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LEGAL UPDATE

December 30, 2008

To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, Schools Legal Counsel CDC

Subject: New Federal Regulations Allow Parents to Revoke Consent to Special Education Services Without Liability for Districts
Memo No. 33-2008

The U.S. Department of Education published new regulations¹ regarding the Individuals with Disabilities Education Act ("IDEA") on December 1, 2008, which become effective on December 31, 2008. The revised federal regulations address several compliance and reporting issues at the state level and other issues of less immediate concern; however, the revised federal regulations also provide much needed guidance on the issue of parental revocation of consent for special education services. The revised federal regulations govern parental revocations that occur on or after December 31, 2008 and do not apply retroactively to parental revocations that occurred prior to this date.

The revised federal regulations continue the previously existing rule that when parents refuse to consent to a student's initial receipt of special education services, a Local Educational Agency ("LEA") cannot file a request for a due process hearing or otherwise seek to override the parents' refusal to consent to services.² Under these circumstances the LEA is not liable for failure to provide the student with a Free Appropriate Public Education ("FAPE").³ However, a question had remained as to the duty and liability of the LEA where the parents wished to revoke

¹ The regulations are available at: http://www.access.gpo.gov/su_docs/fedreg/a081201c.html.

² This Legal Update refers to "parents" in the plural; however, please be advised that one parent, with educational rights over the child, may revoke consent for special education services. In the case of two parents disagreeing, with one parent consenting and the other parent revoking consent, an LEA should continue to provide the services.

³ 34 C.F.R. 300.300(b)(3)-(4).

consent after their child had received special education services. California resolved this issue through Education Code section 56346(f), which requires the LEA to file for a due process hearing in this circumstance where the LEA believed the student required such special education services in order to receive a FAPE.

The revised federal regulations, which supersede Education Code section 56346(f), provide that when parents revoke consent for the provision of special education services to a student who is receiving special education services the LEA will not be liable for failure to provide the student with a FAPE under the IDEA, so long as the following revocation process is followed.⁴

Process for Revocation

1. The parents must revoke the special education services in writing;
2. The LEA must “promptly” and within a “reasonable time” respond to the parents’ request with prior written notice before discontinuing the services; and
3. After sending the parents prior written notice, the LEA may discontinue the special education services.

Parental revocation of consent for services cannot be retroactive; therefore, an LEA is not required to amend education records to remove any references to a student’s prior receipt of special education assessment and services.⁵ An LEA or Special Education Local Plan Area (“SELPA”) may choose to develop a standard form for parents to use to revoke consent for special education services, but the use of the form cannot delay the discontinuation of the services.⁶ An LEA may request from parents, but cannot require, the reason for their revocation of special education services for their child.⁷

Prior Written Notice

The prior written notice, in conformance with 34 C.F.R. 300.503, should provide the student’s parents with the following:

1. A statement that the parents are requesting to revoke consent for special education services for their child, which will result in the discontinuance of special education services and result in the child being treated as a general education student for all purposes (to include disciplinary matters);
2. A statement describing the general education program and services the student will receive;
3. A statement that while the LEA believes the student still requires special education services to receive a FAPE, the parents are revoking consent for the special education services;

⁴ 34 C.F.R. 300.300(b)(4).

⁵ 34 C.F.R. 300.9(c)(3).

⁶ Comments to the Regulations, 73 Fed.Reg. 73008 (Dec. 1, 2008).

⁷ *Id.*

4. A statement that the LEA believes the student still requires special education services based on the students most recent assessments, reports, and other information (which should be listed in some detail);
5. A statement that the student's parents have protection under the procedural safeguards of the IDEA (and we also advise a copy of the procedural safeguards accompany the prior written notice);
6. A statement regarding sources of information for the parents to contact to understand the requirements of the IDEA such as the LEA special education administrator; and
7. A statement regarding any other relevant factors or issues.

The prior written notice should be provided in the native language of the student's parents unless it is clearly not feasible to do so. In the case of a student who is eighteen or older and requests to revoke consent for services, the prior written notice should be provided to both the student and the student's parents although the student holds the revocation rights.⁸ We recommend that the prior written notice provide a short time period in which the special education services will continue to be provided, such as five school days, before the services are discontinued in order to allow the students' parents to fully consider their action and change their minds (i.e. request for the services to continue).

Revocation of Services Changes Status of Student to General Education

Once a student's parents revoke the consent for special education services, the student should be treated the same as any other general education student, which includes matters of discipline.⁹ The student may be placed in any classroom where other general education students are placed, including general education classrooms co-taught by a special education teacher.¹⁰ If the student's parents later change their minds and request special education services for their child, then the LEA must treat the parents' request as an initial request for services.¹¹ This means the LEA must assess the student (although the assessment can be abbreviated at the LEA's discretion based upon previous assessment information), convene an Individualized Education Program ("IEP") meeting to determine eligibility for special education, and provide an appropriate offer of services if the student qualifies. All timelines regarding initial referrals, assessments and IEP meetings would apply.

An LEA should neither try and "convince" parents to continue to consent to special education services for their child¹² nor try to "encourage" parents to revoke consent for special education services where the LEA believes the student still requires special education services in order to receive a FAPE.¹³ The comments to the regulations make clear that the parents are presumed to have the "best interests" of their child in mind when revoking consent for special education services.¹⁴ Nevertheless, an LEA is still authorized to file a complaint with child

⁸ Comments to the Regulations, 73 Fed.Reg. 73010 (Dec. 1, 2008).

⁹ Comments to the Regulations, 73 Fed.Reg. 73012 (Dec. 1, 2008).

¹⁰ Comments to the Regulations, 73 Fed.Reg. 73013 (Dec. 1, 2008).

¹¹ Comments to the Regulations, 73 Fed.Reg. 73015 (Dec. 1, 2008).

¹² *Id.*

¹³ Comments to the Regulations, 73 Fed.Reg. 73014 (Dec. 1, 2008).

¹⁴ Comments to the Regulations, 73 Fed.Reg. 73009-73010 (Dec. 1, 2008).

protective services when abuse or neglect is suspected, which may be triggered by parents revoking consent for special education services for their child.¹⁵

No Need to Develop a 504 Plan

The United States Department of Education, Office of Civil Rights (“OCR”) has advised that when a parent rejects consent for implementation of an IEP developed under the IDEA the parent is essentially rejecting what would be offered under Section 504 of the 1973 Rehabilitation Act.¹⁶ Therefore, an LEA is not required to develop a 504 Plan for a student whose parents have refused to consent or revoked consent for special education services.

Partial Revocation of Parental Consent

In California, Education Code section 56346(f) states that LEAs must file for due process hearing if a student’s parents refuse to consent to a component of the student’s existing special education program where the LEA believes the student requires the component in order to receive a FAPE. The federal regulations unfortunately do not clearly resolve the issue of partial revocation of parental consent. However, a comment to the federal regulations strongly suggests that parents may not partially revoke consent for special education services – in other words, consent may be an all or nothing proposition:

If, however, the parent and public agency disagree about whether the child would be provided with FAPE if the child did not receive a particular special education or related service, the **parent** may use the due process procedures...to obtain a ruling that the service with which the parent disagrees is not appropriate for their child.¹⁷ (Emphasis added).

