

### ***Written Offer of Free Appropriate Public Education (FAPE)***

The “Written Offer of a Free and Appropriate Public Education” (FAPE) is a formal offer made by the local education agency (LEA) of educational placement, including supplemental aids and services. It meets the requirements outlined in IDEA for “written prior notice.” It is required whenever a LEA proposes, or refuses, to initiate or change the educational placement and/or services of a disabled student. The offer must be in writing and presented to the parents. The purpose of the written offer is to create a “clear record that will do much to eliminate troublesome factual disputes years later about when placements/services were offered, what placements/services were offered, and if any additional educational assistance was offered to supplement a placement, if any.” Additionally, it offers a clear choice to parents which they can deny or accept, and ensures that the LEA is prepared to set forth relevant evidence in support of the offer.

The written offer should be made on the individualized education program (IEP) document, in a notice, in a letter, in any other clear written statement, or in any combination of the above.

The written offer of educational placement/services must be as specific as necessary to show that the placement meets the unique needs of the student. An offer that names the facilities, personnel, location, or equipment necessary to provide FAPE will be adequate. The offer of SDC, RSP, LSS, etc. is not sufficient.

State law requires a written explanation to the parent of the reasons that the special education program and/or service is being proposed for the child, stating, “no pupil shall be required to participate in all or part of any special education program unless the parent is first informed, in writing, of the facts, that make participation in the program services necessary or desirable, and of the contents of the individualized education program, and after this notice, consents, in writing, to all or part of the individualized program.” (Education code 56346(a)) This notice may be given at the same time the LEA requests the parent’s consent for action; for example, the parents may receive this notice at the IEP meeting when they are asked to consent to the proposed program and/or placement.

(34 C.F.R. section 300.503 (a)(2)).

If it is determined that a LEA failed to make a written offer it may result in a finding that the LEA has denied FAPE, resulting from procedural flaws that result in the loss of educational opportunity or seriously infringe the parents' opportunity to participate in the IEP formulation process. Trial courts have found that failing to make a written offer is a "per se" denial of FAPE. This may result in reimbursement to parents who obtain appropriate services privately, as rulings have indicated parents have an equitable right to reimbursement for the cost of providing an appropriate education when a LEA has failed to offer a child FAPE.

Written offer of FAPE is made:

- For initial placement, at the individualized education program (IEP) meeting held within 50 days of the parents' consent to assess.
- For two year olds, at a minimum, within a reasonable time prior to the date the child is eligible to receive services; the obligation to make FAPE available to each eligible child begins no later than the child's third birthday.
- For continuing placement, at the IEP team meeting for the annual review, or at a minimum, within a reasonable time before the expiration of the current individualized education program (IEP).

Federal law specifies that the content of the written offer must include but is not limited to:

- A description of the action proposed, for example, the educational placement offer.
- An explanation of the action/educational placement offer.
- A description of other options the agency considered and why those options were rejected.
- A description of each evaluation procedure or document used as a basis.
- A description of any other relevant factors.
- A statement of the availability of procedural safeguards and how to obtain a copy.
- Sources for parents to contact to obtain assistance in understanding the provisions of the law.

Components of the formal written offer should include:

- The educational placement and/or services including but not limited to:
  - The type of program, what portion of the school day it will use, the particular focus if relevant.
  - The site location of the program.
  - Qualifications of the personnel if relevant.
  - The proportion of the school day the pupil is in the general education classroom, and the necessary modifications and supplemental services, including their frequency, location, and duration.
  - An explanation of extended school year service, if appropriate.
  - A description of the daily schedule, if relevant.
  - Special equipment to be provided.
  - Other features of special relevance to the student, such as class size, peer tutoring, socialization groups, etc.
  - The procedural notice may be in the IEP itself, on a front page attached to the IEP or in a separate letter.
  
- Factors that must be included are:
  - An explanation of the facts that make participation in the special education program desirable, which should include the unique needs of the child which make the recommended program appropriate, and if the program is a change from a prior program the reasons this change is desirable.
  - A description of other options considered and why they were rejected.
  - A list of each evaluation instrument, report, test, or other documentation on which the proposed program is based
  - A description of other relevant factors, which might include past, similar placements where the student had a history of success, proximity of the program to the student's home, whether the program was at a sibling's school of attendance, etc.
  - A statement that parents of children with disabilities have procedural safeguards and where a copy of those safeguards can be obtained.
  - A list of sources for parents to contact to obtain assistance in understanding the provisions of the law.

It is recommended that for a typical Individualized Education Program (IEP) the document be viewed as the written offer of an educational placement, ensuring that crucial issues have been addressed, and that the procedural notice is added to the individualized education program (IEP) cover sheet or addendum.

For a difficult or complex IEP, it is recommended that the same steps are followed as for the normal IEP, but a follow-up letter to the IEP is also written, which summarizes the offer of educational placement and refers to the IEP as the complete statement of the written offer. In the letter, the procedural notice should be repeated. (Lozano and Smith, 2001).