



January 13, 2009

Q & A: Revocation of Parental Consent for the Provision of Special Education Services

The Minnesota Department of Education (MDE) Division of Compliance and Assistance has developed this document to address questions raised by parents and school districts regarding the revocation of parental consent for the provision of special education services.

Question 1: IDEA has new regulations about parents revoking consent for special education, what do the new regulations say?

Answer: A parent can now revoke consent for special education and related services at any time. A district cannot use mediation or due process hearings in an attempt to continue special education or related services when a parent revokes consent. 34 C.F.R. § 300.300 (b)(4).

Question 2: Does the revocation of consent need to be in writing?

Answer: Yes. A parent's revocation for consent to continue providing special education and related services must be in writing to ensure that both the district and the parents have documentation that the child will no longer receive special education and related services. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73008; 34 C.F.R. § 300.9(c)(3); 34 C.F.R. § 300.300(b)(4).

Question 3: When a parent revokes consent does the district need to remove any reference to the child's receipt of special education and related services from the child's record?

Answer: No. A district is not required to amend a child's education record because of the revocation of consent. 34 C.F.R. § 300.9(c)(3).

Question 4: Is a district liable for denial of Free and Appropriate Public Education (FAPE) when special education and related services are discontinued following parental revocation of consent?

Answer: No. Districts will not be found to have denied a child FAPE because of a failure to provide the child with special education and related services after the parent refuses to or fails to provide consent. 34 C.F.R. § 300.300(b)(4).

Question 5: When a parent revokes consent for special education services does the Individual Education Plan (IEP) get reviewed annually anyway?

Answer: No. Once a parent revokes consent for the continuation of special education and related services the district is not required to hold an IEP team meeting or develop an IEP for the child. 34 C.F.R. § 300.300(b)(4)(iv). Furthermore, the review of a child's IEP by the IEP team does not replace a parent's right to revoke consent for the continued provision of special education and related services to his or her child. A parent's revocation effectively removes the child from special education and moves the child into the general curriculum, thus the child's IEP does not get reviewed once the child is no longer receiving special education or related services. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73009.

Question 6: Is the removal of a student from special education upon a parent's revocation of consent for special education a change of placement?

Answer: Yes. The district must provide prior written notice consistent with 34 C.F.R. § 300.503. This notice is explained in the answer to question #7.

Question 7: What kind of notice does the district need to provide the parent before stopping special education services when a parent revokes consent for continuing special education?

Answer: When a parent revokes consent for the continuation of special education services, the district must provide the parent with prior written notice consistent with 34 C.F.R. § 300.503 before special education and related services are discontinued. This notice must be in writing and given to the parent within a reasonable time before the public agency removes the child from special education. 34 C.F.R. § 300.300(b)(4)(i); 34 C.F.R. § 300.300 cmts. at 73 F.R. 73008. This notice must also inform the parent about the change in educational placement and services that will result from the parent revoking consent to provide special education and related services. This notice must include, among other things, information on resources for the parents to contact that can assist the parents in understanding the requirements of Part B of IDEA and implementing its regulations. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73008.

Question 8: Does the prior written notice need to be in the parent's native language?

Answer: Yes. Any prior written notice required by 34 C.F.R. § 300.503 must be provided in the native language of the parent or another mode of communication used by the parent, unless it is clearly not feasible to do so. 34 C.F.R. § 300.503(c)(1)(ii). Additionally, if the parent's native language or other mode of communication is not a written language, the district must take additional steps to communicate the information contained in the notice to the parent. 34 C.F.R. § 300.503(c)(2). These additional measures include taking steps to have the notice translated orally or by other means to the parent in the parent's native language or other mode of communication. The district must ensure that the parent understands the content of the notice and that there is written evidence that the prior written notice requirement has been met. 34 C.F.R. § 300.503(c); 34 C.F.R. § 300.300 cmts. at 73 F.R. 73088.

Question 9: Is there a timeline for how soon the district can stop providing special education services to the student?

