

Q and A Regarding "Revocation of Parental Consent for Special Education Programs and Services"

On December 1, 2008, the United States Department of Education (USDOE) issued a series of new regulations which amend a number of the regulations implementing the Individuals with Disabilities Education Act. These newly amended regulations will take effect on December 31, 2008. While the new amendments implicate 11 different regulations, the most significant change involves 34 CFR § 300.300(b)(4), which now allows a parental revocation of consent for special education and related services subsequent to the initial provision of those services. The following Q and A describes the content of 34 CFR § 300.300(b)(4), how this change would be implemented in Intermediate and Local School Districts and possible implications of the changes.

Q1: What does the amended § 300.300(b)(4) now say?

A: If, at any time 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, the public agency---

- (i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;
- (ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
- (iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- (iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.

Q2: How does the amendment to § 300.300(b)(4) change districts' current practices?

A: Prior the current amendment, parents did not have the right to unilaterally remove their children from special education and related services after the initial provision of services. The USDOE's longstanding interpretation of IDEA and its implementing regulations was that LEAs had a continuing obligation to provide FAPE to students after consent was given for the initial provision of special education, and the parent did not have the right to revoke this consent. See *Letter to Williams*, 18 IDELR 534 (OSEP 1991). Pursuant to the newly amended 300.300(b)(4), that prior interpretation is no longer valid and it is clear that when specific procedures are followed (see below), parents have a right to revoke their consent and unilaterally withdraw their student from all special education and related services.

Q3: What procedures must a parent follow to revoke consent for special education and related services?

A: The parent must revoke consent in writing for the continued provision of special education and related services. NOTE: The wording of the request will be important. See, for example, Q7.

Q4: What procedures must a district follow in order to discontinue IEP services pursuant to a parent's written revocation of consent ("WROC")?

A: The amended regulation requires that a district take two steps upon receipt of a parent's written revocation of consent:

1. In accordance with § 300.503, the district must promptly provide prior written notice of the change in educational placement and services that will result from the revocation of consent (see below for what to include in the prior written notice); and
2. Within a reasonable period of time after prior written notice is provided to the parent, the district must discontinue all special education and related services.

Q5: Once a WROC is received, what is the timeframe in which special education and related services must be discontinued?

A: The USDOE refused to establish a specific timeline for responding to the written revocation of consent. The USDOE simply states that it "expects" districts to "promptly respond" to WROCs, provide PWN "within a reasonable time" **before** discontinuing services, and that discontinuation of services will "occur in a timely manner". (Federal Register, Vol. 73, No. 231, p. 73008).

It is significant to note that in written discussion accompanying the amended regulation, the USDOE stated that the timeline may differ "due to parent-specific factors, such as whether the parent wants to meet with the public agency or another entity prior to the discontinuation of services". (Federal Register, Vol. 73, No. 231, p. 73008). Thus it is apparent that the USDOE anticipated that different events may occur, requiring varying lengths of time, leading up to the discontinuation of services.

Q6: May a district inquire into why a parent is revoking consent?

A: The district can ask but a district may not require the parent to provide any explanation. (Federal Register, Vol. 73, p. 73008, column 3).

Q7: May a parent revoke consent for only certain IEP services, for example, revoke consent for resource room programming but request that social work and speech services continue?

A: No. The regulation and USDOE written discussion make it clear that revoking consent is an all or nothing proposition. A parent may only use a WROC to discontinue all of the student's special education and related services.