



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

MAR 20 2003

Mr. Geoffrey A. Yudien
Legal Counsel
Vermont Department of Education
120 State Street
Montpelier, Vermont 05620-2501

Dear Mr. Yudien:

This is in response to your letter to the Office of Special Education Programs (OSEP) requesting clarification regarding parent consent for the provision of special education and related services for their children with disabilities under the Individuals with Disabilities Education Act (IDEA). Our response to each of the questions in your letter is provided below.

- 1. We understand that if a parent refuses to give consent for an initial evaluation or a reevaluation, a school district may, nevertheless, pursue the (re)evaluation by utilization of the due process procedures. See 34 C.F.R. §300.505(b). Is it similarly possible to override a parent's refusal to give consent for the initial provision of special education or related services?***

The IDEA statute and regulations contain express provisions that require local education agencies (i.e., school districts) to obtain informed parental consent prior to a child's initial evaluation or reevaluation or initial provision of special education and related services. 20 U.S.C. §§(a)(1)(c)(i) and (c)(3) and 34 CFR §300.505(a). The IDEA statute at §614(a)(1)(c)(ii) and regulations at §300.505(b) also expressly allow an agency to override the lack of parental consent if the parents of a child with a disability refuse to provide informed consent for the child's initial evaluation or reevaluation. Specifically, the agency may continue to pursue those evaluations by using the due process procedures under §§300.507-300.509, or the mediation procedures under §300.506, if appropriate, except to the extent inconsistent with State law relating to parental consent. Additionally, the statute and regulations make clear that consent for the initial evaluation is not to be construed as consent for the initial provision of services. 20 U.S.C. §1414(a)(1)(c)(i) and 34 CFR §300.505(a)(2).

However, there are no comparable provisions in either the statute or IDEA regulations that allow the agency to override parental refusal to consent for the initial provision of special education and related services to a child with a disability. Under §300.505(a)(1)(ii), informed parent consent must be obtained before the initial provision of special education and related services to a child with a disability. The public agency

may not override this requirement by using the due process procedures or other methods under the IDEA. In States that offer mediation prior to a due process hearing request, school districts may use mediation to try and resolve parental refusal to consent to the initial provision of services, provided, however, that it must be clear to both parties that participation in mediation is voluntary on the part of the parents and the local education agency. *See*, 34 CFR §§300.506(a) and (b)(1).

2. If a parent consents to a certain constellation of services at the time services are initially offered and, later, it is deemed by the IEP team that additional services are necessary, must parental consent for those additional services be obtained?

If a parent of a child with a disability provides informed consent to the initial provision of special education and related services under §300.505(a)(1)(ii) and additional services are later determined necessary by that child's individualized education program (IEP) team, separate parental consent for those additional services is not required under the IDEA. However, a State may choose to provide parents additional consent rights, such as the right to consent before any particular service is provided, as long as those additional consent provisions are implemented consistently with §300.505, including §300.505(d).

Parents are important members of the child's IEP team. The child's IEP team is responsible for making determinations of the content of the child's IEP. It is at the IEP team meeting that the IEP team determines what, if any, additional services are necessary to enable the child to achieve the written annual goals in his or her IEP. *See* §§ 300.344, 300.346, and 300.347. Each public agency is required to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate. §300.345.

Additionally, the public agency must provide written notice to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child. Prior notice by the public agency and the content of that notice must meet the requirements of §300.503.

3. Similar to the last question, if a certain service is determined to be necessary for the period of time covered by the initial IEP and, later, it is determined by the IEP team that that same service should continue to be provided to the child, must parental consent again be sought?

If a certain service is determined to be necessary during the period covered by the initial IEP (under which the parent consented to the initial provision of services) and the IEP team (which includes the parent) determines that the service should continue to be provided to a child with a disability, the school district is not required to obtain separate parental consent under the IDEA. However, as explained above, a State may have

additional consent rights for parents. If a State has given parents the right to consent to a continuing service and the parent does not consent, under §300.505(d), the agency must use its “effective procedures to ensure that a parent’s refusal to consent does not result in failure to provide the child with FAPE,” including, if necessary, taking the appropriate steps to override parental refusal to consent.

4. *We understand that, pursuant to 34 C.F.R. §300.7(2)(i), “if it is determined...that a child...needs only a related service and not special education, the child is not a child with a disability.” We also are cognizant of 34 C.F.R. §300.505(e), which says that a school district “may not use a parent’s refusal to consent to one service...to deny the parent or child any other service...” We wonder whether, in the situation where a parent has refused to consent to all but a related service, that service must be provided to the child.*

The citations in your question do not apply to the situation you describe. Your question seeks to determine if the public agency must provide a related service if parents refuse consent for all services except for a related service. Under this scenario, we assume that (1) the services refused are part of the initial provision of special education and related services since there are no express provisions under the IDEA requiring consent for subsequent provision of services and (2) that the services refused include special education (thus the child has already been determined to be a child with a disability and) in which case §300.7(a)(2)(i) would not apply. If parents refuse to consent to all services except for a related service, under the IDEA, the school district is not required to provide the related service. In addition, it cannot proceed to due process to override the refusal to consent to the special education and other related services because the parent has not provided consent to the initial provision of special education and related services.

5. *If a parent refuses all special education and related services for a child, will that child be eligible for the protections provided to children with disabilities who are removed from their educational setting for disciplinary reasons? See 34 C.F.R. §300.519 et seq.*

We assume your question addresses only those children whose parents refuse to consent to the initial provision of special education and related services since there are no express provisions under the IDEA requiring consent for subsequent services. Section §300.527(d)(2)(iii) requires agencies to provide special education and related services including the protections of §§300.520 – 300.529 to children determined to be a child with a disability. However, in the situation you describe where a parent of a child with a disability refuses consent for the initial provision of services, we would consider the parent to have refused the benefits of FAPE and its protections under the IDEA, including the discipline procedures at §§300.520 – 300.529, and thus those protections would not apply to such children.

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We hope that you find this explanation helpful. If you need further assistance, please call Dr. JoLeta Reynolds at 202-205-5507.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie S. Lee". The signature is written in a cursive style with a large initial 'S'.

Stephanie S. Lee
Director
Office of Special Education Programs

cc: Mr. Dennis Kane
State Director of Special Education