Answer: There is no specific timeline outlined in law for discontinuing special education services upon receipt of a revocation of consent by a parent. However, the comments to the federal regulations provide that a district cannot stop providing special education services until the appropriate prior written notice has been provided to the parents. 34 C.F.R. § 300.300(b)(4)(i). Districts must promptly respond to a parent's written revocation of consent to continue special education services. Additionally, the district must provide the parent with the required prior written notice within a reasonable time before discontinuing special education services. Giving this notice within a reasonable time gives parents the necessary information to fully consider the change to their child's educational services and decide whether they have additional questions or concerns regarding the revocation. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73008; 34 C.F.R. § 300.503.

Question 10: Can a state establish additional procedures for implementing the new regulations?

Answer: Yes. A state can choose to establish additional procedures for implementing 34 C.F.R. § 300.300(b)(4), including requiring a public agency to offer to meet with parents to discuss concerns. The state must ensure that any additional procedures are voluntary for the parents, do not delay or deny the discontinuation of special education and related services, and are consistent with other Part B requirements under IDEA. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73008.

Question 11: Can a district ask why a parent is revoking consent for special education and related services?

Answer: Yes, a district can ask a parent why they are revoking consent; however, a parent is not required to provide an explanation, either orally or in writing, before discontinuing special education and related services. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73008.

Question 12: Do parents need to acknowledge in writing that they have been fully informed of the educational services and supports they are declining by revoking consent?

Answer: No. The required prior written notice informs parents of the educational services and supports they are declining and provides a sufficient record that parents have been appropriately informed. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73008.

Question 13: How do parents find out about their right to revoke consent to special education and related services?

Answer: Parents should be given by the district, at least annually, a procedural safeguards notice that includes a full explanation of the procedural safeguards available to the parents of a child with a disability. 34 C.F.R. § 300.504; 34 C.F.R. § 300.300 cmts. at 73 F.R. 73008. This notice must also be given to parents when they request an evaluation, which would occur if a parent revokes consent and then requests re-enrollment in special education. 34 C.F.R. § 300.504(a)(1); 34 C.F.R. § 300.300 cmts. at 73 F.R. 73015. This notice must explain that parents have the right to revoke their consent for special education services in writing under 34 C.F.R. § 300.300.

Question 14: Can an IEP team consent to the provision of special education and related services to a child?

Answer: No. Although the IEP team plays an important role in the special education decision-making process, the authority to consent to the provision of special education and related services to a child rests exclusively with the parent. 20 U.S.C. §§ 1414, 614(a)(1)(D)(i)(II). This right emphasizes the role of parents in protecting their child's rights and the U.S. Department of Education's goal of enhancing parent involvement and choice in their child's education. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73009.

Question 15: Does the parent need to continue working with the child's school after revoking consent to provide special education and related services?

Answer: Yes. It is assumed that after a parent revokes consent for the continued provision of special education and related services that the parent will continue to work with their child's school to support their child in the general education curriculum. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73009.

Question 16: How do districts document when a parent refuses special education services?

Answer: A parent's revocation must be in writing. 34 C.F.R. § 300.300(b)(4). In addition, districts must give parents prior written notice within a reasonable time before special education services are stopped. 34 C.F.R. § 300.300(b)(4)(i); 34 C.F.R. § 300.300 cmts. at 73 F.R. 73008. This process sufficiently documents the parent's revocation of consent.

Question 17: When a parent revokes consent for special education services does the student need to re-qualify at a later time to receive special education services?

Answer: Yes. If a parent revokes consent for special education services and a child subsequently experiences academic difficulties a parent can request an evaluation to determine if the child is eligible, at that time, for special education and related services. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73010.

Question 18: Does a parent revoking consent for special education services serve as "stay put"?

Answer: No. A parent's revocation of consent for special education services will have the effect of returning a child to general education as a nondisabled student. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73010-11, 73013.

Question 19: If custody or guardianship is an issue with a child with a disability, do both parents need to agree to a revocation of consent for special education and related services?

Answer: The federal comments are unclear on this question. The federal Department of Education declined to add language to the regulation that would specify that both parents who are legally responsible must revoke consent when custody is in dispute. The comments to the regulations state that under the federal definition of a parent (34 C.F.R. § 300.30) when guardianship or custody of a child with a disability is an issue, the parental rights established under IDEA apply to both parents, unless a court order or state law specifies otherwise. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73011.

Question 20: Can a parent revoke consent to some services and not others?

