



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

September 5, 2013

Vicky McKinney, Director
Parent Training and Information Program
PAVE
Partnerships for Action, Voices for the Empowerment
6316 S. 12th Street
Tacoma, WA 98465-1900

Dear Ms. McKinney:

This letter is in response to your June 17, 2013 electronic mail (email) correspondence to me regarding the new parental consent and written notification requirements in the Part B of the Individuals with Disabilities Education Act (IDEA) regulations published on February 14, 2013. In your email, you ask if the use of a parent or child's public insurance or benefits by the school district will affect the use by the family outside the school. You stated that when you ask school districts and the State agency that administers Medicaid this question, you receive different answers; and therefore, have requested guidance from the Office of Special Education Programs on this issue.

Under the new regulations, a public agency must provide written notification, consistent with 34 CFR §300.503(c), to the child's parents prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter. 34 CFR §300.154(d)(2)(v). The notification must include, among other things, the "no cost" provisions in 34 CFR §300.154(d)(2)(i)-(iii). These "no cost" requirements are not new and were in place during the previous regulations. They include: 1) The school district may not require parents to sign up for, or enroll in, a public benefits or insurance program in order for their child to receive a free appropriate public education. This means that the school district may not make enrollment in a public benefits or insurance program a condition of providing a child the services it is required to provide under IDEA at no charge to the parent or child; 2) The school district may not require the parent to pay an out-of-pocket expense, such as the payment of a deductible or co-pay amount for filing a claim for services that the school district is otherwise required to provide the child without charge. For example, if a child's individualized education program includes speech and language therapy and the parent's insurance requires a \$25 co-pay or deductible payment for a session, the parent could not be charged the \$25. The school district would need to pay the cost of the co-pay or deductible in order to bill the parent's or child's public benefits or insurance program for the particular service; and 3) The school district may not use the child's parent's public benefits or insurance if using those benefits or insurance would:

- a. Decrease the available lifetime coverage or any other insured benefit, such as a decrease in the plan's allowable number of physical therapy sessions available to the child or a decrease in the plan's allowable number of sessions for mental health services;

- b. Cause the parent to pay for services that would otherwise be covered by the public benefits or insurance program because the child also requires those services outside of the time the child is in school;
- c. Increase the premium or lead to the cancelation of the public benefits or insurance; or
- d. Cause the parent or child to risk the loss of their eligibility for home and community-based waivers that are based on total health-related expenditures.

A school district must ensure all of these “no cost” provisions are met if it intends to use a parent’s or child’s public benefits or insurance to pay for services under Part B. If, for example, the school district’s use of public benefits or insurance to pay for speech and language therapy will limit the amount of speech and language therapy a child may receive outside of school, the school district may not use the parent’s or child’s public benefits or insurance to pay for that service. It is the the school district’s responsibility to make this determination and ensure it is in compliance with all of the “no cost” provisions in 34 CFR §300.154(d) (2)(i)-(iii) before it provides the written notification to the parent and requests consent from the parent to use their public benefits or insurance.

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 Laura Duos at 202-245-7324 or by email at Laura.Duos@ed.gov.

Sincerely,

/s/ Melody Musgrove

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