Comments to the federal regulations do not carry the force of law, but are persuasive authority cited by the Office of Administrative Hearings (“OAH”) and the courts in interpreting the law. Therefore, based on the above, we suggest that districts contact legal counsel to obtain assistance in resolving an issue of partial parent consent or partial parent revocation of existing special education services. We will keep you updated as OAH and the courts further clarify this legal issue.

Please contact any of our attorneys if you have any questions regarding this legal update.

¹⁵ Comments to the Regulations, 73 Fed.Reg. 73016 (Dec. 1, 2008).

¹⁶ *Letter to McKethan* (OCR 1996) 25 IDELR 295.

¹⁷ Comments to the Regulations, 73 Fed.Reg. 73011 (Dec. 1, 2008).



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SUMMARY OF U.S. DEPARTMENT OF EDUCATION COMMENTS IN QUESTION AND ANSWER FORMAT

Accompanying the new regulations, the U.S. Department of Education (USDOE) published a summary of comments by individuals commenting on the regulations and a discussion by employees of the United States Department of Education. These comments and discussion do not have the force of law and are not binding in the same manner as regulations, but do offer insight into the views of the U.S. Department of Education and can provide assistance in interpreting the regulations. To summarize the comments and responses by the U.S. Department of Education, we have redrafted the comments into questions and summarized the responses of the U.S. Department of Education. The entire comments and discussion can be found in the Federal Register published on December 1, 2008.¹

- 1. If a parent or guardian revokes their consent to special education and related services, is the public agency required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent?**

USDOE: Section 300.9 (c) addresses revocation of consent, explaining that consent is voluntary and may be revoked at any time. Section 300.9 (c) states that the parent's revocation of consent is not retroactive and that revocation does not negate an action that occurred after the consent was given and before the consent was revoked. A parent's revocation of consent is not retroactive. Consequently, the public agency would not be required to amend the child's education records to remove any references to the child's receipt of special education and related services in the event the child's parent revokes consent.²

- 2. What is the rationale for authorizing parents to revoke their consent to special education and related services?**

USDOE: The IEP team does not have the authority to consent to the provision of special education and related services to a child. The Secretary of Education strongly believes that since a

¹ Federal Register, Vol. 73, No. 231, Rules and Regulations (December 1, 2008).

² Id. at 73006-73007.

parent may refuse to consent to the initial provision of special education and related services. The parent has the authority to revoke that consent, thereby ending the provision of special education and related services to their child.³ Allowing parents to revoke consent for the continued provision of special education and related services at any time is consistent with the IDEA's emphasis on the role of parents in protecting their child's rights and the Department's goal of enhancing parent involvement and choice in their child's education. The Department of Education expects that after a parent revokes consent for the continued provision of special education and related services, the parent will continue to work with the child's school to support the child in the general curriculum.⁴

3. If the child fails to make academic progress after the parent revokes their consent to special education and related services, may an IEP team be convened?

USDOE: An IEP team meeting should be convened if any member of the IEP team, including a parent, believes the child is not progressing. The regulations require each public agency to review a child's IEP periodically, but not less than annually and revise the IEP as appropriate to address any lack of expected progress.⁵ However, the review of a child's IEP by the IEP team does not replace a parent's right to revoke consent for the continued provision of special education and related services to their child.

4. Is allowing parents to revoke consent for special education and related services inconsistent with the IDEA's emphasis on the role of parents in protecting their children's rights?

USDOE: Allowing parents to revoke consent for special education and related services at any time is consistent with the IDEA's emphasis on the role of parents in protecting their child's rights and the Department of Education's goal of enhancing parent involvement and choice in their child's education. The IDEA presumes that a parent acts in the best interest of their child. If a child experiences academic difficulty after a parent revokes consent to the continued provision of special education and related services, nothing in the act or the implementing regulations would prevent a parent from requesting an evaluation to determine if the child is eligible at that time for special education and related services.⁶

5. What if safety issues arise when a parent revokes their consent to special education and related services and the child returns to the general education classroom?

USDOE: The safety of all students in the classroom is of primary concern to the Secretary of Education. The Department of Education expects that schools will continue to maintain the safety of all students in all classrooms regardless of whether children are receiving special education and related services.⁷

³ See 20 U.S.C. section 1414 (a)(1)(D)(i)(II).

⁴ See, Federal Register, Vol. 73, No. 231, p. 73009 (December 1, 2008).

⁵ See 34 C.F.R. section 300.324 (b)(1).

⁶ *Id.* at 73009-73010.

⁷ *Id.* at 73010.

6. Does allowing parents to revoke their consent to special education and related services undermine a child's right to a free appropriate public education?

USDOE: The Department of Education does not agree with individuals who commented that allowing parents to revoke their consent to special education and related services undermines a child's right to a free appropriate public education. The Department of Education notes that the IDEA grants parents rights regarding the provision of a free appropriate public education to their child, including the right to determine whether their child will receive special education and related services.⁸ It is the Department of Education's position that a parent should also have the authority to revoke consent to the continued provision of special education and related services to their child. The Act presumes that parents act in the best interest of their child. Therefore, affording a parent the right to consent to the initial provision of special education and related services or the right to revoke consent, in writing, to the continued provision of special education and related services is consistent with the IDEA and does not undermine a child's right to a free appropriate public education.⁹

7. When a public agency receives a parental revocation of consent for special education and related services, in writing, what procedure should the public agency follow?

USDOE: When a public agency receives a parent revocation of consent, in writing, for all special education and related services for a child, the public agency should provide written notice in accordance with federal regulations within a reasonable time before discontinuing all special education and related services.¹⁰

8. What if the parent disagrees with the provision of particular special education and related services and agrees to other special education and related services?

USDOE: In situations where a parent disagrees with the provision of a particular special education or related service and the parent or public agency agree that the child would be provided with a free appropriate public education if the child did not receive that service, the public agency should remove the service from the child's IEP and the public agency would not have a basis for using the due process procedures or mediation to require that the service be provided to the child.

If, however, the parent and the public agency disagree about whether the child would be provided with a free appropriate public education if the child did not receive a particular special education or related service, the parent may use the due process procedures to obtain a ruling that the service with which the parent disagrees is not appropriate for their child.¹¹ Under the regulations, states are free to create additional parent consent rights, such as requiring parental consent for

⁸ See, 20 U.S.C. Section 1414 (a)(1)(d).

⁹ Federal Register, Vol. 73, No. 231, p. 73010 (December 1, 2008).

¹⁰ *Id.* at 73011; See, also, 34 C.F.R. Section 300.503.

