



September 20, 2010

VIA Email

Tamera Lewis, Assistant Superintendent of Special Education
c/o Desirée Brown
Office of the State Superintendent of Education
Division of Special Education
810 1st St., NE – 5th Floor
Washington, DC 20002

Re: The OSSE's August 20, 2010 Policy Statement Regarding the Individualized Education Program (IEP) Process

Dear Ms. Lewis,

I am submitting these comments on behalf of the Children's Law Center¹ (CLC), which represents more than 1,000 low-income children and families in the District of Columbia every year. Many of the children we represent have special education needs and are enrolled in DC public schools. Our comments on OSSE's proposed policy statement regarding the Individualized Education Program (IEP) process ("IEP Policy") are based on our experiences in those cases.

The IEP policy outlines the process that OSSE expects LEAs to follow in creating and updating IEPs for students with disabilities, specifically discussing the composition of the IEP team, the IEP amendment process, the provision of prior written notice, and the requirements for completing and documenting the IEP. We appreciate OSSE's effort to detail clearly and comprehensively the responsibilities of LEAs, particularly the emphasis on documenting all steps of the process in the Special Education Data System (SEDS) and providing prior written notice of all changes so that information will be readily available to all team members and follow the student if he or she changes schools.

We do, however, have a few concerns. We are concerned that language in the policy seems to take away a parent's legal right to refuse consent for certain services without refusing consent for special education as a whole. We are also concerned that several

¹ The Children's Law Center, with over seventy staff members, is the largest civil legal services organization in the District of Columbia and the only organization providing comprehensive representation to children. The Children's Law Center envisions a future for the District of Columbia in which every child has a safe home, a meaningful education and a healthy mind and body. We work toward this vision by providing free legal services to 1,000 children and families each year and by using the knowledge we gain from representing our clients to advocate for changes in the law.



sections of the policy might lead LEAs to limit discussions at IEP meetings in ways that could restrict parental participation and make meetings pro forma rather than individualized. Finally, we are concerned that the provisions allowing DCPS to designate a DCPS representative at District charters and allowing all LEAs to designate LEA representatives at nonpublic schools may lead to those designees lacking the necessary information to fulfill the legal role of LEA representative. The specifics of our concerns are outlined below.

Revocation of Parental Consent

The IEP policy states that "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." IEP Policy at 7. This appears contrary to federal law. The IDEA specifically states that "a public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), (c), or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part." 34 C.F.R. §. 300.300(d)(3). The IDEA does discuss the situation in which, "subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services," stating that in that case "the public agency may not continue to provide special education and related services to the child, but must provide prior written notice...before ceasing the provision of special education and related service." 34 C.F.R. §. 300.300(b)(4). However, OSSE's IEP policy describes a different situation in which the parent revokes consent only for particular Part B services rather than for special education and related services as a whole. Neither the IDEA nor the DC special education regulations contain any language authorizing a public agency to cease providing *all* special education services when a parent revokes consent for discrete services. We urge that the policy be revised to clarify that a parent may revoke consent for one or more specific services without revoking consent for all special education and related services. If a parent revokes consent for discrete services, the public agency must continue to provide all of the other services outlined in the IEP.

The last sentence of the last paragraph of the section "IEP Process Completion and Documentation Requirements" should be deleted and a new sentence should be added stating: "A parent has the right to revoke consent for discrete components of a student's special education and related services without revoking consent for special education and related services as a whole. If a parent revokes consent for some components, the LEA must continue to provide the other components consistent with the IEP."

IEP Team Members

The distinction drawn by OSSE between "mandatory" and "additional" IEP team members may cause confusion and lead to the omission of necessary participants at IEP meeting. IEP Policy at 2-5. LEA's responsibilities would be clearer if the policy were to state directly that the required participants in an IEP meeting depend upon the services the student receives, as well as the student's age and the issues to be discussed. In some cases, some of the "mandatory" participants will not be necessary. For example, a general education teacher might not be necessary at an IEP meeting for a child who receives full-time special education in a self-contained classroom. Conversely, a related services provider

will almost always be essential at an IEP meeting for a child receiving or potentially in need of related services. The IEP policy states that related services providers are necessary only when the team plans to discuss a new evaluation proposing changing the hours of the student's related services. IEP Policy at 5. This instruction is overly restrictive. Related service providers -- and all other providers for a student -- are needed at all IEP team meetings to provide information to parents and other team members about a student's progress. Without the opportunity to receive updates about a student's progress from all of his or her providers, the team lacks information essential to determine whether a child is receiving a free, appropriate public education and the parent lacks the opportunity to participate meaningfully in the IEP process. We urge OSSE to amend the IEP Policy to state that public agencies must invite all service providers to IEP meetings unless the parent and LEA agree otherwise.

