



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Ms. Marcella Franczkowski
Assistant State Superintendent
Division of Special Education/
Early Intervention Services
Maryland State Department of Education
200 West Baltimore Street, 9th Floor
Baltimore, Maryland 21201

JAN 09 2019

Dear Ms. Franczkowski:

The U.S. Department of Education, Office of Special Education Programs (OSEP), received communications from a parent of a child with a disability in Maryland, alleging that the Maryland State Department of Education's (MSDE) Parents Rights Procedural Safeguards Notice, revised July 2017 (referred to here as Notice), is inconsistent with the Individuals with Disabilities Education Act (IDEA). Specifically, the parent alleges that:

1. Maryland's Notice is inconsistent with the IDEA implementing regulations at 34 CFR §§300.503 and 303.421, because it does not specify the timeline for providing prior written notice to the parents of infants and toddlers and children with disabilities; and
2. Maryland's Notice excludes MSDE from the public agencies responsible for establishing, maintaining and implementing procedural safeguards that meet the requirements of the IDEA.

Regarding the parent's first allegation, both the Part B and Part C implementing regulations specify when prior written notice must be given to parents. Under 34 CFR §303.421, prior written notice must be given to the parents *a reasonable time before* the lead agency or an early intervention service (EIS) provider proposes or refuses to initiate or change the identification, evaluation, or placement, of their infant or toddler or the provision of appropriate early intervention services to the infant or toddler (emphasis added). Under 34 CFR §300.503, prior written notice must be given to the parents *a reasonable time before* the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child (emphasis added). Maryland's Notice includes the following statement on page two:

"A public agency must give parents written notice each time it proposes, or refuses, to initiate or change the identification, evaluation, educational program, educational placement of a child, provision of a FAPE to a child, or provision of early intervention services to the child and the child's family through an IFSP [individualized family service plan], or provision of special education and related services to the child through an IEP [individualized education program]."

However, Maryland's Notice does not state that this written notice must be provided to parents "a reasonable time before" the lead agency or EIS provider under Part C, or the public agency

under Part B, proposes or refuses to carry out the activity identified in the prior written notice, as required by 34 CFR §§303.421 and 300.503, respectively.

With respect to the second allegation, there is no requirement that the procedural safeguards notice required by section 615(d) of IDEA and 34 CFR §300.504 include a statement specifying that under 34 CFR §300.500, each State educational agency (SEA) must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of 34 CFR §§300.500 through 300.536. However, in connection with its obligation to provide a full explanation of procedural safeguards available to parents, Maryland has chosen to include a definition of public agency on page 5 of its Notice, which states:

“A public agency is the agency providing the IFSP or the IEP services to the child.”

This definition of public agency is not complete and must be revised to be fully consistent with the definitions of public agency in 34 CFR §303.30 of the IDEA Part C regulations and 34 CFR §300.33 of the IDEA Part B regulations, because it does not include the lead agency under Part C and the SEA under Part B.¹ Accordingly, MSDE must revise its Procedural Safeguards Notice to specify that the term “public agency,” where applicable, applies to EIS providers, school districts, and other public agencies in the State. This change is sufficient to clarify that in appropriate circumstances, the requirements described in the Notice can be applied to the State lead agency under Part C and the SEA under Part B. For example, one of the matters that must be explained in the procedural safeguards notice required by IDEA is that an organization or individual, including one from another State, may file a signed written complaint alleging that a public agency has violated a requirement of the IDEA or the IDEA Part B or IDEA Part C regulations. 34 CFR §§300.504(c)(5) and 34 CFR §303.421; 34 CFR §§300.151-300.153 and 303.432-303.434. Under both Part B and Part C, an organization or individual, including one from another State, has the right to file a State complaint against the lead agency or the SEA if the organization or individual alleges that this public agency has violated a requirement of the IDEA or its implementing regulations.

To ensure that the notice provided to parents in Maryland is consistent with Part B and Part C of the IDEA, OSEP requires that within 60 days of the date of this letter, MSDE must:

1. Revise Maryland’s current Notice to specify that: (i) the timeline for providing prior written notice to parents is “a reasonable time before” the lead agency or an EIS provider or public agency proposes, or refuses, to initiate or change the identification, evaluation, placement of a child or the provision of early intervention services under Part C (34 CFR §303.421), or the educational placement or the provision of FAPE to a child under Part B (34 CFR §300.503); and (ii) the definition of public agency in its Notice includes other public agencies in the State in addition to school districts or EIS providers (34 CFR §§303.30 and 300.33).²

¹ Under Part B at 34 CFR §300.33, public agency includes the State educational agency (SEA), local educational agencies (LEAs), educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. Under Part C at 34 CFR §303.30, public agency means the lead agency and any other agency or political subdivision of the State.

² If MSDE so chooses, it could simply delete the definition of public agency from its Notice, since there is no IDEA requirement that this definition be included in the notice.

2. Notify OSEP of: (a) the results of MSDE's review and revision of its Procedural Safeguards Notice; (b) the State's plan for informing stakeholders including hearing officers, LEAs, parent advocacy groups and other interested parties of the required changes; and (c) how the State will broadly disseminate the revised Notice.

Please note that OSEP's review is limited to the concerns raised by the parent. At this time, OSEP has not conducted a complete review of Maryland's Notice.

As MSDE makes the revisions that are necessary to address these required actions, OSEP calls your attention to the Department's model Procedural Safeguards Notice, revised June 2009, which is available at:

https://sites.ed.gov/idea/files/modelform_Procedural_Safeguards_June_2009.pdf

Please submit the information requested above and a copy of the revised Notice to Ms. Priscilla Irvine, OSEP's State Lead for Maryland, via email at priscilla.irvine@ed.gov.

By copy of this letter, we are notifying the parent of this matter and the required actions. If you have questions regarding the information in this letter or would like to request technical assistance, please contact Ms. Irvine at 202-245-6913.

Sincerely,



Laurie VanderPloeg

Director

Office of Special Education Programs

cc: Hameed Jamarussadiq