¹¹ The discussion by the U.S. Department of Education on this point does not address whether the public agency may use the due process procedures. However, in California, Education Code section 56346 (f) requires California school districts to file for a due process hearing.

particular services, or allowing parents to revoke consent for particular services, or allowing parents to revoke consent for particular services, but in those cases, the state must ensure that each public agency in the state has effective procedures to ensure that the parents exercise of these rights does not result in a failure to provide a free appropriate public education to the child.¹²

9. **For purposes of testing under the No Child Left Behind Act, how will a student be treated once a parent revokes consent for a child to receive special education and related services?**

USDOE: When a parent revokes consent for a child to receive special education and related services, the child is considered a general education student under the No Child Left Behind Act (NCLB). If a parent revokes consent after the school year begins but before administration of the annual state assessment required by the NCLB, the child is considered a general education student who has exited special education for accountability purposes.¹³

10. **Will a teacher be required to provide the accommodations listed in a child's IEP in the general education environment for any child if the parent revoked consent to special education and related services?**

USDOE: When a parent revokes consent in writing for the continued provision of special education and related services, a teacher is not required to provide the previously identified IEP accommodations in a general education environment. However, general education teachers often provide classroom accommodations for children who do not have IEPs. Nothing in the federal regulations would prevent a general education teacher from providing a child whose parents have revoked consent for the continued provision of special education and related services with accommodations that are available to non-disabled children under relevant state standards.¹⁴

11. **When a parent revokes consent to special education and related services, what law is applicable to the student for disciplinary purposes?**

USDOE: The federal regulations generally provide protection for children not yet determined eligible for special education and related services. In instances when the public agency is deemed to have knowledge that a child, is a child with a disability before the behavior that precipitated the disciplinary action occurred.¹⁵ However, the public agency is not deemed to have knowledge under federal regulations if the parent of the child has refused services under the IDEA.¹⁶ When a parent revokes consent for special education and related services, the parent has refused

¹² See, 34 C.F.R. Section 300.300 (d)(2); Federal Register, Vol. 73, 231, p. 73011 (December 1, 2008). In this regard, it can be argued that Education Code section 56346 (f) is consistent with 34 C.F.R. Section 300.300 (d)(2).

¹³ *Id.* at 73011.

¹⁴ *Id.* at 73012; see also, 34 C.F.R. Section 300.300(b)(4). The parents could request a Section 504 plan and seek reasonable accommodations under Section 504 in the general education environment.

¹⁵ 34 C.F.R Section 300.534.

¹⁶ 34 C.F.R. Section 300.534 (c)(1).

services. Therefore, the public agency is not deemed to have knowledge that the child is a child with a disability and the child may be disciplined as a general education student and is not entitled to the IDEA's discipline protections.¹⁷

The Department of Education expects that parents will consider possible consequences of discipline procedures when making the decision to revoke consent for the provision of special education and related services.¹⁸

- 12. After a parent revokes their consent to special education and related services, may the school district place the child in a general education classroom that is taught by a general education teacher and a special education teacher?**

USDOE: Once a parent revokes consent for special education and related services, the child is a general education student. Consequently, the child may be placed in any classroom where other general education students are placed. If a child, whose parents has revoked consent, is placed in a classroom that is taught by both a general education teacher and a special education teacher, that child is placed in the classroom as a general education student and should be treated the same as all other general education students are treated in that classroom.¹⁹

- 13. What effect do these new regulations allowing parents to revoke their consent to special education and related services have on the child's rights under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act?**

USDOE: The new regulations implement provisions of the IDEA only. The new regulations do not attempt to address any overlap between the protections and requirements of the IDEA, and those of Section 504 and the ADA.²⁰

- 14. Does the public agency have any obligation to convince parents to accept special education and related services that are offered to a child?**

USDOE: A public agency does not have any obligation to convince parents to accept the special education or related services that are offered to a child. The public agency will not be considered to be in violation of the requirement to make a free appropriate public education available to the child if the parent of a child revokes consent for the continued provision of special education and related services. No provision in the IDEA or implementing regulations imposes an obligation on public agencies to dissuade parents to accept special education and related services or to dissuade parents from revoking consent for special education.²¹

¹⁷ Federal Register, Vol. 73, No. 231, p. 73012 (December 1, 2008).

¹⁸ *Id.* at 73013.

¹⁹ *Id.* at 73013.

²⁰ *Id.* at 73013. In our opinion, the student would continue to have rights under the ADA and Section 504 as a general education student.

²¹ *Id.* at 73013.

- 15. Is a public agency required to offer a free appropriate public education, triennial evaluations or an annual IEP to students whose parents have revoked their consent to special education and related services?**

USDOE: The Department of Education does not believe that a public agency is required to offer a free appropriate public education, triennial evaluations, or an annual IEP to students whose parents have revoked their consent to special education and related services. The Department of Education believes that the new regulations make it clear that once a parent revokes consent for special education and related services, the public agency will not be considered in violation of the obligation to make a free appropriate public education available to the child for failure to provide the child with further special education and related services and will not be required to convene an IEP team meeting or develop an IEP.²²

If a parent revokes consent for special education and related services, the child will be treated as a general education student, and will not be eligible for a free appropriate public education, triennial evaluations or an annual IEP.²³

- 16. Is it appropriate for school district personnel to encourage parents to remove their child from special education and related services by revoking their consent?**

USDOE: It is inappropriate for school personnel to encourage a parent to revoke consent for special education and related services. If school personnel believe a child no longer qualifies as a child with disability, there is a process under the IDEA and its implementing regulations for making that determination. In such cases, the public agency is required to evaluate a child before determining the child is no longer a child with a disability.²⁴

- 17. Does the placement of a child in a private school when free appropriate public education is at issue, a revocation of consent for special education for special education and related services?**

USDOE: The Department of Education believes that the placement of a child in a private school when free appropriate public education is at issue does not constitute a revocation of consent for special education and related services. Existing federal regulations address the steps a parent must take when enrolling a child with a disability in a private school, when free appropriate public education is at issue. The parent must inform the IEP team at the most recent IEP team meeting that the parent is rejecting the placement proposed by the public agency and must inform the IEP team of their intent to enroll the child in a private school at public expense or give written notice ten business days prior to the removal of the child from the public school. These requirements and the steps that must be followed by the parent, do not constitute parental revocation of consent for special education and related services.²⁵

²² Id. at 73013.

²³ Id. at 73013-73014.

²⁴ Id. at 73014; see also, 20 U.S.C. Section 1414 (c)(5); 34 C.F.R. Section 300.305(e).

²⁵ Id. at 73014; see also, 34 C.F.R. Section 300.148.

- 18. May parents request an evaluation when their child is disciplined if they have, prior to the discipline, revoked their consent to special education and related service?**

USDOE: The Department of Education believes that there is nothing in the IDEA or the implementing regulations that would prevent a parent from requesting an evaluation when their child has a discipline issue or is at risk of not succeeding in school. The Department believes that the child's right to a free appropriate public education does not cease to exist upon the revocation of consent. Therefore, a parent may consider discipline and graduation requirements when determining whether to request special education and related services for their child.²⁶

- 19. Is there a limit on how frequently may revoke their consent to special education and related services?**

USDOE: The Department of Education believes that there is no limit as to how frequently a parent may revoke consent and then subsequently request reinstatement in special education. The Department of Education believes that the purpose of the IDEA is to retain flexibility to address the unique and individualized circumstances surrounding each child's education. A public agency will not be considered in violation of the obligation to provide a free appropriate public education to the child for failure to provide the child with further special education services following the parent's revocation of consent. A public agency is only responsible for providing a free appropriate public education during the time period that the parent has provided consent for special education and related services.²⁷

- 20. Do the difficulties of staffing special education classrooms limit the ability of the parent to revoke their consent to special education and related services?**

USDOE: The Department of Education does not believe that the difficulties of staffing special education classrooms should affect a parent's right to revoke consent for special education and related services. The Department of Education believes that a parent's right to determine whether their child will receive special education and related services is paramount.²⁸

- 21. If a parent who revoked their consent for special education and related services later request that their child be re-enrolled in special education should the public agency treat this request as a request for initial evaluation?**

USDOE: The Department of Education believes that if a parent who revoked consent for special education and related services later requests that their child be re-enrolled in special education, the public agency must treat the request as a request for an initial evaluation, rather than a reevaluation. However, the Department of Education stated that depending on the data available, a new evaluation may not always be required. An initial evaluation requires a review of existing

²⁶ Id. at 73014.

²⁷ Id. at 73014.

²⁸ Id. at 73014.

evaluation data that includes local or state assessments, and classroom based observations by teachers and related services providers. On the basis of that review an input from the child's parents, the IEP team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child. Therefore, a public agency may not always have to expend resources on a new initial evaluation.²⁹

22. Does the parent have the right to revoke their consent for special education and related services at any time?

USDOE: The Department of Education believes that the parent's right to revoke consent for special education and related services may be exercised at any time. The Department believes that the right to revoke consent at any time is consistent with the IDEA's emphasis on the role of parents in protecting their child's rights and the Department of Education's goal of enhancing parent involvement and choice in a child's education.

The Department of Education does not believe that allowing a parent to revoke consent for the provision of special education and related services at any time, procedurally or substantively lessens protection provided to children with disabilities. The Department believes that a parent is recognized under the IDEA as the party responsible for protecting the child's interest in obtaining appropriate educational services. The Department of Education believes that the protections provided to children with disabilities are enlarged rather than lessened by amending the regulations to provide that a parent's decision to revoke consent for the continued provision of special education and related services cannot be challenged by the public agency. The Department of Education believes that a parent's revocation of consent for the continued provision of services cannot be challenged by a public agency any more than a parent's refusal to provide consent for the initial provision for special education and related services.³⁰

23. Is allowing a parent to revoke their consent to continue special education and related services inconsistent with the provisions of the IDEA that require a local educational agency (LEA) to evaluate a child before determining that the child is no longer a child with a disability?

USDOE: The Department of Education believes that allowing a parent to revoke consent for special education and related services is consistent with the provisions of the IDEA that require an LEA to evaluate a child before determining that the child is no longer a child with a disability. The Department of Education believes that allowing a parent to revoke consent for the continued provision of special education and related services does not trigger an LEA's obligation to conduct an evaluation for a child that is receiving services before determining that the child is no longer a child with a disability. If a parent revokes consent for the consent for the continued provision of special education and related services for their child, the public agency is not determining that the child is no longer a child with a disability. Instead, the public agency is discontinuing the provision

²⁹ Id. at 73015.

³⁰ Id. at 73015.

of special education and related services pursuant to the decision of the parent and there is no obligation for the local educational agency to evaluate the child.³¹

24. Is mediation appropriate when a parent revokes consent to the continued provision of special education and related services?

USDOE: The Department of Education believes that both the due process procedures and the mediation procedures are not appropriate when a parent revokes their consent to the continued provision of special education and related services. The Department of Education believes that a public agency should not have the ability to override a parent's revocation of consent for the continued provision of special education and related services. If a public agency believes that a child is no longer a child with a disability, then the public agency must evaluate the child before making that determination. If the parent disagrees with the eligibility determination, then the parent may challenge the decision using the due process procedures.³²

RDW: tnm

³¹Id. at 73015.

³²Id. at 73015-73016.

SELPA DEL CONDADO DE SONOMA

REVOCACIÓN DEL CONSENTIMIENTO PARA SERVICIOS DE EDUCACIÓN
ESPECIAL

Nombre del Estudiante _____
Fecha de Nacimiento _____
Escuela _____
Distrito Escolar _____

Por medio de la presente revoco el consentimiento para que mi hijo/hija reciba servicios de educación especial.

Al revocar el consentimiento, entiendo lo siguiente:

1. Mi hijo/hija ya no recibirá ningún servicio de educación especial.
2. Mi hijo/hija recibirá los mismos servicios educativos e intervenciones disponibles a cualquier estudiante en el programa de educación general, y será tratado en todo aspecto como estudiante de educación general, incluyendo cualquier procedimiento disciplinario.
3. El distrito ya no tendrá más juntas IEP para mi hijo/hija.
4. No se requiere que el distrito corrija el récord educativo de mi hijo/hija para remover toda referencia de que haya recibido servicios de educación especial.
5. Si cambio de parecer y solicito servicios de educación especial, el distrito llevará a cabo otra evaluación inicial de educación especial y tendrá una junta IEP para determinar si mi hijo/hija requiere servicios de educación especial.
6. También estoy rechazando las acomodaciones y servicios educativos a los que mi hijo/hija calificaría bajo la Sección 504 de la Ley de Rehabilitación de 1973.

Firma del padre/estudiante adulto _____

Fecha _____

[Insert Date]

[Put on District Letterhead]

[Insert name of parent(s) and address]

Acerca de: [Insert student's name] – Revocación del Consentimiento para Servicios de Educación Especial

Estimado [Insert name of parent(s)]:

Respondo a nombre del [Insert district name] ("District") a cerca de su carta fechada [Insert date of written parent revocation] que fue recibida por el Distrito el [Insert if received by the district on a different date than on parent's letter]. Por medio de su carta, entiendo que usted está eligiendo revocar el consentimiento para que [Insert student's name] reciba todo servicio de educación especial de acuerdo a la ley estatal y federal bajo la Ley Educativa para Individuos con Incapacidades ("IDEA"). Para poder satisfacer los requisitos anteriormente escritos de C. F. R. 34, Sección 300.503, le voy a proveer con la información acerca de su decisión de revocar el consentimiento para que [Insert student's name] reciba servicios de educación especial bajo IDEA.

Primero, su revocación del consentimiento para que [Insert student's name] reciba servicios de educación especial, resultará en que [Insert student's name] ya no reciba ningún servicio de educación especial de acuerdo a la ley federal y estatal bajo IDEA. [Insert student's name] será dado de "alta" del programa de educación especial, lo que quiere decir que él/ella recibirá los mismos servicios educativos e intervenciones disponibles a cualquier otro estudiante matriculado en el programa de educación general, y él/ella será tratado en todo aspecto como estudiante de educación general. Además, el Distrito ya no tendrá más juntas de Programa Educativo Individualizado ("IEP") para [Insert student's name]. Si más adelante cambia de parecer para que [Insert student's name] reciba servicios de educación especial, debe tenerse otra evaluación inicial de educación especial y se tendrá otra junta IEP para poder determinar si [Insert student's name] requiere servicios de educación especial y, si es así, qué colocamiento y qué servicios educativos requiere para poder recibir Educación Gratis Pública Apropriada ("FAPE"). Finalmente, haga el favor de estar enterado que al revocar su consentimiento para los servicios de educación especial bajo IDEA para [Insert student's name], usted también está rechazando las acomodaciones y/o servicios educativos a los que [Insert student's name] podría calificar bajo la Sección 504 de la Ley de Rehabilitación de 1973.

Segundo, la colocación de [Insert student's name] en educación general será en la escuela [Insert the name of the school site and class grade for elementary students – for secondary students insert complete class schedule].

Tercero, el Distrito cree que [Insert student's name] continúa requiriendo servicios de educación especial de acuerdo a su junta IEP fechada [Insert date of annual IEP meeting and any following IEP amendments]; sin embargo, su revocación del consentimiento resultará en la discontinuación de estos servicios de educación especial.

Cuarto, el Distrito cree que [Insert student's name] continúa requiriendo servicios de educación especial basándose en las siguientes fuentes de información: [Insert Psychoeducational assessment]; [Insert academic assessment]; y [Insert any other assessments or reports such as a speech/language assessment, general education teacher reports, etc.].

