



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

AUG 21 2009

H. Douglas Cox
Assistant Superintendent
Special Education and Student Services
Commonwealth of Virginia
Department of Education
P.O. Box 2120
Richmond, VA 23218-2120

Dear Mr. Cox,

This is in response to your letter to me as Acting Director of the Office of Special Education Programs (OSEP) at the U.S. Department of Education, dated April 3, 2009. In your letter, you request that OSEP provide guidance regarding what local educational agencies (LEAs) are required to do when parents, both with legal authority to make educational decisions for their child, disagree on the revocation of consent for special education and related services, pursuant to the December 2008 supplemental regulations issued for the Individuals with Disabilities Education Act (IDEA). You ask which parent's consent right prevails and whether, under 34 CFR §300.300, a parent is precluded from appealing the other parent's revocation of consent. IDEA does not address this issue, as State law governs the resolution of disagreements between parents. However, a district may, based on State or local law, provide or refer parents to alternative dispute resolution systems to attempt to resolve their disagreements.

Under 34 CFR §300.9(c), once a child is receiving special education services under Part B of the IDEA, a parent may revoke consent for his or her child's receipt of special education and related services at anytime.¹ In determining who the LEA must consider a parent, and who therefore has the parental right to revoke consent, 34 CFR §300.30(b)(1) provides that the biological or adoptive parent, when attempting to act as the parent under Part B, and when more than one

¹ This situation differs from the one discussed in OSEP's April 2009 non regulatory guidance, The IDEA Part B Supplemental Regulations Issued December 1, 2008 and Effective December 31, 2008, where OSEP discussed the revocation of consent for a particular service (rather than all special education and related services). The guidance states, on page 4:

Revocation of consent for a particular service: If a parent disagrees with the provision of a particular special education or related service and the parent and public agency agree that the child would be provided with a free appropriate public education (FAPF) if the child did not receive that service, the public agency should remove the service from the child's individualized education program (IEP) and, since it does not disagree with the parents, would not have a basis for using the procedures in Subpart E of the regulations to require the service be provided to the child. If, however, the parent and public agency disagree about whether the child would be provided FAPF if the child did not receive a particular special education or related service, the parent may use the due process procedures in Subpart E of the regulations to obtain a ruling that the Service with which the parent disagrees is not appropriate for their child.

party is qualified under 34 CFR §300.30(a) to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. Therefore, as long as the parent has the legal authority to make educational decisions for the child, the LEA must accept either parent's revocation of consent for the purposes of 34 CFR §300.300(b)(4). Upon revocation of consent for special education and related services, the LEA must provide the parent with prior written notice in accordance with 34 CFR §300.503 before ceasing the provision of special education and related services. 34 CFR §300.300(b)(4)(i).

After revoking consent for special education and related services for his or her child, a parent maintains the right to subsequently request an initial evaluation to determine if the child is a child with a disability who needs special education and related services. If a parent - including a parent other than the parent who revoked consent - later requests that his or her child receive special education and related services, an LEA must treat this request as a request for an initial evaluation under 34 CFR §300.301, rather than a reevaluation under 34 CFR §300.303. OSEP acknowledges that disputes between parents who share the right to make educational decisions for their child, and who disagree about the provision of special education and related services for their child, may place an LEA in a difficult situation. However, as you noted, under 34 CFR §300.300(b)(4)(ii), the public agency may not use Subpart E (Procedural Safeguards Due Process Procedures) of the Part B regulations to overcome a parent's written revocation of consent for the continued provision of special education and related services.

In addition, a parent does not have the right to use Subpart E of the Part B regulations to overcome the other parent's revocation of consent for special education and related services. Pursuant to 34 CFR §300.507(a)(1), a parent may only file a due process complaint with respect to any of the matters described in sections 300.503(a)(1) and (2). Section 300.503(a)(1) and (2) cover actions by a "public agency," and not by another parent. A decision by one parent to revoke consent is not an action by a "public agency," and when invoked, the public agency has no discretion – by operation of law, it must provide written notice to the parents, and then cease providing special education and related services consistent with the parental revocation.² Moreover, due process complaints "must allege a violation" of a Part B requirement. 34 CFR §300.507(a)(2). In the situation you present, no violation of the IDEA has occurred or could be alleged – it is not a violation of IDEA for one parent to revoke parental consent for special education and related services over the objection of the other parent. In effect, the hearing officer would have no role to play as the matter is not one over which he or she has jurisdiction.

Similarly, States are not required to offer mediation under 34 CFR §300.506 in the situation you pose, as mediation is designed to resolve disputes between a public agency and a parent. The regulations provide that if the parties resolve a dispute through the mediation process, they must execute a legally binding agreement that sets forth the resolution that, among other things, is "signed by both the parent and a representative of the agency who has the authority to bind such agency." 34 CFR §300.506(b)(6). Thus, this regulation contemplates that public agencies be

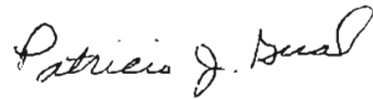
² If an LEA does not comply with the requirements of 34 CFR §300.300(b)(4), either by continuing to provide special education and related services to the child after a parent revokes consent, or by failing to provide prior written notice in accordance with 34 CFR §300.503 before ceasing the provision of special education and related services, the parent may use the procedures in Subpart E. However, that is not the situation posed in your letter.

included as a “party” to mediation. Accordingly, the IDEA does not provide a mechanism for parents to resolve disputes with one another; such disputes must be settled privately or through whatever State law processes exist.

Based on section 607(e) of 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 IDEA in the context of the specific facts presented.

I hope this information is helpful to you. If you have questions, please contact Dr. Deborah Morrow at 202-245-7456.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education
Programs