



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

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Dear Professor Bowe: *Frank*

This is in response to your e-mail asking for the statutory provisions that substantiate the position set forth in the letter dated September 24, 2001 to Virginia Department of Education Assistant Superintendent H. Douglas Cox, regarding the Individuals with Disabilities Education Act (IDEA) requirement that parental consent must be obtained before the initial evaluation, the reevaluation, and the initial provision of special education and 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 services for special education and related services. 20 U.S.C. §§1414(a)(1)(c)(i) and (c)(3) and 34 CFR §300.505(a). The IDEA statute at section 614(a)(1)(c)(ii) and regulations at 34 CFR §300.505(b) also contain express provisions that allow an agency to override 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 34 CFR §§300.507-300.509, or the mediation procedures under 34 CFR §300.506, if appropriate and voluntary. 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 special education and related services. 20 U.S.C. §1414(a)(1)(c)(i) and 34 CFR §300.505(a)(2).

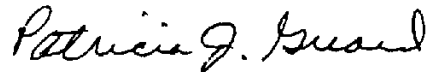
However, there are no comparable provisions in either the statute or IDEA regulations that allow the agency to override parental refusal to consent for the initial provision of special education and related services to a child with a disability. Under 34 CFR §300.505(a)(1)(ii), informed parent consent 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 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).

Congress chose not to include an express provision in the IDEA that would allow school districts to use the IDEA due process hearing procedures to override a parent's refusal to consent to the initial provision of special education and related services although an express provision was included under IDEA §614(a)(1)(c) for school districts to use these procedures to override parental refusal to consent to initial evaluations. We assume this was intended to support parents' rights to choose whether their children would initially receive special education and related services. The provision allowing school districts to proceed to due process for non-consent on evaluations was enacted to ensure that parents' choices were informed (such that parents would have information about the special education and related services needs of each individual child) while still enabling the parent to ultimately determine if his or her child would initially receive special education and related services.

We hope that this information is helpful.

Sincerely,



Patricia J. Guard
Deputy Director,
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