

Overview of IDEA Regulations (Effective Dec. 31, 2008): Presentation to MA Special Ed Coalition

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Major Changes

1. Parental revocation of consent for continued provision of services
2. Efforts to employ and advance qualified individuals with disabilities
3. Representation by non-attorneys in DP hearings
4. State monitoring, enforcement, and reporting
5. Subgrants to LEAs and reallocation of LEA funds

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1. Revocation of Consent for Continued Provision of Services: §300.300(b)(4)

NEW provision allows parent, at any time subsequent to initial provision of services, to revoke consent, in writing, for continued services. When parent revokes consent, LEA:

- May not continue to provide services to child, but must provide prior written notice (§ 300.503) before ceasing the provision of services;
- May not use mediation (§300.506) or DP procedures (§§300.507-300.516) to obtain agreement or ruling that services may be provided;

(cont'd)

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1. Revocation of Consent for Continued Provision of Services: §300.300(b)(4)

- Will not be considered to be in violation of requirement to make FAPE available to child because of failure to provide child with further services;
- Is not required to convene an IEP meeting or develop an IEP (§§300.320 and 300.324) for further provision of services.

Revocation of Consent:

Additional Obligations of LEAs

In addition to requiring parental revocation to be in writing and LEA to provide prior written notice (§300.503) within a reasonable time before discontinuing services, USED commented that the LEA:

- Must include explanation of parental revocation rights in annual procedural safeguards notice (§300.504);
- May utilize additional procedures established by the State (provided they are voluntary for parent and do not delay or deny discontinuation of services);
- May not require parent to provide an explanation for revocation of consent.

Revocation of Consent:

Amendment of Records: §300.9(c)(3)

- **NEW provision:** When parent revokes consent in writing for continued provision of services, LEA is not required to amend child's education records to remove any references to receipt of services.
- USED noted that this provision does not affect the rights of parent to inspect and review child's education record (§300.613) or to request an amendment to the information in child's records (§§300.618-300.621).

Revocation of Consent:

Implications for Discipline

- According to USED, when parent revokes consent, LEA is not deemed to have knowledge that the child is a child with a disability – child may be disciplined as a GE student; not entitled to IDEA protections.
- USED commented that regulations implement IDEA only; do not address overlap with §504 and ADA.
- **Note for advocates:** Child still has a right under §504 to be free from discrimination; cannot be punished for behavior that is a manifestation of his/her disability.

Concern that Parental Revocation May Be Detrimental to Child: Further USED Clarification

- IDEA presumes parent acts in child's best interest; right of parent to revoke consent is consistent with IDEA's emphasis on role of parent in protecting child's rights.
- Revocation of consent does not diminish "child find" obligations.
- Parent who revokes consent always maintains right to request subsequent initial evaluation.
- Child who reaches the age of majority may revoke consent to his/her services in States that allow for transfer of rights upon age of majority (18 in MA).

Revocation of Consent for Particular Service(s): Further USED Clarification

- If parent wants to end provision of a particular service, and LEA and parent disagree about whether this would result in denial of FAPE, parent may use DP procedures to try to obtain ruling that service is not appropriate for child.
- States may establish additional consent rights (e.g., requiring parental consent for particular services), but must ensure that LEAs have procedures to ensure that exercise of these rights does not result in denial of FAPE.

Implications of Revocation of Consent for Accountability: Further USED Clarification

- When parent revokes consent, child is considered a GE student who has exited SE for accountability purposes.
- Consistent with NCLB regulation §200.20(f), States may include a student whose parent revokes consent in SE subgroup for AYP calculations for 2 years following revocation of consent; however, child will no longer have an IEP.
- Under IDEA, States are generally not required to include students whose parents revoke consent in calculations for SPP indicators.

