



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

AUG 15 2007

Teresa T. Combs
Senior Attorney
Kentucky School Boards Association
260 Democrat Drive
Frankfort, Kentucky 40601

Dear Ms. Combs:

The U.S. Department of Education, Office of Special Education Programs (OSEP) is in receipt of your letter dated June 6, 2007, in which you ask: "What is OSEP's current position on whether a local school district must or may file a request for due process hearing in an attempt to force a child back into the district's special education program after a parent revokes consent for special education services?"

As you know, 34 CFR §300.9 of the final Part B regulations implementing the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA) states that, regarding consent, the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time (34 CFR §300.9(c)(1)). 34 CFR §300.9(c)(2) goes on to state that if a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

The "action" indicated above would, in your question, refer to the provision of special education and related services pursuant to the child's individualized education program (IEP). Therefore, the revocation of consent for services does not negate the provision of services that occurred after the parent granted consent for those initial services and before the parent revoked the consent for provision of special education and related services.

Under 34 CFR §300.300(b), if a parent fails to provide consent, or fails to respond to a request for consent, to the initial provision of special education and related services that are needed to provide a free appropriate public education (FAPE) to the child, the public agency may not use the procedures in subpart E of the final regulations (including the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507-300.516) in order to obtain agreement or a ruling that the services may be provided to the child.

The final Part B regulations do not specifically address whether parents who previously consented to the initiation of special education services should have the right to subsequently remove their child from special education services. In the *Analysis of Comments and Changes* section of the 2006 regulations, we addressed concerns about situations in which a child is receiving special education services and the child's parent wants to discontinue services because they believe the child no longer needs special education services. The issue raised was whether public agencies should be allowed to use the procedural safeguards to continue to provide special

education and related services to a child whose parent withdraws consent for the continued provision of special education and related services. In the past, the Department interpreted Part B of IDEA as requiring a public agency to take the necessary steps, which could include using informal means to reach agreement with the parents, as well as requesting a due process hearing, to seek to override the parent's revocation of consent, if the public agency believes the services are necessary to ensure that a child eligible for special education and related services continues to receive FAPE. The Department intends to propose regulations to permit parents who previously consented to the initiation of special education services, to withdraw their consent for their child to receive, or continue to receive, special education services. This would preclude a public agency from using due process procedures to override a parent's revocation of consent. Because this is a change from the Department's longstanding policies and was not proposed in the Notice of Proposed Rulemaking (NPRM), we will provide the public the opportunity to comment. 71 Fed. Reg. at 46551. Until final regulations are published, there would be no bar to a public agency using due process procedures to override a parent's revocation of consent.

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.

We hope this provides the information you need. If you have questions about this issue, please do not hesitate to contact Deborah Morrow at (202) 245-7456.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs