



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

March 21, 2014

Janice Breton, Director of Special Services
Maine Department of Education
23 State House Station
Augusta, Maine 04333

Dear Ms. Breton:

This is in response to your January 16, 2014 electronic correspondence to the Office of Special Education Programs (OSEP) and phone conversations with Jennifer Wolfsheimer, OSEP Education Program Specialist, in which you ask whether a school district may use electronic mail to provide parents with their child's individualized education programs (IEPs) and related documentation, such as progress reports. Specifically, you describe a situation where a Maine school district is using electronic mail to distribute IEPs and progress reports to parents who have consented to electronic delivery of such documents. You also state that the district has implemented the following security procedures when delivering such information via electronic mail: the district obtains prior signed permission from the parents; the parents provide the address of their confidential email account; a secure password is used to access documents; and the parents may request hard copies at any time and/or refuse the electronic mail option.

Under Part B of the Individuals with Disabilities Education Act (IDEA) and the implementing regulations, parents may elect to receive prior written notices, procedural safeguards notices, and due process complaint notices by an electronic mail communication, if the public agency makes that option available. 34 CFR §300.505. The IDEA statute and regulations do not explicitly address the use of electronic mail for other documents required under the IDEA. However, OSEP has stated that the IDEA statute and regulations do not prohibit the use of electronic mail to carry out administrative matters under section 615 of the IDEA, so long as the parent of the child with a disability and the public agency agree. Analysis of Comments and Changes to Final Regulations Implementing 2004 IDEA, 71 Fed. Reg. 46540, 46687 (Aug. 14, 2006). In addition, OSEP has stated that States may use electronic or digital signatures for consent, provided they take the necessary steps to ensure that there are appropriate safeguards to protect the integrity of the process. That is, consistent with §300.9(b), a parent must understand and agree to the carrying out of the activity for which the parent's consent is sought. 71 Fed. Reg. at 46629. Further, with regards to the requirement under 34 CFR §300.320(a)(3)(ii) concerning periodic progress reports, OSEP has left the discretion with State and local officials to determine the manner and format for reporting a child's progress toward meeting the annual goals. 71 Fed. Reg. at 46664.

Therefore, in light of the IDEA statute and regulations, as well as OSEP's prior guidance, States may permit the use of electronic mail to distribute IEPs and related documents, such as progress reports, to parents, provided that the parents and the school district agree to use the electronic

mail option, and the States take the necessary steps to ensure that there are appropriate safeguards to protect the integrity of the process.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Jennifer Wolfsheimer, of my staff, at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs