



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

JUN 3 2010

Deborah S. Johnson
Attorney at Law
9923 State Line Road
Kansas City, MO 64114

Dear Ms. Johnson:

This is in response to your February 17, 2010 letter to Patricia J. Guard, Deputy Director of the Office of Special Education Programs in the U.S. Department of Education, regarding the parental consent requirements in the Individuals with Disabilities Education Act (IDEA). In your letter you express concern about the portion of the IDEA definition of consent that requires the parent to signify that he or she "understands" the activity for which his or her consent is sought. If the parent does not sign such a statement, you are concerned that school districts in Missouri will not provide the service or activity for which parental consent was sought. You suggest instead that, in providing consent, a parent only be required to sign a statement indicating that the parent agrees to the carrying out of the activity for which consent is sought, and not be required to signify that the parent understands the activity.

As you know, under 34 CFR §300.300(a), (b), and (c), a public agency must obtain informed consent from the parent, consistent with §300.9, before conducting the initial evaluation of their child, the initial provision of special education and related services to the child, or any reevaluation. The IDEA definition of consent reads, in relevant part:

Consent means that -

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought and the consent describes that activity and lists the records (if any) that will be released and to whom

34 CFR §300.9.

We have reviewed the explanation of the definition of parental consent in the Missouri Department of Elementary and Secondary Education model form, Missouri Procedural Safeguards Notice, posted on the State's Web site, and believe that its explanation reflects the applicable IDEA requirements for "consent." If public agencies in Missouri are requiring a parent to sign a consent form indicating that he or she understands the activity for which his or her consent is sought, as a prerequisite to conducting an initial evaluation, a reevaluation, or the initial provision of special education and related services, such a practice is consistent with the definition of the term "consent" in the IDEA regulations.

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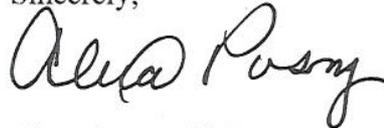
The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

In obtaining parental consent under the IDEA, public agencies are required to provide the parent all information relevant to the activity, so that the parent can signify in writing that he or she understands that the public agency is asking their permission to conduct an initial evaluation of their child, to initially provide special education and related services to their child, or to conduct any reevaluation of their child. For example, in seeking parental consent for the initial provision of special education and related services, the public agency is seeking the parent's consent to the provision of special education and related services generally. The public agency is not asking the parent to signify that he or she understands the precise nature of all of the services or activities that would be included in an individualized education program (IEP) if the public agency were to develop an IEP for their child. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46635 (Aug. 14, 2006).

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 that you find the above explanation helpful. If you have further questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive, flowing style.

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs

cc: Heidi Atkins-Lieberman