

Questions and Answers for Supplemental Regulations to 34 CFR Part 300

Parent Revocation of Consent for Special Education Programs and Services October 2, 2009

1) What do the Final Supplemental Regulations require?

A: 34 CFR 300.9(c)(3) If the parents revoke consent in writing for their child's receipt of 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...."

34 CFR 300.300(b)(4) A parent may revoke consent in writing for his or her child's receipt of special education services after the parents' child was initially provided special education and related services"

2) When do the Final Supplemental Regulations go into effect?

A: December 31, 2008

3) What procedures are required for the revocation of consent?

A: The following are required:

1. Parent must submit a signed, dated, written request revoking consent for special education programs and services.
2. The district must issue prior written notice (NOREP/PWN) within a reasonable period of time.
3. Reasonable notice is defined as ten calendar days.
4. The parents are informed that all special education programs and services will cease on the eleventh day from the receipt of the parents' revocation letter.

4) May either parent revoke consent?

A: If both parents have legal custody to make educational decision, either parent may revoke consent.

5) May staff ask the parents why they are revoking consent?

A: Yes; however, the parents are not required to provide either an oral or written explanation before services are discontinued.

6) What occurs when the parents revoke consent?

A: All special education programs and services cease. Also, the child will not longer be identified as a child with a disability under the implementing regulations, 34 CFR Part 300, of IDEA.

7) May parents revoke consent to some services and not others?

A: No. The revocation of consent requires the district to cease all special education and services. The parents cannot submit a revocation for some special education programs or services-this is all or nothing.

8) If a student is 18 years of age, can he/she revoke consent?

A: No. In Pennsylvania the age of majority is 21.

9) If the student reaches the age of majority, may the student revoke consent for special education programs and services?

A: Yes. If the rights transfer to the student at the age of majority, a student will be able to remove himself/herself from special education programs and services, as long as he/she does so in writing. The district must inform the parents of such a revocation of special education programs and services and provide notice as per 34 CFR 300.520(a)(1)(i)-“... The public agency must provide any notice required by this part to both the child and the parents....” This notice requirement is specified in 34 CFR 300.503(a) and (b).

10) May a school district suggest or encourage parents to revoke consent?

A: No. It is inappropriate for staff to suggest or encourage a parent to revoke consent. If staff believes that the child no longer requires special education programs and services, the staff should conduct a reevaluation to determine whether the child is still an eligible child.

11) May a district use mediation or due process to override the parents’ revocation of consent?

A: No. The regulations specifically state that districts may not use mediation or due process to override the parents’ revocation of consent.

12) Is the district required to remove the paperwork regarding special education services that was completed prior to the revocation of consent?

A: No. The revocation is not retroactive and does not erase what already occurred.

13) After the revocation of consent goes into effect, what is the student’s status?

A: The following considerations now apply:

1. The student is considered a general education student and treated in the same manner as any other nondisabled child.
2. The student's individualized education program (IEP) is no longer in effect. The district is no longer required to conduct timely reevaluations or IEP team meetings.
3. Child find applies to the student in the same manner as any other nondisabled student.
4. Regular discipline rules apply. The district would not be considered to have knowledge that the child is a child with a disability who needs special education and services and not required to determine whether the conduct was a manifestation of the child's disability before implementing regular discipline.

14) When the parent revokes consent, must the district conduct a reevaluation or convene an IEP team meeting?

A: No. The district is not required to conduct a reevaluation or convene an IEP team meeting prior to issuing of the NOREP/PWN and discontinuing special education programs and services.

15) Is the district liable for a denial of a free appropriate public education (FAPE) after the parents revoke consent?

A: No. The regulations specifically state that a school district will not be considered in violation of the FAPE requirement for not providing special education and services.

16) If consent is revoked, is the student eligible for Response to Intervention (RTI)?

A: Yes. RTI is a regular education initiative.

17) What is the procedure if the parents change their mind and request special education programs and services?

A: Since the child is no longer considered an eligible child, the district would:

1. Issue a Permission to Evaluate/Consent Form;
2. Complete the evaluation;

3. Determine whether the child meets eligibility criteria;
4. If no longer eligible, issue the evaluation report and NOREP/PWN; and
5. If eligible, issue the evaluation report, issue an invitation to participate in an IEP team meeting or other meeting, develop an IEP, and issue the NOREP/PWN.

18) Once the parents revoke consent, must the teacher continue to provide IEP accommodations in general education?

A: No. The teacher is not required to provide previously identified IEP accommodations in the general education environment.

19) What if parents, six days after submitting a letter for the revocation of consent, change their minds and submit a written request that the child remain in special education?

A: The district would issue the NOREP/PWN to the parents that special education programs and services will continue.

20) For accountability purposes on the State assessment, how is the student reported when the parents revoke consent for special education programs and services?

A: If parents revoke consent after the school year begins but before the administration of the 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) if the Title 1 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 AYS (but not for reporting purposes). Therefore, the State may continue to include a child whose parents revoke consent for special education programs and services in the special education subgroup for the purposes of calculating AYP for two years following parental revocation of consent.

21) Is a student entitled to a Section 504/Chapter 15 service agreement when parents revoke consent?

A: No. A student is not entitled to a Section 504/Chapter 15 service agreement for services, accommodations, or modifications if parents revoke consent for special education programs and services. Following the change in special education regulations granting parents the right to revoke consent, staff in the Office for Civil Rights (OCR), US Department of Education, would not respond to an inquiry regarding whether a Section 504/Chapter 15 service agreement must be provided when parents revoke consent for special education programs and services under the IDEA. There is, however, a 1996 OCR opinion in *Letter to McKethan*. OCR staff stated "... once a school district has

found a student disabled within the meaning of the IDEA and has developed an IEP in accordance with the law's requirements, it is impermissible for the student's parent to refuse to accept IDEA services as specified therein and require the district to develop an IEP under Section 504....” Thus a rejection of services under the IDEA would amount to a rejection of services offered under Section 504 and in these situations, the district complied with Section 504 when it complied with the IDEA requirements....” Teachers therefore are not required to implement those accommodations listed in the student's IEP. Under Section 504, districts continue to have an affirmative duty to identify and locate every qualified disabled child residing in SD who is

1. Not receiving public education
2. Homeless children
3. In a nonpublic school or
4. In a public School.

Based on this affirmative duty to identify and locate qualified handicapped children the school district/charter school may need on a case-by-case basis to consider eligibility under 504 for those students whose parents have revoked consent for special education services.