Answer: No. A parent can only revoke consent to special education and related services in their entirety. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73011; 34 C.F.R. § 300.300(b)(4). In situations where a parent disagrees with the provision of a particular service and the parent and the district agree that the child would still receive FAPE if the child did not receive the service, the service should be removed from the child's IEP. If the child would not receive FAPE if the child did not receive a particular service, the parent may use the mediation or due process procedures available under IDEA to obtain a ruling regarding the service with which the parent disagrees. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73011.

Question 21: Does a general education teacher have to provide the same accommodations previously identified in a student's IEP when a parent revokes consent for special education?

Answer: No. Once a parent revokes consent in writing for continued provision of special education services a general education teacher is not required to provide the accommodations included in the child's IEP. However, the teacher can provide accommodations that are available to non-disabled students under State standards. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73102.

Question 22: If a parent revokes consent for continued special education services and the child subsequently engages in behavior that violates a code of student conduct, can the child assert any of the protections of IDEA as provided for in 34 C.F.R. § 300.534?

Answer: No. When a parent revokes consent for special education and related services, the district is deemed to not have knowledge that the child is a child with a disability and thus the child may be disciplined as a general education student according to the district's discipline procedures and the child is not entitled to the Act's discipline protections. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73012-3; 34 C.F.R. § 300.534. Parents are expected to consider the possible consequences of discipline procedures when making the decision to revoke consent for the provision of special education and related services. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73013.

Question 23: What type of classroom should a student with a disability be placed in whose parent has revoked consent for special education and related services?

Answer: Once a parent revokes consent for special education and related services, the child is a general education student and may be placed in any classroom where other general education students are placed. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73013.

Question 24: Can a child whose parent has revoked consent for continued special education and related services be placed in a classroom that is co-taught by a general education teacher and a special education teacher?

Answer: Yes. If a child's parent revokes consent and that child is then placed in a classroom co-taught by a general education teacher and special education teacher, the child is placed in the classroom as a general education student. The child should be treated the same as all other general education students in the classroom. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73013.

Question 25: When a parent revokes consent for continued special education and related services under IDEA, how does this effect a district's obligations under Section 504?

Answer: The comments to the federal regulations do not directly address this question. 34 C.F.R. § 300.300 cmts. at 73 F.R. 74014.

Question 26: If a parent revokes consent for the continued provision of special education and related services, can a parent subsequently request an initial evaluation?

Answer: Yes. A parent always maintains the right to subsequently request an initial evaluation to determine if the student is a child with a disability who needs special education and related services.

Question 27: Is there a limit on the number of times a parent can revoke consent and then subsequently request reinstatement in special education services?

Answer: No. There is not a limit on a parent's right to revoke consent and then request reinstatement in special education services as this flexibility is important to address the unique and individualized circumstances surrounding each child's education. A district will not be found in violation of not providing FAPE to the child following a parent's revocation. A district is only responsible for providing FAPE during the time period the parent has provided consent for special education and related services. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73014.

Question 28: When a parent revokes consent for special education and related services and then requests re-enrollment in special education services, is the subsequent evaluation considered an initial evaluation or a re-evaluation?

Answer: When a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, the district must treat this request as a request for an initial evaluation, not a reevaluation. Depending on the data available, a new evaluation may not always be required. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73015; 34 C.F.R. § 300.301.

Question 29: When a parent revokes consent for continued provision of special education and related services for his or her child, is this the same as the district finding that the child is no longer a child with a disability?

Answer: No. A parent revoking consent is not the same as a district finding that the child is no longer a child with a disability under IDEA. When a parent revokes consent, the district is discontinuing the provision of special education and related services based on the decision of the parent and the district no longer has an obligation to evaluate the child and provide special education. 34 C.F.R. § 300.300 cmts. at 73 F.R. 73015.

Authority: 34 C.F.R. § 300.9; 34 C.F.R. § 300.101; 34 C.F.R. § 300.300; 34 C.F.R. § 300.301; 34 C.F.R. § 300.503; 34 C.F.R. § 300.504; 34 C.F.R. § 300.534; 20 U.S.C. §§ 1414, 614(a)(1)(D)(i)(II); *Letter to McKethan*, 25 IDELR 295 (OCR 1996); 34 C.F.R. § 300.300 cmts. at 73 F.R. 73007-73016.