The IEP Policy should be revised to eliminate the distinction between "mandatory" and "additional" participants. In particular, the sentence on page 2 explaining that "the term additional participant refers to an individual who does not fulfill a team role explicitly identified by the IDEA" should be removed because many of the participants identified as "additional" in the IEP Policy do have IDEA-mandated roles. See 34 C.F.R. §§ 300.321(a)(6), (7), and (b)(1-3). Language should be added stating that a student's specific circumstances will determine which participants are mandatory.

The IDEA provides that the LEA must include in the IEP team "at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child." 34 C.F.R. §. 300.321(a)(6). The IEP policy acknowledges this provision only in a footnote. IEP Policy at Footnote 17. We are concerned that, because this provision is not included under the Mandatory Participants section, schools may not realize that they are obligated to include in the IEP meeting individuals determined by the parent to have knowledge or special expertise regarding the child, such as a guardian *ad litem*, social worker, private therapist, or private evaluator. This requirement should be stated explicitly in the body of the policy to protect the parent's right to include experts of their choice at IEP meetings.

Non-annual IEP Meetings

Several provisions of the IEP policy may restrict the topics of discussion at non-annual IEP meetings. The IEP Policy states that "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 must review, at minimum, all items identified in the Standard IEP Amendment Form and/or any corresponding letter of invitation." IEP Policy at 6. In a footnote, the policy states that "an IEP meeting to discuss proposed changes to the IEP, after the annual IEP team meeting occurs during the school year, is held when either the parent or the LEA does not agree to amending the IEP through the IEP Amendment Process, or when the IEP team meeting purpose involves discussion of placement into a nonpublic school or program." IEP Policy at Footnote 38. We find that there are many occasions when a parent has concerns about a child's lack of progress or other difficulties but does not have enough information about the services being provided to propose specific changes to the IEP without having an in-person meeting with the various teachers and providers to learn more

about the child's curriculum, services, and performance. Under a strict reading of the IEP Policy, an LEA might refuse to convene an IEP meeting if a parent does not make a specific proposal in advance for amendments to the IEP. We urge OSSE to revise the policy to clarify that IEP team meetings should be held at a parent's request regardless of whether a parent knows in advance what specific changes to the IEP he or she would like to propose.

The last sentence of the last paragraph on page 6 should be revised to state "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 must review, at minimum, all items identified in the Standard IEP Amendment Form and/or any corresponding letters of invitation, as well as any concerns raised by parents, whether at or prior to the meeting." Footnote 38 should be deleted.

LEA Designees at District charters and Nonpublics

The IEP Policy allows LEAs to specify "designees" at nonpublic schools and District charters to attend IEP meetings on the LEA's behalf. IEP Policy at 3 and 5. While we appreciate OSSE's intention of ensuring that LEAs oversee the provision of special education to their students placed at nonpublics and that DCPS oversee the provision of special education to students at District charters, we are concerned that the designees may lack the information and authority needed to fulfill their legally-mandated roles. The IDEA requires that each IEP meeting include "a representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency." 34 C.F.R. § 300.321(a)(4). We are concerned that a "designee" of the public agency who is employed by the nonpublic or District charter may lack the legally-required information specified above, especially the information about the LEA's available resources. If the IEP Policy is to give LEAs the option of assigning a designee to fulfill the role of public agency representative, the policy should state clearly that the designee must be able to fulfill the criteria of 34 C.F.R. § 300.321(a)(4). Otherwise, IEP meetings will not be productive because no one present will have information about the LEA's resources.

Miscellaneous – Parental Participation and Student Records

The IEP Policy should include the definition of "parent" under the IDEA. The legal definition of "parent" for purposes of special education law is distinct from the common meaning that school staff may ascribe to the term. In order to make sure that LEAs include all parents, guardians, and surrogate parents in the IEP process, OSSE should revise the IEP policy to emphasize that "parent" for special education purposes means "a biological or adoptive parent of a child; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a guardian; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent." 34 C.F.R. § 300.30.

The IEP Policy should make clear that LEAs must provide translators at IEP meetings for parents whose native language is not English, consistent with 34 C.F.R. § 300.322(e).


The IEP Policy should require that LEAs provide parents in advance of the IEP meeting with any written reports that will be used at the meeting. This is necessary to allow parents to participate in the team discussion in a meaningful way.

We are glad to see that the IEP Policy discusses the need to document student information promptly and fully so that it will follow students from school to school. Especially in the District, where students often transfer from one LEA to another, it is critical that students' electronic records be complete and readily available. This need is so critical that we suggest that OSSE create a separate policy that directly addresses the transfer of records to ensure that all LEAs are fully aware of their obligations.

Finally, we suggest that the IEP policy include a statement that makes clear that it is subordinate to federal and District law. Since the purpose of the policy is to provide guidance, but not to set forth fully all of an LEA's legal obligations, we believe such a statement would help avoid confusion.

Thank you for considering these comments. If you have any questions about these comments, please feel free to contact me at (202) 467-4900 ext. 565, or sgreer@childrenslawcenter.org.

Respectfully,



Sharra E. Greer
Director of Policy