Parental Revocation of Consent under MA Law: 603 C.M.R. §§28.07(1)(a), (b)

- Written parental consent shall be obtained before placing a student in a special education placement subsequent to the initial placement in special education.
- If parent revokes consent for placement in an SE program subsequent to the initial placement, school district shall consider, with parent, whether such action will result in denial of FAPE.
- If, after consideration, school district determines that parent's action will result in denial of FAPE, district shall seek resolution through procedures found in 603 C.M.R. §28.08 (mediation and DP). Participation by parent in such consideration shall be voluntary and failure or refusal of parent to participate shall not preclude school district from taking appropriate action under 603 C.M.R. §28.08.
- **Comparison to IDEA §300.300(b)(4)**

2. Positive Efforts to Employ and Advance Individuals with Disabilities: §300.177(b)

- NEW provision requires SEAs and LEAs to make positive efforts to employ and advance qualified individuals with disabilities in programs assisted under IDEA.
- “Positive efforts” is not defined because of unique needs of each SEA and LEA; SEAs and LEAs have a separate obligation under §504 to provide reasonable accommodations to qualified individuals with disabilities who apply for employment.
- USED does not anticipate adding an SPP indicator to measure implementation of §300.177(b).

3. Representation by Non-Attorneys in DP Hearings: §300.512(a)(1)

- NEW provision states that whether parties have right to be represented by non-attorneys in DP hearings is determined under State law.
- USED commented that if State Law is silent on whether non-attorney advocates can represent parties in DP hearings, nothing in the statute or regulations prohibits non-attorneys from assuming this role.
- New provision does not limit right of parties to be “accompanied and advised” at DP hearings by individuals with special knowledge or training regarding the challenges of children with disabilities (20 U.S.C. §1415(h)(1)).

Representation by Non-Attorneys: Further USED Clarification

- State law regarding non-attorney representation applies to all parties.
- New provision does not prevent parents from representing themselves (*see Winkelman*) and does not address whether parties may be “represented” by non-attorneys in other matters (e.g., at IEP meetings).
- USED acknowledged that additional information regarding availability of legal representation for parties might help Congress decide whether to change the statute.

4. State Monitoring, Enforcement, and Reporting: §§300.600, 300.602, 300.606

- Under REVISED §300.600(a), States must: (1) monitor implementation of Part B; (2) make annual determinations about performance of each LEA; (3) enforce Part B, using appropriate enforcement mechanisms; and (4) report annually on performance of State and each LEA.
- Under NEW §300.600(e), States must ensure that all noncompliance by LEAs is corrected as soon as possible, in no case later than one year after State’s identification of noncompliance.

Public Reporting on LEA and SEA Performance

- REVISED §300.602(b)(1)(i)(A) requires States to report annually to the public on performance of each LEA on SPP targets as soon as practicable but no later than 120 days following State’s APR submission.
- REVISED §300.602(b)(1)(i)(B) requires States to make available to the public: SPP, APRs, and State’s annual reports on performance of each LEA. Plan and reports must, at a minimum, be posted on SEA’s website and distributed to the media and through public agencies.

Notifying the Public of Enforcement Actions

- REVISED §300.606 requires States receiving notice of enforcement actions being taken against them by Secretary of ED to notify the public, including, at a minimum, by posting notice on SEA's website and distributing notice to the media and through public agencies.
- Neither the IDEA statute nor regulations require SEAs to report publicly on enforcement actions taken against LEAs; however, USED encouraged States, in interest of transparency and public accountability, to report to the public on such actions, where appropriate.

5. Subgrants to LEAs and Reallocation of LEA Funds: §§300.705, 300.815, 300.816, 300.817

- REVISED §§300.705(a) and 300.815 require States to distribute funds to LEAs, including public charter schools that operate as LEAs that have established their eligibility as an LEA, even if they are not serving any children with disabilities.
- REVISED §§300.705(c)(2) and 300.817(b) allow States to reallocate any funds that have not been obligated by an LEA not serving any children with disabilities to other LEAs that are not adequately providing services to all children with disabilities.