



**Department  
of Education**

John R. Kasich, Governor  
Dr. Richard A. Ross, Superintendent of Public Instruction

**ODE-OEC MEMO #2013-1**

**To:** Ohio Educational Agencies Serving Children with Disabilities  
**From:** Sue Zake, Ph.D., Director of the Office for Exceptional Children  
**Date:** December 20, 2013  
**Subject:** *Individualized Education Program (IEP) no longer serves as prior written notice to families*

Please communicate this information immediately with those who work with students with disabilities.

Parents or guardians of a child with a disability must receive a written notice when a change is proposed to the child's free and appropriate public education. This must occur even if the parents agree with the change. The IEP for that student no longer meets the definition of the written notice. This is an **immediate change** from current Operating Standards for Ohio Educational Agencies serving Children with Disabilities, section (H)(4)(c). The standards are currently under review as part of the five-year review process and once finalized will reflect this change.

The following federal regulation indicates when prior written notice is required, as well as what elements must be in the notice.

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section 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.
  
- (b) Content of notice. The notice required under paragraph (a) of this section must include:
  - (1) A description of the action proposed or refused by the agency;
  - (2) An explanation of why the agency proposes or refuses to take the action;
  - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

- (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- (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 that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language.

(1) The notice required under paragraph (a) of this section must be—

- (i) Written in language understandable to the general public; and
- (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—

- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- (ii) That the parent understands the content of the notice; and
- (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

In addressing this issue, school districts must make sure that all procedures and policies are amended to reflect the above requirements. In addition, districts must require that staff members involved in the development and/or implementation of individualized education plans are notified and trained with respect to the revised requirement.

The Ohio Department of Education will review district compliance with this memorandum as part of the Office for Exceptional Children's monitoring and complaint processes.