

# School Law Alert

*January 2009*

## **NEW FEDERAL IDEA REGULATIONS IMPACT DELIVERY OF SPECIAL EDUCATION AND RELATED SERVICES**

New federal special education regulations were issued on December 1, 2008. These regulations took effect on December 31, 2008. This School Alert discusses the regulatory changes that will most significantly impact the delivery of special education and related services. To access the full text of the new regulations, please visit: <http://edocket.access.gpo.gov/2008/pdf/E8-28175.pdf>.

## **REVOCATION OF PARENTAL CONSENT FOR CONTINUED SPECIAL EDUCATION AND RELATED SERVICES**

Under the new regulations, a parent may now unilaterally revoke consent for the continuation of special education and related services, provided the revocation is in writing. 34 C.F.R. § 300.300(b)(4). If a parent exercises this right and revokes consent for ongoing special education services, the regulations make clear that a local educational agency ("LEA") may not use due process or mediation proceedings to override the parent's decision. 34 C.F.R. § 300.300(b)(3)(i). Before ending services, however, the LEA must provide prior written notice in accordance with the existing requirements found at 34 C.F.R. 300.503.

Consistent with the current provisions governing a parent's right to refuse consent for the initial provision of special education services, if a parent chooses to revoke consent for the continuation of services under this new provision, the LEA will not be in violation of the requirement to provide FAPE because of the failure to provide further special education and related services. The LEA will also not be required to hold a PPT meeting and will not have any obligation to develop an IEP for the child. Finally, should a parent revoke consent for special education services in writing, the new regulations clarify that the LEA has no obligation to alter a student's records to remove any indication that the student had once received special education and/or related services. 34 C.F.R. § 300.9.

The new parental consent regulations will affect the delivery of special education services in several important ways, including:

- The PPT team will have no right, arising under IDEA and its implementing regulations, to challenge a parent's revocation of consent to the continuation of services.



- Procedural safeguard notifications will have to be updated to reflect the parent's right to withdraw consent, in writing, for the continuation of special education and related services.
- Upon receipt of a written revocation of consent, a LEA will have to issue prior written notice as soon as possible, so that special education services may be timely discontinued.
- If rights transfer at the age of majority, a student will be able to remove him/herself from special education and related services, as long as he/she does so in writing. Parents of age of majority students continue to receive notice of changes in their children's IEPs, so the LEA should inform the parents of such a termination of services.
- When a parent revokes consent for special education services, the student may be disciplined as a general education student. The LEA will be considered to have no knowledge that the student is a child with a disability. A parent may, however, request an evaluation when the child has a discipline issue.
- A LEA will still have child find obligations in regard to a student whose parent has revoked consent for special education. Accordingly, we would advise that a LEA state, in its prior written notice, its belief that the child in question is a student eligible for special education services. Such language would provide notice in conjunction with the LEA's child find obligations for the school year during which consent is revoked. The student for whom consent has been revoked should be treated the same as any other student for child find purposes in each subsequent school year.
- The parent cannot provide a partial revocation of consent for services. If a parent disagrees with a particular service, the LEA should end that service if it is not necessary to provide a FAPE. If the LEA believes that the service is necessary to provide FAPE, the parent may use due process procedures to obtain a ruling that the service is not appropriate for the child.
- When a parent revokes consent for continued services, the child need not be included in the special education subgroup for accountability purposes under No Child Left Behind. A LEA is permitted, however, to count a student who has exited special education in the special education subgroup for two AYP cycles, if it so desires.
- When a parent revokes consent for continued services, the LEA should no longer consider the child a special education student for the purposes of reporting to the Connecticut Department of Education in conjunction with Connecticut's Performance Plan reporting requirements.
- Unilateral placement is not, in and of itself, to be considered parental revocation of consent for continued services.

## **OTHER REGULATORY CHANGES**

In addition to the above changes, the new regulations include several other more minor revisions. First, the regulations now expressly permit "any party to a hearing to be accompanied or advised by counsel and by an individual with special knowledge or training with respect to the problems of children with disabilities." The new regulations add a provision clarifying that State law may prohibit non-attorney representation at due process hearings.

34 C.F.R. § 300.512(a)(1). In Connecticut, non-attorney advocates may participate in due process hearings, but the extent of their participation may be limited by hearing officers, due to concerns regarding the unauthorized practice of law.

Second, when state monitoring uncovers noncompliance with the IDEA, a LEA must correct the noncompliance as soon as possible, but in no case later than 120 days from identification of the noncompliance. 34 C.F.R. § 300.600(e). Prior to the new regulations, a LEA had to correct noncompliance within 60 days.

Third, a state must report the performance of each of its LEAs on the targets identified in the state's Performance Plan to the public within 120 days of the state's filing of its Annual Performance Report with the U.S. Department of Education. 34 C.F.R. § 300.602(b)(1)(i)(A).

Finally, the regulations also impact the manner with which the State distributes funding to LEAs under the IDEA.

As a practical matter, we advise school districts to review these regulatory changes with special education staff and to develop a consistent practice for responding to parental requests to discontinue special education services. In addition, while the IDEA regulatory changes will have no effect on the provision of services under Section 504, districts should keep in mind their concurrent obligation to make appropriate referrals to a Section 504 Team for any student suspected of having a disability which may substantially limit a major life activity such as learning.

#### QUESTIONS OR ASSISTANCE?

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