Quinto, la información disponible a usted acerca de garantías de procedimiento bajo IDEA, está contenida en el Aviso de Derechos de Padres y va adjunta con esta carta.

Sexto, si gusta ayuda para entender el contenido de esta carta o si quisiera que le explicaran más a fondo sus derechos de padre bajo IDEA, haga el favor de contactarme al: [Insert telephone number].

Séptimo, el Distrito no está conciente de ningún otro factor ni asunto relevante a esta cuestión. Sin embargo si usted está conciente de preocupaciones adicionales acerca de esta cuestión, haga el favor de contactarme.

Para poder darle tiempo para que usted revise esta carta y para considerar las implicaciones de su revocación del consentimiento para que [Insert student's name] reciba servicios de educación especial, el Distrito no discontinuará los servicios de educación especial de [Insert student's name] hasta que después del [Insert date approximately 5 school days after the date of this notice]. A menos que me provea con una declaración por escrito antes de esta fecha, la cual solicite que [Insert student's name] continúe recibiendo servicios de educación especial, los servicios de educación especial de [Insert student's name] serán automáticamente discontinuados el [Insert date approximately 5 school days after the date of this notice].

Haga el favor de contactarme si tiene cualquier pregunta acerca de esta carta o cualquier otra pregunta acerca del programa educativo de [Insert student's name].

Atentamente,

[Insert name and title of District representative]

Adjuntos: Aviso de Derechos de Padres bajo IDEA

SONOMA COUNTY SELPA

REVOCATION OF CONSENT FOR SPECIAL EDUCATION SERVICES

Name of Student _____
Birthdate _____
School _____
School District _____

I hereby revoke consent for my child to receive all special education services.

By revoking consent, I understand the following:

1. My child will no longer receive any special education services.
2. My child will receive the same educational services and interventions available to any student in the general education program and will be treated in all aspects as a general education student, including any disciplinary proceedings.
3. The district will not convene any further IEP meetings for my child.
4. The district is not required to amend my child's education records to remove any references to his/her receipt of special education services.
5. If I should change my mind and request special education services, the district will conduct another initial special education assessment and convene an IEP meeting to determine whether my child requires special education services.
6. I am also rejecting the educational accommodations and services that my child may otherwise qualify for under Section 504 of the 1973 Rehabilitation Act.

Signature of Parent /Adult Student _____

Date _____

[Insert Date]

[Put on District Letterhead]

[Insert name of parent(s) and address]

Re: [Insert student's name] – Revocation of Consent for Special Education Services

Dear [Insert name of parent(s)]:

I am responding on behalf of the [Insert district name] ("District") in regards to your letter of [Insert date of written parent revocation] that was received by the District on [Insert if received by the district on a different date than on parent's letter]. My understanding from your letter is that you are choosing to revoke consent for [Insert student's name] to receive any special education services pursuant to federal and state law under the Individuals with Disabilities Education Act ("IDEA"). In order to satisfy the prior written requirements of 34 C.F.R. section 300.503, I will provide you with information regarding your decision to revoke consent for [Insert student's name] to receive special education services under the IDEA.

First, your revocation of consent for [Insert student's name] to receive special education services will result in [Insert student's name] no longer receiving any special education services pursuant to federal and state law under the IDEA. [Insert student's name] will be "dismissed" from the special education program, which means s/he will receive the same educational services and interventions available to any other student enrolled in the general education program and s/he will be treated in all aspects as a general education student. In addition, the District will not convene any further Individualized Education Program ("IEP") meetings for [Insert student's name]. If you later change your mind and desire for [Insert student's name] to receive special education services, another initial special education assessment must occur and an IEP meeting will be convened in order to determine whether [Insert student's name] requires special education services and, if so, what educational placement and services s/he requires in order to receive a Free Appropriate Public Education ("FAPE"). Lastly, please be aware that by revoking your consent for special education services under the IDEA for [Insert student's name], you are also rejecting the educational accommodations and/or services that [Insert student's name] may otherwise qualify for under Section 504 of the 1973 Rehabilitation Act.

Second, [Insert student's name]'s general education placement will be at the [Insert the name of the school site and class grade for elementary students – for secondary students insert complete class schedule].

Third, the District does believe that [Insert student's name] continues to require special education services pursuant to her/his IEP meeting convened on [Insert date of annual IEP meeting and any following IEP amendments]; however, your revocation of consent will result in the discontinuation of these special education services.

Fourth, the District believes [Insert student's name] continues to require special education services based upon the following sources of information: [Insert Psychoeducational assessment]; [Insert academic assessment]; and [Insert any other assessments or reports such as a speech/language assessment, general education teacher reports, etc.].

Fifth, Information about procedural safeguards available to you under the IDEA is contained in the Parent's Notice of Rights that is enclosed with this letter.

Sixth, if you would like assistance in understanding the contents of this letter or would like your rights as a parent under the IDEA explained in more detail, then please contact me at: [Insert telephone number].

Seventh, the District is not aware of any other factors or issues relevant to this matter. However, if you are aware of any additional concerns regarding this matter, then please contact me.

In order to allow you time to review this letter and consider the implications of your revocation of consent for [Insert student's name] to receive special education services, the District will not discontinue [Insert student's name]'s special education services until [Insert date approximately 5 school days after the date of this notice]. Unless you provide me with a written statement prior to this date requesting that [Insert student's name] continue to receive special education services, [Insert student's name]'s special education services will discontinue automatically on [Insert date approximately 5 school days after the date of this notice].

Please contact me if you have any questions regarding this letter or any other questions regarding [Insert student's name]'s educational program.

Sincerely,

[Insert name and title of District representative]

Enc: Parent's Notice of Rights under the IDEA

Authority: 20 U.S.C. 1221e-3, 1406, 1411-1419, unless otherwise noted.

- 2. Section 300.9 is amended by adding a new paragraph (c)(3).

The addition reads as follows:

§ 300.9 Consent.

(c) * * *

(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

- 3. Section 300.177 is revised to read as follows:

§ 300.177 States' sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.

(a) *States' sovereign immunity.*

(1) A State that accepts funds under this part waives its immunity under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of this part.

(2) In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against any public entity other than a State.

(3) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

(b) *Positive efforts to employ and advance qualified individuals with disabilities.* Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

(Authority: 20 U.S.C. 1403, 1405)

- 4. Section 300.300 is amended by:

■ A. Revising paragraphs (b)(3) and (b)(4).

■ B. In paragraph (d)(2), removing the words "paragraph (a)" and inserting, in their place, the words "paragraphs (a), (b), and (c)".

■ C. In paragraph (d)(3), adding after the words "paragraphs (a)" the words ", (b), (c)".

The revision reads as follows:

§ 300.300 Parental consent.

(b) * * *

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—

(i) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.

- 5. Section 300.512 is amended by revising paragraph (a)(1) to read as follows:

§ 300.512 Hearing rights.

(a) * * *

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;

- 6. Section 300.600 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (e).

The revision and addition read as follows:

§ 300.600 State monitoring and enforcement.

(a) The State must—

(1) Monitor the implementation of this part;

(2) Make determinations annually about the performance of each LEA using the categories in § 300.603(b)(1);

(3) Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and

(4) Report annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(i)(A) and (b)(2).

