



Nancy S. Grasmick
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD

MEMORANDUM

TO: Local Directors of Special Education

FROM: Carol Ann Baglin, Ed.D.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

SUBJECT: Consent for Special Education Services

DATE: July 6, 2006

Attached is the response to a request for clarification from Montgomery County Public Schools (MCPS) regarding whether a parent with a disability has the right to revoke consent for the provision of special education and related services after the initial provision of those services. This response contains the Maryland State Department of Education's (MSDE's) current interpretation of the Individuals with Disabilities Education Act (IDEA) parental consent provision. However, please note that the IDEA and proposed regulations are not clear on this issue, and we will send MCPS' question to the United States Department of Education, Office of Special Education Programs (OSEP) for their interpretation. In the interim, public agencies are expected to follow MSDE's interpretation of the parental consent provision unless OSEP informs this office that it interprets the provision differently.

As always, thank you for your advocacy and support for students with disabilities in Maryland. If you have any questions, please do not hesitate to contact me at 410-767-0238.

CAB/aam

Attachment

c: Local School Superintendents (w/attachment)
Branch/Section Chiefs (w/attachment)



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July 6, 2006

Ms. Vickie Strange-Moscose
Director, Department of Special Education Operations
Montgomery County Public Schools
850 Hungerford Drive
Rockville, Maryland 20850

RE: Consent for Special Education Services

Dear Ms. Strange-Moscose:

Thank you for your request to the Maryland State Department of Education (MSDE) for an interpretation of whether a parent of a student with a disability has the right to revoke consent for the provision of special education and related services after the initial provision of those services. You requested the interpretation because the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1414(a)(1)(D) and 34 C.F.R. §§300.500(b)(1)(iii) and .505 do not clearly explain whether a parent can revoke consent after the initiation of special education and related services and does not explain the public agency's obligations to the student if the parent attempts to revoke consent. For the reasons stated below, and consistent with the analysis provided in MSDE's Letter of Findings in complaint investigation #03-103, MSDE believes that the IDEA does not permit a parent to revoke consent for a public agency to continue to provide special education and related services after the initiation of those services. It is MSDE's position that the public agency continues to have an obligation to provide a free appropriate public education (FAPE) to a student with a disability after initial parent consent for special education and related services and the initiation of those services unless the student no longer meets the criteria for identification as a student with a disability under IDEA, or the parties are able to resolve a disagreement through mediation or a due process hearing.

The IDEA requires the public agency to obtain informed consent from a parent before providing special education and related services to a student (20 U.S.C. §1414(a)(1)(D)). However, federal regulations state that consent "may be revoked at any time" (34 CFR §300.500(b)(1)(iii)). These provisions read together have led to uncertainty about whether a parent can revoke consent after special education and related services have been provided to a student.

Current federal regulations specify that parental consent is required before: (a) conducting an initial evaluation or reevaluation; and (b) the initial provision of special education and related services (34 CFR §300.505(a)(1)). Accordingly, the federal regulations indicate that, while consent may be revoked at any time, the consent described in §300.500(b)(1)(iii) is only required for the initial provision of special education and related services and is not required for the

continuation of services once the services are initiated. Since consent is not required to continue to provide special education and related services, a parent's attempt to revoke consent does not change the public agency's responsibility to continue to provide FAPE while the student meets the criteria for identification as a student with a disability under IDEA. While states may adopt a policy under which parents may revoke consent subsequent to the initial provision of services, MSDE has not adopted such a policy.

In support of MSDE's interpretation, the United States Department of Education, Office of Special Education Programs (OSEP), provided guidance on this matter in *Letter to Williams*, 18 IDELR 534, September 20, 1991. In that guidance, the OSEP states the following:

"It is our position that 'the right to revoke consent corresponds to the duration of the activity for which consent was obtained and is applicable when a parent initially gives consent and subsequently withdraws it.'"

The OSEP letter further states that, based on the above reasoning "consent to initial [provision of special education services] can be revoked at any time prior to the child's receipt of special education for the first time," and "the parent's right to revoke consent ceases to be relevant once the replacement evaluation and initial [provision of services] have occurred."

Once the public agency obtains the initial consent to provide special education and related services and those services have been initiated, the public agency is required to provide FAPE to the student, as it is required to provide to all students with disabilities residing in the jurisdiction (20 U.S.C. §1412(a)). Therefore, the Montgomery County Public Schools (MCPS) has an affirmative obligation to continue to provide special education and related services to a student in accordance with the Individualized Education Program (IEP) even if the parent requests discontinuation of services after the initial provision of services to the student.

The public agency should attempt to resolve a disagreement with a parent through informal means, such as parent conferences and reevaluation of the student's eligibility for special education services. If, as a result of a reevaluation, the IEP team determines that the student no longer meets the criteria for identification as a student with a disability under IDEA, the school system would be required to discontinue the provision of special education and related services. If, however, the team determines that the student continues to require special education and related services and the disagreement cannot be resolved informally, the school system or the parent may use formal means, such as a due process hearing, to resolve the dispute (*Letter to Williams*, 18 IDELR 534, *supra*).

Because of the lack of clarity in the language of the IDEA regarding this issue, we will send a request to OSEP for their interpretation of the parent consent issue. As soon as I receive a response from OSEP to the inquiry, I will share it with you and other public agencies in

Ms. Vickie Strange-Moscoco
July 6, 2006
Page 3

Maryland. Unless and until OSEP informs MSDE that its interpretation is incorrect, public agencies will be expected to follow the interpretation as outlined above.

Sincerely,



Carol Ann Baglin, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAB/aam

c: Carey Wright Alison Steinfels
 Gwendolyn J. Mason Edward L. Wulkan
 Zvi Greismann Elliott Schoen