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CANDICE MCQUEEN
COMMISSIONER

MEMORANDUM

TO: Directors of Special Education

FROM: Theresa Nicholls
Assistant Commissioner for Special Populations

DATE: June 8, 2017

RE: Prior Written Notice

The division of special populations issues this guidance to clarify the use of prior written notice. This memorandum supersedes all previous guidance from the department on this topic.

Tennessee Special Education Regulation 0520-01-09-.16 regarding prior written notice by the LEA provides that prior written notice must be given to the parent of a child suspected to have a disability or a child with a disability at least ten (10) school days prior to the LEA either proposing or refusing to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The state regulation supplements the IDEA regulation at 34 C.F.R. 300.503 by providing a time frame within which prior written notice must be given to the parent of a child with a disability. Legally, the proposal or refusal is an act taken subsequent to the meeting and not to be proposed or refused prior to a meeting. The term "prior written notice" refers to written notice that is required after a change has been proposed or refused but before (i.e., prior to) implementing that change.

The following are instances requiring prior written notice:

IEP Team Proposal

When the IEP team proposes to alter the educational placement or provision of FAPE of the child, the LEA must give the parent prior written notice 10 school days before (i.e., prior to) implementing the change in the IEP. The prior written notice must include a description of the action proposed, an explanation of why the LEA proposed the action and a description of other actions considered. The prior written notice may be given to the parent at the conclusion of the IEP meeting. If the parent is in agreement with the alteration of the educational placement or provision of FAPE of the child, the alterations may be implemented sooner than 10 school days. If the parent does not agree with the

proposal, the parent must be allowed 14 calendar days within which to request a due process hearing. If the parent does not request a hearing within 14 calendar days, the alteration may be added to the child's IEP and implemented as soon as reasonably possible thereafter.

IEP Team Refusal

When the IEP team refuses a parent's request to change the educational placement or the provision of FAPE to the child, the LEA must give the parent prior written notice within 10 school days of the IEP meeting at which the parent's request was refused by the LEA. The prior written notice must include a description of the change refused by the LEA and an explanation of why the LEA refused the request. The prior written notice may be given to the parent at the conclusion of the IEP meeting. Thereafter, the parent may, at any time within the two-year statute of limitations, request a due process hearing proposing the change that was refused by the IEP team.

Initial Evaluation

When a parent requests an initial evaluation in writing, or the LEA refers a child for an initial evaluation, the LEA must obtain informed written consent from the parent before the evaluation can begin, and must give the parent prior written notice 10 school days before the evaluation is to begin. The prior written notice must include a description of the actions proposed or refused by the LEA and the reasons for the proposal or refusal. If the parent is in agreement with the actions proposed, the evaluation may begin sooner than 10 school days. The prior written notice may be given to the parent at the conclusion of an evaluation team meeting or, if a meeting is unnecessary because the LEA agrees with the initial evaluation request, it may be given directly to the parent. If the LEA refuses a parent's request for an initial evaluation, it must provide the parent a prior written notice which must include an explanation of why the LEA refused the request. Thereafter, the parent may request a due process hearing proposing that the child be evaluated.

Re-evaluation

When the LEA proposes to conduct additional evaluations of a child, or a re-evaluation is required for a child, the LEA must give the parent a prior written notice 10 school days before the evaluation is to begin. If additional assessments or testing are necessary for re-evaluation, informed written consent must be obtained from the parent. The prior written notice must include a description of the actions proposed or refused by the LEA and the reasons for the proposal or refusal. The prior written notice may be given to the parent at the conclusion of the IEP team meeting.