



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

February 10, 2014

Jennifer Pardus  
Department of Social Services  
Reimbursement and Certificate of Need, 11th floor  
25 Sigourney Street  
Hartford, CT 06106

Dear Ms. Pardus:

This letter is in response to your April 5, 2013 and July 30, 2013 electronic mail (email) correspondence to the Office of Special Education and Rehabilitative Services, U.S. Department of Education (Department). Your questions were forwarded to the Office of Special Education Programs (OSEP) for a response. In your email, you asked a series of questions regarding the revised parental consent and new written notification requirements in the Part B of the Individuals with Disabilities Education Act (IDEA or Part B) regulations regarding children with disabilities who are covered by public benefits or insurance, which were published in the Federal Register on February 14, 2013 at 78 FR 10525. Answers to your questions are provided below.

Question 1: May the Written Notification and Parental Consent Form be presented to the parent at the same time, for instance included in the same mailing, or handed out together at an individualized education program (IEP) Team meeting?

OSEP's Response: Yes. Under 34 CFR §300.154(d)(2)(iv), prior to accessing a child's or parent's public benefits or insurance for the first time, the public agency, after providing notification to the child's parents consistent with §300.154(d)(2)(v), must obtain written consent from the parent, consistent with 34 CFR §300.154(d)(2)(iv)(A)-(B). There is nothing in Part B that would prevent a public agency from providing the written notification to the child's parents at the same time that parental consent is requested, because parental consent cannot be obtained without providing the parents the written notification. Therefore, so long as the parents receive the appropriate written notification before the public agency requests written consent prior to accessing a child's or parent's public benefits or insurance for the first time, there is nothing in the Part B regulations that would preclude a public agency from providing the parents the written notification and consent form at the same time. As you suggest in your question, this could occur through mailing the written notification form and the consent form together or providing the parent with the two forms at the same IEP Team meeting.

Question 2: Pertaining to the following quote from the Federal Register:

“There are a number of ways in which the public agency may provide the written notification to parents. The annual written notification may be mailed to the parents, provided at an IEP Team meeting if it occurs prior to the first time a public agency

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accesses a child's or parent's public benefits or insurance, or provided through other means determined by the public agency, so long as all of the written notification requirements in these final regulations are met, including the requirement in §300.154(d)(2)(v) that the public agency provide written notification before obtaining parental consent under new §300.154(d)(2)(iv)." 78 FR 10525, 10530 (Feb. 14, 2013).

May a school district post the written notification to the school district's Web site, in lieu of mailing or providing the written notification at an IEP meeting?

OSEP's Response: No. Under 34 CFR §300.154(d)(2)(v), public agencies must provide parents written notification of their rights and protections prior to accessing a child's or parent's public benefits or insurance for the first time and annually thereafter. While States and their public agencies have flexibility in the manner in which they provide this notification to the child's parents, a public agency would not meet its obligation under 34 CFR §300.154(d)(2)(v) by directing a parent to its Web site instead of providing the parents a printed copy of the notification. If a parent declines the offered printed copy of the notification and indicates a clear preference to obtain the notification from the agency's Web site, it would be reasonable for the public agency to document that it offered the parents a printed copy of the written notification, but that the parents declined the copy and instead opted to obtain the notification from the public agency's Web site.

Question 3: Pertaining to the following quotes from the Federal Register:

"As a practical matter, however, eligibility for Medicaid may not necessarily coincide with annual IEP Team meetings... Further, nothing in these regulations would prevent public agencies from providing the notification described in final §300.154(d)(2)(v) to all parents of children with disabilities, regardless of whether the public agency is seeking to access the child's or parent's public benefits or insurance." 78 FR at 10530.

May a school district likewise provide the parental consent form described in final 34 CFR §300.154(d)(2)(iv) to all parents of children with disabilities, regardless of whether the public agency is seeking to access the child's or parent's public benefits or insurance?

OSEP's Response: No. The parental consent form may not be provided to all parents of children with disabilities, regardless of whether the public agency is seeking to access the child's or parent's public benefits or insurance to pay for required special education and related services. The notification requirement described in the quote above is separate and distinct from the parental consent requirement. The parental consent requirement in 34 CFR §300.154(d)(2)(iv) is only applicable to a parent of a child with a disability who is enrolled in a public benefits or insurance program and from whom a public agency seeks to access that parent's or child's public benefits or insurance to pay for the child's required special education and related services for the first time or in the future. The parental consent requirement ensures that the consent from the parent is meaningful, and that the parent understands that, by consenting, the parent is enabling the public agency to access his or her, or the child's, public benefits or insurance. Conversely, a public agency may not request consent from all parents of children with disabilities, because the consent requirement is not applicable to parents of children with disabilities who are not yet enrolled in a public benefits or insurance program.

Question 4: If a parent, who previously refused to provide consent for the public agency to bill Medicaid, subsequently signs the consent form, can the school only bill for services delivered as of the date that the consent is signed, or does the consent override the previous denial, and thus the school may bill for services delivered prior to the date that the consent-to-bill was signed?

OSEP's Response: Public agencies may only bill a child's or parent's public benefits or insurance program for the cost of special education and related services delivered as of the date that the parent signs the consent form. The consent from the parent required under 34 CFR §300.154(d)(2)(iv) is prospective (for disclosure of personally identifiable information to a public benefits or insurance program for future billing purposes), and not retroactive. Therefore, if a parent does not provide written consent until April of a school year, the public agency may not bill the child's or parent's public benefits or insurance program for services provided prior to April. In the situation you pose, we understand that a parent previously refused to consent and later provided their consent for the public agency to access public benefits or insurance to pay for special education and related services. In the written notification described in §300.154(d)(2)(v), the public agency must include a statement that the parent's withdrawal of consent or refusal to provide consent under 34 CFR part 99 and §300.622 to disclose personally identifiable information to the State agency responsible for the administration of the public benefits or insurance program for billing purposes does not relieve the public agency of its responsibility to ensure that all required special education and related services are provided at no cost to the parents. 34 CFR §300.154(d)(2)(v)(D).

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](mailto:Laura.Duos@ed.gov).

Sincerely,

/s/

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs