation and notice procedures required for an annual IEP Team meeting.³⁴

PROVISION OF APPROPRIATE NOTICE TO IEP TEAM MEMBERS

The LEA shall provide prior written notice (PWN) to the parents every time the IEP Team decides to initiate a change or decides against making a change to the student's IEP.³⁵ The PWN shall include:³⁶

1. A description of the action proposed or refused by the LEA;³⁷

²⁷ The age of majority in the District of Columbia is 18 years old. 5 DCMR §E-3023.1

²⁸ OSSE's Secondary Transition Policy requires LEAs, with the consent of the parents or a student who has reached the age of majority, to invite a representative of Rehabilitation Services Administration (RSA) to an IEP Team meeting where secondary transition will be discussed. (January 5, 2010)

²⁹ 34 C.F.R. §300.321(b)(3)

³⁰ 34 C.F.R. §300.321(a)(3) & (a)(6)

³¹ 34 C.F.R. §300.321(a)(6); 34 C.F.R. §300.321(c)

³² 34 C.F.R. §300.324(a)(4)

³³ A parent may propose an IEP amendment by contacting the LEA. The LEA will respond to the parent's request by either consenting to the amendment through written agreement or by sending a letter of invitation to the parent to participate in an IEP Team meeting to discuss the proposed IEP amendment.

³⁴ LEAs may not amend an IEP without convening an IEP Team meeting where the purpose is to discuss and/or make decisions regarding a potential change in least restrictive environment to a nonpublic placement. OSSE's Individualized Education Program Amendment Guidance (April 21, 2010)

³⁵ 34 C.F.R. §300.503(a)

³⁶ 34 C.F.R. §300.503(b)

³⁷ The proposal considered may be a change to the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.



2. An explanation of why the LEA proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;
4. A statement that the parents of a student with a disability have protection under the Part B procedural safeguards;³⁸
5. Resources for parents to contact to obtain assistance in understanding Part B of the IDEA;
6. A description of other options that the IEP Team considered and the reasons why those options were rejected; and
7. A description of other factors which are relevant to the LEA's proposal or refusal.

The PWN shall be sent within a reasonable time³⁹ before the LEA implements the change.⁴⁰ The LEA shall take whatever action is necessary to ensure that the parent understands the PWN, including arranging for translation.⁴¹ LEAs shall provide PWN to all IEP Team members implementing the IEP and the parent, following an amendment to an IEP in the absence of a meeting.⁴²

COMPREHENSIVE IEP REVIEW

The IEP meeting type determines the scope and content that the IEP Team shall review. For IEP Team meetings to develop the initial IEP, an IEP Team shall review all required sections of the IEP document including:

- Present levels of performance and annual goals by area of concern;
- Special education and related services;
- Least restrictive environment (LRE);
- Classroom accommodations and state assessment participation;
- Extended school year; and
- Transition and behavior as appropriate.

For annual IEP Team meetings, the IEP Team shall review all current and new data to update and complete all required sections of the IEP and address any other concerns raised by the parent or other IEP Team members. For IEP Team meetings held to discuss changes to the IEP proposed after the annual IEP Team meeting occurs during the school year, the IEP Team shall review, at minimum, all items identified in the Standard IEP Amendment Form and/or any corresponding letter of invitation, and any concerns expressed by the parent prior to or at the meeting. Any additional proposed amendments that are agreed upon or refused, but not initially specified in the Standard Amendment Form shall be documented in the PWN.

IEP DOCUMENTATION REQUIREMENTS

Once the IEP Team has reviewed and come to a consensus on all required items according to meeting type, the IEP Team shall complete each required section of the IEP in SEDS (including the documentation of all eligibility and service decisions). The resulting finalized draft of the IEP and all corresponding documentation shall be captured in or uploaded in SEDS within 5 business days of the IEP Team meeting (or completion of the IEP amendment process as appropriate).⁴³ All LEAs are required to update student files in SEDS regularly

³⁸ If the PWN is not an initial referral for evaluation, the notice must also include the means by which a copy of a description of the procedural safeguards can be obtained. A copy of the procedural safeguards must be given to parents upon initial referral for evaluation. 34 C.F.R. §300.504(a)

³⁹ The determination of what constitutes a reasonable amount of time is made on a case by case basis. The term "reasonable" generally means without undue delay and within a timeframe that does not interfere with a student's right to receive FAPE.

⁴⁰ 34 C.F.R. §300.503(a)

⁴¹ 34 C.F.R. §300.503(c)

⁴² 34 C.F.R. §300.324(a)(4)(ii)

⁴³ LEA Data Management Policy (December 9, 2010)



Office of the



State Superintendent of Education

throughout the school year; all new information shall be captured or uploaded in SEDS within 5 business days of receipt.⁴⁴ Upon the enrollment of a new student, an LEA shall verify that the student's entire record is complete in SEDS; if the student's record is incomplete, the LEA shall take all appropriate steps to obtain any missing documentation and upload the documentation to SEDS within 10 business days of the student's enrollment.

The IEP document is considered compliant once all the following requirements are met: all notice requirements are fulfilled; all mandatory and appropriate additional IEP members are properly included by the LEA to participate in the IEP Team meeting; the IEP Team has reviewed and completed all required sections of the IEP and uploaded all of the supporting eligibility and evaluation documentation to SEDS; all regulatory and policy timelines are met; and the LEA finalizes the IEP draft. The LEA may implement the IEP once the parent gives consent for initial provision of IDEA service. Parental consent for services continues to be in effect, year after year, unless the parent formally revokes consent and the LEA appropriately issues PWN before discontinuing services.

ADDITIONAL GUIDANCE

This memorandum supersedes all previous policy, memoranda, and/or guidance promulgated by the SEA. Please direct any questions regarding the content of this document to Grace Chien, LEA Policy and Charter Implementation Specialist, at (202) 741-5089 or by email at Grace.Chien@dc.gov.

⁴⁴ LEAs must regularly update documentation in SEDS to ensure timely transfer of student records. LEA Data Management Policy (December 9, 2010); see 34 C.F.R. §300.323(g) regarding transfer of student records.