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

- 7. Section 300.602(b)(1)(i) is revised to read as follows:

§ 300.602 State use of targets and reporting.

(b) * * *

(1) * * *

(i) Subject to paragraph (b)(1)(ii) of this section, the State must—

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make each of the following items available through public means: the State's performance plan, under § 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A)

responsible for the child's welfare. The definition of *parent* also includes a surrogate parent who has been appointed in accordance with § 300.519 and section 639(a)(5) of the Act. The duty to appoint a surrogate parent under § 300.519 arises when no parent can be identified, the public agency, after reasonable efforts, cannot locate a parent, the child is a ward of the State, or the child is an unaccompanied homeless youth, as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)(6)).

The language in § 300.300(b)(4) is consistent with other regulatory language concerning parental rights in the Part B regulations. Under § 300.30, when guardianship or custody of a child with a disability is at issue, the parental rights established by the Act apply to both parents, unless a court order or State law specifies otherwise. Therefore, we decline to make the change requested by the commenter.

Changes: None.

Comment: A few commenters questioned whether a parent may revoke consent for the continued provision of some services and not others and, therefore, require the public agency to continue to provide only those services for which the parent has not revoked consent.

Discussion: Section 300.300(b)(4) allows a parent at any time after the initial provision of special education and related services to revoke consent for the continued provision of special education and related services to their child in their entirety. Under § 300.300(b)(1), parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Once a public agency receives a parental revocation of consent, in writing, for all special education and related services for a child and provides prior written notice in accordance with § 300.503, the public agency must, within a reasonable time, discontinue all special education and related services to the child. In this circumstance, the public agency may not use the procedures in subpart E of these regulations, including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516, to obtain agreement or a ruling that the services may be provided to the child.

In situations where 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 FAPE if the child did not receive that service, the public agency should remove the service from the child's IEP and would

not have a basis for using the procedures in subpart E to require that the service be provided to the child.

If, however, the parent and public agency disagree about whether the child would be provided with FAPE 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 these regulations to obtain a ruling that the service with which the parent disagrees is not appropriate for their child.

Additionally, under the regulations in § 300.300(d)(2), States are free to create additional parental consent rights, such as requiring parental consent for particular services, or allowing parents to revoke consent for particular services, but in those cases, the State must ensure that each public agency in the State has effective procedures to ensure that the parents' exercise of these rights does not result in a failure to provide FAPE to the child.

Changes: None.

Comment: Some commenters asked how proposed § 300.300(b)(4) will affect a school district's adequate yearly progress (AYP) reporting under the ESEA and whether children who previously received special education and related services would be counted in the special education subgroup. The commenters requested clarification as to whether the student will remain in the students with disabilities subgroup if services are discontinued after school has begun but before the State assessment is administered and whether or not the State will be required to provide accommodations on assessments to the student. Another commenter expressed concern that teachers will be blamed if a child fails to succeed after a parent revokes consent for the continued provision of special education and related services because educators are "liable" for all students under the ESEA. One commenter expressed concern about an LEA's and State's ability to accurately track the progress of students with disabilities over time, especially if large numbers of parents choose to exercise their right to revoke consent. Lastly, another commenter expressed concern that a parent who unilaterally withdraws his or her child from special education and related services may sue an LEA if a student fails to make progress.

Discussion: Once a parent revokes consent for a child to receive special education and related services, the child is considered a general education student and will be considered a general education student under the ESEA. Therefore, if a parent revokes consent

after the school year begins but before administration of the annual State assessment required under the ESEA, the child is considered a general education student who has exited special education for accountability purposes. Section 200.20(f) of the Title I regulations allows States to include, for a period of up to two AYP determination cycles, the scores of students who were previously identified with a disability under the Act, but who no longer receive special education services, in the special education subgroup for purposes of calculating AYP (but not for reporting purposes). Therefore, the State may continue to include a child whose parent revokes consent for special education and related services in the special education subgroup for purposes of calculating AYP for two years following parental revocation of consent. While the State may continue to include the child in the students with disabilities subgroup for purposes of calculating AYP for up to two years, the child will not have an IEP; therefore, the State will no longer be required under the IDEA to provide accommodations that were previously included in the child's IEP.

Concerning the suggestion that teachers are "liable" and will be blamed if a child fails to succeed after a parent revokes consent for special education and related services, we disagree. Teachers play a critical role in ensuring that all children progress academically regardless of whether a child receives special education and related services. The majority of children who receive special education and related services receive their special education services in the general education classroom; therefore, general education teachers have a vital role in promoting their educational progress. These general education teachers will continue to have an important role in fostering the educational progress of all children, regardless of whether they receive special education and related services.

We disagree that LEAs and States will not have the ability to accurately track the progress of students with disabilities over time. LEAs currently track the progress of all students through student records, report cards, progress reports, and State assessments. Students who no longer receive special education and related services due to a parent revoking consent will have their progress tracked in the same manner as students who do not receive special education and related services.

Lastly, concerning the comment that a parent who revokes consent for special education and related services may sue an LEA if their child fails to make

California Education Code section 56346

(a) A local educational agency that is responsible for making a free appropriate public education and related services to the child with a disability under this part shall seek to obtain informed consent from the parent of the child before providing special education and related services to the child pursuant to Section 1414(a)(1)(D)(i)(II) of Title 20 of the United States Code. The local educational agency shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child in accordance with Section 300.300(b)(2) of Title 34 of the Code of Federal Regulations.

(b) If the parent of the child fails to respond or refuses to consent to the initiation of services pursuant to subdivision (a), the local educational agency shall not provide special education and related services to the child by utilizing the procedures in Section 1415 of Title 20 of the United States Code or the procedures in subdivision (e) of Section 56506 in order to obtain agreement or a ruling that the services may be provided to the child.

(c) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide the consent, both of the following are applicable:

(1) The local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the local educational agency requests consent.

(2) The local educational agency shall not be required to convene an individualized education program team meeting or develop an individualized education program under this part for the child for the special education and related services for which the local educational agency requests consent.

(d) If the parent or guardian of a child who is an individual with exceptional needs refuses all services in the individualized education program after having consented to those services in the past, the local educational agency shall file a request for due process pursuant to Chapter 5 (commencing with Section 56500).

(e) If the parent of the child consents in writing to the receipt of special education and related services for the child but does not consent to all of the components of the individualized education program, those components of the program to which the parent has consented shall be implemented so as not to delay providing instruction and services to the child.

(f) With the exception of a parent of a child who fails to respond pursuant to subdivision (b), or refuses to consent to services pursuant to subdivision (b), if the local educational agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing shall be initiated in accordance with Section 1415(f) of Title 20 of the United States Code. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding upon the parties. While a resolution session, mediation conference, or due process hearing is pending, the child shall remain in his or her current placement, unless the parent and the local educational agency agree otherwise.

(g) In accordance with Section 300.300(d)(4)(i) of Title 34 of the Code of Federal Regulations, if the parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial assessment or the reassessment, or the parent fails to respond to a request to provide consent, the local educational agency may not use the consent override procedures described in Section 300.300(a)(3) and (c)(1) of Title 34 of the Code of Federal Regulations. The local educational agency is not required to consider the child as eligible for services under Article 5.6 (commencing with Section 56170) of Chapter 2.

