



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

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OSEP 07 - 10

MEMORANDUM

TO: State Directors of Special Education

FROM: Alexa Posny, Ph.D. *Alexa Posny*
Director
Office of Special Education Programs

SUBJECT: Interpretation of 34 CFR §300.154(d)(2)(iv)(A)

The Office of Special Education Programs (OSEP) has received many requests for clarification regarding interpretation of the requirement at 34 CFR §300.154(d)(2)(iv)(A) of the final Part B regulations implementing the Individuals with Disabilities Education Act of 2004 (IDEA). This regulation requires that, with regard to services required to provide a free appropriate public education (FAPE) under Part B, the public agency must obtain parental consent, consistent with 34 CFR §300.9, *each time* [emphasis added] that access to public benefits or insurance is sought.

In this context, “parental consent” means –

- The parent has been fully informed of all information relevant to the activity for which the consent is sought, in his or her native language or other mode of communication;
- 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 that will be released and to whom;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent is given and before it is revoked).

OSEP believes that permitting a public agency to obtain parental consent for a specified amount of services for a specified period of time would be sufficient to enable parents to make an informed decision as to whether to provide consent for a public agency to access their or their child’s public benefits or other public insurance.

This consent may be obtained one time for the specific services, and duration of services identified in a child's individualized education program (IEP), and a local educational agency (LEA) would not be required to obtain a separate consent each time a Medicaid agency or other public insurer or public program is billed for the provision of required services. For example, if it is known that a child is to receive three hours per week of occupational therapy (OT) for 36 weeks, parents could be asked to give consent to the public agency's billing of the parent's public benefits or insurance for 108 hours of service for the 36-week period. (The amount billed would depend on the amount of OT service that was actually provided.) While this type of consent may be obtained at an IEP meeting, it could also be obtained at some point after the IEP is developed.

However, if the public agency seeks to use the child's or parents' public benefits or public insurance to pay for additional hours of service (due to the IEP being revised or extended) or the public agency is charging different amounts for such services, and would like to access the child's or parents' benefits or insurance for those costs, the public agency must obtain parental consent, covering the additional amount of service or costs to be charged to the child's or parents' public benefits or public insurance. The Part B provisions in 34 CFR §300.154(d)(2) are intended to ensure that the parent is fully informed of a public agency's proposed access of the child's or parents' benefits under a public benefits or public insurance program and provide written parental consent prior to the public agency's access to those public benefits or public insurance.

If parental consent is given directly to another agency, such as the State Medicaid agency, the LEA does not have to independently obtain a separate parental consent, as long as the parental consent provided to the other agency meets the requirements of 34 CFR §§300.9 and 300.154(d). The public agency seeking parental consent to access public benefits or public insurance programs is also obligated, under 34 CFR §300.154(d)(2)(iv), to notify the parent that the parent's refusal to allow access to their public benefits or public insurance does not relieve the public agency of its responsibility to ensure that all required FAPE services are provided at no cost to the parent. If another agency obtains the parental consent required by 34 CFR §§300.9 and 300.154(d)(2), the LEA must maintain a copy of the parental consent to both demonstrate its compliance under Part B of the IDEA and to ensure that it is available for the parent or child to review.

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.

cc: CSSOs
Part C Lead Agency Directors
Part C Coordinators
PTI Directors
P&A Directors
RRCs
NECTAC