



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

JUN - 6 2012

James Gerl
Scotti & Gerl
Attorneys At Law
216 South Jefferson Street
Lewisburg, West Virginia 24901

Dear Mr. Gerl:

This is in response to your October 14, 2011 letter to me regarding revocation of consent for special education and related services under Part B of the Individuals with Disabilities Education Act (IDEA). You asked whether, in a situation where a parent revokes consent for ongoing special education and related services, a local educational agency (LEA) may “offer to agree to mediation in order to ensure that the parent’s decision to revoke services is an informed consent decision.” Your letter refers to the mediation process in 34 CFR §300.506.

As you note, 34 CFR §300.300(b)(4) states that 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...may not use the procedures in subpart E of 34 CFR Part 300 (including the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child. Additionally, under 34 CFR §300.300(b)(4)(i), the public agency may not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 34 CFR §300.503 before ceasing the provision of special education and related services.

The U.S. Department of Education (Department) further addressed the issue of ensuring that parents are fully informed about the revocation of consent in the *Analysis of Comments and Changes* section of the December 1, 2008 final Part B regulations.

Concerning the comment about ensuring that the parent receives the time and information needed to make informed decisions regarding their child’s continued need for services, a public agency cannot discontinue services until prior written notice consistent with §300.503 has been provided to the parents. Therefore, we expect public agencies to promptly respond to receipt of written revocation of consent by providing prior written notice to the parents under §300.503. Section 300.503 specifies that, within a reasonable time before a public agency discontinues services, the public agency must provide the parents of a child with a disability written notice of the proposal to discontinue services based on receipt of the parent’s written revocation of consent. Providing such notice a reasonable time before the public agency discontinues services gives parents the

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necessary information and time to fully consider the change and determine if they have any additional questions or concerns regarding the discontinuation of services.

While the notice required under §300.503 provides sufficient information to parents regarding revocation of consent for special education and related services, a State may choose to establish additional procedures for implementing §300.300(b)(4), such as requiring a public agency to offer to meet with parents to discuss concerns for their child's education. However, 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 otherwise consistent with the requirements under Part B of the Act and its implementing regulations. For example, while a public agency may inquire as to why a parent is revoking consent for special education and related services, a public agency may not require a parent to provide an explanation, either orally or in writing prior to ceasing the provision of special education and related services. See the *Analysis of Comments and Changes* accompanying publication of the December 1, 2008 final Part B regulations (*Analysis*), 73 Fed. Reg. 73008 (December 1, 2008).

Additionally, the Department directly addressed the potential use of mediation once a parent revokes consent for special education and related services.

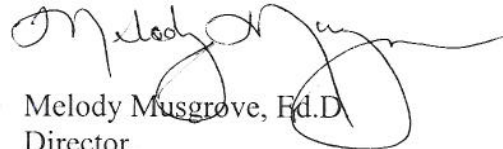
...mediation, pursuant to §300.506(a), may be used to resolve any disputes under Part B of the Act and its implementing regulations before a parent revokes consent for the continued provision of special education and related services. However, for the same reasons that mediation is not allowed when a parent refuses to provide initial consent for services, mediation is not appropriate once a parent revokes consent for the provision of special education and related services. See *Analysis*, 73 Fed. Reg. 73016 (December 1, 2008).

States may establish additional procedures to ensure that a parent receives the information needed to make an informed decision regarding his or her child's continued need for services. As noted above, a 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 otherwise consistent with the requirements under Part B of the Act and its implementing regulations. However, for the reasons noted above, once the parent has revoked consent the public agency is specifically prohibited from using the procedures in subpart E, including mediation procedures (34 CFR §300.506) or due process procedures (34 CFR §§300.507-300.516), in order to obtain agreement or a ruling that services may be provided to the child. 34 CFR §300.300(b)(4)(ii).

Based on section 607(e) of the IDEA, this 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 additional 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, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a large loop at the end.

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

cc: State Director of Special Education