



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

AUG 31 2010

Mark Ward
Attorney – Special Education Services
Kansas State Department of Education
120 SE 10th Avenue
Topeka, KS 66612

Dear Mr. Ward:

This is in response to your March 23, 2010 letter to Patricia J. Guard, former Deputy Director of the Office of Special Education Programs (OSEP) at the U.S. Department of Education (Department). In your letter, you ask that OSEP review the policy on parental revocation of consent in the letter to H. Douglas Cox of the Virginia Department of Education, dated August 21, 2009. The referenced OSEP letter interprets Part B of the Individuals with Disabilities Education Act (Part B) as requiring a local educational agency to accept either parent's revocation of consent for his or her child's continued receipt of special education and related services under 34 CFR §300.300(b)(4), provided that the parent has legal authority to make educational decisions on behalf of the child.

As we understand the essence of your inquiry, your view is that only the parent who gave consent has the right to revoke that consent at any time, and that OSEP should not interpret the regulations to give the non-consenting parent the right to revoke that consent. We believe that OSEP lacks the authority to adopt such an interpretation. The Part B regulations require that the public agency obtain consent from the parent of a child for the initial provision of special education and related services, and that the parent of a child may revoke consent in writing for the child's continued receipt of special education and related services any time subsequent to the initial provision of special education and related services. Once the parent of a child revokes consent in writing for the child's continued receipt of special education and related services, the public agency may not continue providing special education and related services to the child, but must provide prior written notice to both parents, consistent with 34 CFR §300.503, before ceasing the provision of such services. 34 CFR §300.300(b)(4)(i).

Under Part B, any person who meets the definition of the term "parent" in 34 CFR §300.30(a) with legal authority to make educational decisions on behalf of the child has the right to revoke consent in writing to the child's continued receipt of special education and related services any time subsequent to the initial provision of special education and related services. There is no requirement in Part B that the public agency obtain consent for the initial provision of special education and related services, or accept revocation of consent for the child's continued receipt of special education and related services, from both parents with legal authority to make educational decisions on behalf of the child. Further, Part B does not condition a public agency's

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ability to accept from a parent with legal authority to make educational decisions on behalf of that child a revocation of consent for that child's continued receipt of special education and related services on the agreement of the child's other parent, who provided consent for the initial provision of special education and related services to the child.

We appreciate that public agencies may have difficulty with this interpretation when both parents with legal authority to make educational decisions on behalf of their child disagree on the revocation of consent. Nevertheless, for the reasons explained above, we continue to believe that the policy clarification in the August 21, 2009 letter to Cox is consistent with applicable Part B requirements, and therefore decline your request to change that interpretation.

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

If you have additional questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", with a long horizontal line extending to the right.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: Dale Dennis