



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

JUL 19 2004

Leigh M. Manasevit
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Dear Mr. Manasevit:

This is in response to your letter on behalf of the North Carolina Department of Education to the Office of Special Education Programs (OSEP) regarding OSEP's December 24, 2003 letter to you. Your inquiries raise additional issues related to the requirement under Part B of the Individuals with Disabilities Education Act (IDEA) for parent consent to the initial provision of special education and related services. As you noted in your letter, school districts may not use the Part B due process hearing procedures to seek an override of the parental refusal to provide the requisite consent under 34 CFR §300.505(a)(1)(ii) to the initial provision of special education and related services. In your letter, you raise questions regarding the impact of IDEA on settlement agreements between parents and local educational agencies. The Department continues to review this issue and will respond to your question regarding settlement agreements in a separate letter. The remaining issues raised in your letter are restated below along with our responses.

- **Public agency's obligation to provide FAPE and any protections for the public agency when parents refuse to consent to the initial provision of special education and related services.**

Under the IDEA, an individual parent's refusal to consent to the initial provision of special education and related services relieves the school district of the obligation to provide a free appropriate public education (FAPE) to that child until the parent provides that consent. However, in order for the school district to meet its obligation to make FAPE available to that child, it must ensure it has met its obligations under the IDEA to (1) make FAPE available to the child with disabilities (34 CFR §300.300(a)(1)); (2) attempt to obtain parent consent prior to conducting an initial evaluation or reevaluation and prior to the initial provision of special education and related services (34 CFR §300.505(a)); and (3) fully inform the parent of all information relevant to the activity for which consent is sought, which for the initial provision of special education and related services includes information enabling the parent to determine the appropriateness of the services to be provided and the fact that FAPE services and IDEA protections are not available to the child if consent is not provided (34 CFR §300.500(b)(1)).

If North Carolina is concerned that school districts may not be protected from future liability or later questions as to whether the school district met its obligation to fully inform parents and offer FAPE to the child, it may wish to encourage school districts to maintain written

documentation of their efforts in meeting the obligations under IDEA and the parents' refusal to consent to the initial provision of special education and related services. North Carolina also may wish to advise school officials to consider the measures used to document attempts to obtain consent for reevaluations, such as (1) detailed records of telephone calls made or attempted and the results of those calls; (2) copies of correspondence sent to parents and any responses received; and (3) detailed records of visits to the parent's home or place of employment.

- **Effect of parental refusal to consent to the initial provision of special education and related services on the right of a student with disabilities to receive compensatory services.**

As stated above, where a public agency has offered a student with a disability FAPE and the parent of the student with a disability refuses consent for the initial provision of special education and related services, the parent is considered to have refused on behalf of the child the right to the benefits of FAPE and the IDEA's protections, including the right to compensatory services under the IDEA. A parent may still request a new evaluation be conducted or challenge the appropriateness of the services that are offered as FAPE by the school district.

- **Applicability of IDEA disciplinary protections to children with disabilities whose parents refuse consent to the initial provision of special education and related services.**

A student with a disability who is not receiving special education and related services because his or her parent has refused to provide consent to the initial provision of special education and related services does not have the discipline protections of 34 CFR §§300.520–300.529 and, therefore, may be disciplined in the same manner as nondisabled students. This means if nondisabled students are long-term suspended or expelled for a particular violation of school rules, a student with a disability whose parent has refused to consent to the initial provision of special education and related services also may be long-term suspended or expelled. Finally, school officials can report crimes committed by children with disabilities to appropriate law enforcement authorities to the same extent as they do for crimes committed by nondisabled students.

I hope you find this explanation helpful. If you would like further assistance, please contact Dale King at (202) 245-7405.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Ms. Mary N. Watson, Director, Exceptional Children Division
North Carolina Department of Public Instruction