CREDIT(S)

(Added by Stats.2005, c. 653 (A.B.1662), § 32, eff. Oct. 7, 2005. Amended by Stats.2007, c. 454 (A.B.1663), § 23, eff. Oct. 10, 2007.)

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT, ON BEHALF OF STUDENT,

v.

CAMPTONVILLE ACADEMY,
CAMPTONVILLE UNION
ELEMENTARY SCHOOL DISTRICT,
AND YUBA COUNTY SPECIAL
EDUCATION LOCAL PLAN AREA.

OAH CASE NO. 2008090659

DECISION

Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH), State of California, heard this matter in Marysville, California, on February 5, 6, 9, and 10, 2009.

Student was represented by Taymour Ravandi, Attorney at Law, who was assisted by Kathleen Rossow. Parent was present throughout the hearing.

The Camptonville Academy (Academy), the Camptonville Union Elementary School District (CAUSD), and the Yuba County Special Education Local Plan Area (SELPA) (collectively the District) were represented by Linda Rhoads Parks, Attorney at Law. Present throughout the hearing were Janis Jablecki, Executive Director of the Academy, who also represented CAUSD; Christopher Mahurin, the Area Coordinator/Educator of the Academy; and Terri Burroughs, Administrator and Program Specialist for the SELPA.

Student filed a second amended due process hearing request on November 7, 2008. On December 26, 2008, OAH granted a continuance of the dates for hearing. At the conclusion of the hearing, the parties were given leave to file closing briefs by February 26, 2009. On that date, the parties submitted briefs and the record was closed.

safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

Convening of IEP meetings

11. A school district must conduct an IEP meeting for a special education student at least annually "to review the pupil's progress, the [IEP], including whether the annual goals for the pupil are being achieved, and the appropriateness of placement, and to make any necessary revisions." (Ed. Code, § 56343, subd. (d); see, 20 U.S.C. § 1414(d)(4)(A)(i).)

12. A district must also convene an IEP meeting when a parent requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).) In California the meeting must be held within 30 days from the date of receipt of the written request, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays. (Ed. Code, § 56343.5.)

Placement

13. An educational placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) Making placement recommendations is the central function of an IEP team meeting. (Ed. Code, §§ 56342, subd. (a), (b); 56343, subd. (d).) An LEA must ensure that the student's parent "is a member of any group that makes decisions on the educational placement" of the child. (Ed. Code, § 56342.5.)

Procedures for resolving impasse

14. When a parent refuses to consent to the receipt of special education and services, after having consented in the past, California law requires that the school district seek resolution of the impasse by filing a request for a due process hearing:

If the parent or guardian of a child who is an individual with exceptional needs refuses all services in the individualized education program after having consented to those services in the past, the local educational agency *shall file a request for due process* pursuant to Chapter 5 (commencing with Section 56500).

(Ed. Code, § 56346, subd. (d)(emphasis supplied).) If a parent consents to some but not all of a proposed program, the district must implement only those portions to which the parent has agreed:

If the parent of the child consents in writing to the receipt of special education and related services for the child but does not consent to all of the components of the individualized education program, those components of the program to which the parent has consented shall be implemented so as not to delay providing instruction and services to the child.

(Ed. Code, § 56346, subd. (e).) The clear implication of subdivision (e) is that the district may not implement the portions of the IEP to which the parent has not consented. Finally, if the district believes that the components of the IEP to which the parent will not consent are necessary to provide the student a FAPE, it must seek an order from an ALJ to that effect:

... if the local educational agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, *a due process hearing shall be initiated* in accordance with Section 1415(f) of Title 20 of the United States Code.

(Ed. Code, § 56346, subd. (f)(emphasis supplied).) And the statute makes it clear that, while the district seeks resolution of the impasse in due process, it may not implement the disputed IEP. Instead:

While a resolution session, mediation conference, or due process hearing is pending, the child shall remain in his or her current placement, unless the parent and the local educational agency agree otherwise.

(Ed. Code, § 56346, subd. (f).)

15. The mandatory duty of a district to seek a due process hearing was confirmed by *Porter v. Manhattan Beach Unified School Dist.* (C.D.Cal., Dec. 21 2004 (Case No. CV 00-8402 GAF)) 105 LRP 40577. In *Porter*, a school district's impasse with a parent prevented it from providing a FAPE to a student for seven years. The district blamed the parents, but the District Court held that the fault lay with the school district because it did not seek resolution in due process:

Under California law, if the parent does not agree to the IEP, the school district is required to take affirmative steps to ensure that the child receives a FAPE. Cal. Educ. Code § 56346(b)-(c); *Doe v. Maher*, 793 F.2d 1470, 1490 (9th Cir. 1986) (holding that if there is no agreement on the terms, "the agency has a duty to formulate the plan to the best of its ability in accordance with information developed at the prior IEP meeting, but must afford the parents a due process hearing in regard to that plan").

....

If the local educational agency determines that the portions of the program to which the parent did not consent, or all of the program if the parent did not consent to any part of the IEP, is necessary to provide the child with a FAPE, it is required to initiate due process hearing procedures to override the parent's refusal of consent. (*Id.*; see also *Doe [v. Maher]*, 793 F.2d at 1490.)

The District Court emphasized that the parents, however intransigent, were not to blame for the consequences of their impasse with the school district:

Regardless of the conduct of the parents of a disabled child, when a child goes without special education services for years on end, there can be no one to blame but the entity in control of providing the services -- the school district. If the District did not get the consent it needed, it clearly had both a right and an obligation, as a matter of law, to get approval for the IEPs from the state agency to implement them ... Cal. Educ. Code § 56346(b)-7(c).

Consequence of procedural error

16. A procedural error does not automatically require a finding that a FAPE was denied. Since July 1, 2005, the IDEA has codified the pre-existing rule that a procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see, *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) Procedural errors during the IEP process are subject to a harmless error analysis. (*M.L. v. Federal Way School Dist.* (9th Cir. 2004) 394 F.3d 634, 650, fn. 9 (lead opn. of Alarcon, J.).)

Issue 1.A.: Did the District deny Student a FAPE during SYs 2007-2008 and 2008-2009 by failing to conduct an individualized education program (IEP) team meeting?

17. Based on Findings of Fact 1-30, and Legal Conclusions 1-6 and 10-15, the District failed to convene an IEP meeting when requested by Parent to do so on August 24, 2007, or at any time during the SYs 2007-2008 and 2008-2009. Based on Findings of Fact 31, 33-39 and 41, and Legal Conclusion 16, that failure impeded Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to her child, and caused a deprivation of educational benefits. Accordingly, that failure denied Student a FAPE for the SYs 2007-2008 and 2008-2009.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on issue 1.A and 1.B. Because Issues 1.A and 1.B resolved the most significant issues in the matter, Issue 2 was not decided.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: March 18, 2009

/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2008080953

BALDWIN PARK UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2008080193

DECISION

Administrative Law Judge Suzanne Dugan, Office of Administrative Hearings (OAH), State of California, heard this matter in Baldwin Park, California, on November 24-25, 2008, and December 1-4, 2008.

David J. Kim, Attorney at Law, represented Student's Mother, who attended every day of the hearing.

Meredith B. Reynolds, Attorney at Law, represented the Baldwin Park Unified School District (District). The District's Coordinator of Special Education, Mary Beltran, attended every day of the hearing.

The District filed a request for due process hearing in OAH case number 2008080193 on August 7, 2008. Student filed his first amended request for due process hearing in OAH case number 2008080953 on August 29, 2008. On September 9, 2008, Student's motion to consolidate was granted. Applicable timelines in OAH case number 2008080953 were ordered to apply to the consolidated matters. At hearing, the matter was continued to allow for written closing arguments by December 24, 2008, when the record was closed and the matter was submitted.

occur not more frequently than once a year, unless the parents and LEA agree otherwise, and shall occur at least once every three years, unless the parents and LEA agree in writing that it is not necessary. (Ed. Code, §56381, subd. (a)(2).) Parental consent must be obtained before an assessment is undertaken. (Ed. Code, § 56321.)⁷

Procedures for resolving impasse

13. When a parent refuses to consent to the receipt of special education and services, after having consented in the past, California law requires that the school district seek resolution of the impasse by filing a request for a due process hearing. (Ed. Code, § 56346, subd. (d).) If the district believes that the components of the IEP to which the parent will not consent are necessary to provide the student a FAPE, it must seek an order from an ALJ to that effect. (Ed. Code, § 56346, subd. (f); *Porter v. Manhattan Beach Unified School Dist.* (C.D. Cal., Dec. 21 2004 (Case No. CV 00-8402 GAF) 105 LRP 4057; *Student v. Modesto City Schools*, OAH Case No. N2007080202 (Feb. 27, 2008).)

Prior written notice

14. A school district must provide written notice to the parents of a pupil whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the pupil, or the provision of a FAPE to the pupil. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a)(2006); Ed. Code, § 56500.4.) The notice must contain: (1) a description of the action refused by the agency, (2) an explanation for the refusal, along with a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the refusal, (3) a statement that the parents of a disabled child are entitled to procedural safeguards, (4) sources of assistance for parents to contact, (5) a description of other options that the IEP team considered, with the reasons those options were rejected, and (6) a description of the factors relevant to the agency's refusal. (20 U.S.C. § 1415 (c)(1); 34 C.F.R. § 300.503(b)(2006).)

Compensatory Education

15. When a district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(3); *School Committee of Burlington v. Department of Educ.* (1996) 471 U.S. 359, 369-371 [85 L.Ed.2d 385].) Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief that may be granted for the denial of appropriate special education services to help overcome lost educational opportunity. (*Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489,

⁷ An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on Student's Issues 1 A, B (1) and (2), C, D; and Issues 2 A, B (1) and (2). District prevailed on Student's Issues 1 B (3) and E; and Issues 2 C, D, E, and on District's Issue.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: January 7, 2009

/S/
SUZANNE DUGAN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

MURRIETA VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2008120309

DECISION

Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH), State of California, heard this matter in Murrieta, California, on February 18 and 19, 2009.

Ellen Dowd, Esq., represented Student and his parents. There was no appearance by Student or his parents during the hearing.¹

Jack Clarke, Jr., Esq., represented the Murrieta Valley Unified School District (District). Zhanna Preston, Director of Special Education for the District, also appeared on behalf of the District.

Student filed his request for a due process hearing on December 5, 2008. On January 22, 2009, OAH granted the parties' request for a continuance of the case. The case was taken under submission at the close of evidence on February 19, 2009.²

¹ Student's counsel explained during the hearing that Student's father had intended to appear at the hearing, but due to his work schedule he was unable to do so. Counsel represented that she had authority to proceed in the absence of her clients.

² The parties requested and received leave to file written closing argument, and it was decided during the hearing that the due date for the written closing argument would not affect the due date for this Decision. For purposes of maintaining a clear record, Student's written closing argument has been marked for identification as Exhibit T and the District's written closing argument is marked for identification as Exhibit 14. The District's exhibit binder originally contained a different document that had been marked as Exhibit 14, but that document was withdrawn by the District during the hearing.

C.F.R. § 300.320(a) (2006).) The IEP must also contain: 1) a description “of the manner in which the progress of the pupil toward meeting the annual goals...will be measured and when periodic reports on the progress the pupil is making...will be provided” (Ed. Code, § 56345, subd. (a)(3); 34 C.F.R. § 300.320(a)(3) (2006)); 2) a statement of the special education and related services and supplementary aids and services to be provided to the pupil and a statement of program modifications and supports to enable the pupil to advance toward attaining his goals and make progress in the general education curriculum (Ed. Code, § 56345, subd. (a)(4); 34 C.F.R. § 300.320(a)(4) (2006)); 3) an explanation of the extent, if any, that the pupil will not participate with nondisabled pupils in the regular class or activities (Ed. Code, § 56345, subd. (a)(5); 34 C.F.R. § 300.320(a)(5) (2006)); and 4) a statement of any individual appropriate accommodations necessary to measure academic achievement and functional performance of the pupil on state and districtwide assessments. (Ed. Code, § 56345, subd. (a)(6); 34 C.F.R. § 300.320(a)(6).)

5. There are numerous procedural requirements for development of an IEP, including requirements for certain District employees to be members of the team that develops the IEP (Ed. Code, § 56341; 34 C.F.R. § 300.321 (2006)), a requirement for parental participation in the development of the IEP (Ed. Code, § 56341.5; 34 C.F.R. § 300.322 (2006)), and a requirement that the parents agree to the IEP before any services are provided to a pupil in accordance with that IEP. (Ed. Code, § 56346, subd. (c), (d); 34 C.F.R. § 300.300(b) (2006).) A parent must also receive written notice of IDEA procedural safeguards at least once a year. (Ed. Code, § 56301, subd. (d)(2); 34 C.F.R. § 300.504 (2006).)

6. In addition, the law provides that a parent may choose to accept only a portion of the proposed IEP. In that event, only the portions of the IEP to which the parent agreed become effective for the pupil. (Ed. Code, § 56346, subd. (e).) In those circumstances, if there was a prior IEP in effect, the remaining goals, placement and services would stay the same as they were in the prior IEP. If a district believes that the portions of the IEP to which the parent did not consent are required to provide the child with a FAPE, “a due process hearing shall be initiated” in accordance with federal law. (Ed. Code, § 56346, subd. (f).)

Did the District fail to offer and provide a FAPE for the 2006-2007 school year, beginning December 13, 2006, by violating Education Code section 56341 by circumventing the IEP process and not allowing parent to meaningfully participate in the development of an IEP?

7. Education Code section 56341 provides, in part: “(a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs shall be conducted by an individualized education program team.” The section goes on to describe the individuals who must be included as part of the team.

8. Student believes the District violated IDEA by using a settlement agreement as a vehicle to provide the Big Springs educational services to Student when no due process complaint had been filed instead of offering those services through the IEP process. Student contends that the District did this to circumvent the IEP process, and that the failure to offer

51. Student has not met his burden of proving that the parties intended the terms of the settlement agreement to be a permanent placement or to be Student's stay put placement in the event of a later dispute. The District did not violate the stay put protections of federal and state law, and so there was no denial of FAPE. Because there was no denial of FAPE, there is no need to address any of the remedies sought by Student in this case.

ORDER

Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section the following finding is made: The District prevailed on all issues in this case.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision in accordance with Education Code section 56505, subdivision (k).

Dated: March 13, 2009

/s/

SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings

Big Springs School. Later, at the May 29, 2007 IEP, Huscher "indicated that Student was now ready for placement at Big Springs." (Lepkowsky Decision at page 7, Factual Finding 19.)