

# NEW IDEA REGULATIONS

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On December 1, 2008, the U.S. Department of Education issued final regulations in 34 Code of Federal Regulations Part 300, governing the assistance to states for the Education of Children with Disabilities in the area of parental consent for continued special education and related services. There are specifically two regulations regarding parental consent for continued special education and related services — 34 C.F.R. §§ 300.9 and 300.300. The regulations took effect on December 31, 2008.

**SCENARIO:** School administrator receives call from a parent that she wants her son to be exited from special education starting tomorrow. The parent also wants the District to remove from all educational records any reference that her son received special education services.

## **REVIEW OF THE FEDERAL REGULATIONS — 34 C.F.R. §§ 300.9 AND 300.300**

- **34 C.F.R. § 300.9:** 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 C.F.R. § 300.300:** Allows a parent, at any time subsequent to the initial provision of special education and related services, to revoke consent in writing for the continued provision of special education and related services.

## **WHAT STEPS MUST AN ADMINISTRATOR TAKE?**

1. The Administrator Must Comply With the Following Process:
  - Parent's revocation of consent must be in writing. If the parent has not revoked consent in writing, the administrator can have the parent complete the attached form entitled "Parental Revocation of Consent for Special Education and Related Services."
  - The District must "promptly" and within a "reasonable time" respond to the parents' request with prior written notice before discontinuing the services.
  - After sending the parents prior written notice, the LEA must discontinue the special education services in a "timely" manner
2. The Prior Written Notice Letter Must Include the Following [a template is attached]:

- State current offer of FAPE.
  - State date services will end.
  - State general education placement and date placement will begin.
  - Student will be disciplined as general education student.
  - Revoking consent means rejecting 504 plan.
  - Subsequent request for special education services should be treated as an initial request for services, however, the IEP team can determine whether a “new” evaluation must take place depending on the data available.
    - ➔ Existing evaluation data can include: evaluations and information provided by the parents; current classroom-based, local or state assessments, and classroom-based observation; and observation by teachers and related services providers.
  - Include notice of procedural safeguards.
  - 18 yrs or older — both to student and parents.
  - Notice must be in native language.
3. The District Should Follow These Time Lines:
- Provide prior written notice to the parent within three (3) school days of receiving revocation of consent in writing.
  - Special Education services should be discontinued within five (5) school days from date of prior written notice — the date the services will end must be stated in the prior written notice.
4. Case Law/Guidance:
- U.S. Department of Education, Office of Special Education Programs (OSEP) — Non-Regulatory Guidance (April 2009):
    - Age of majority: Prior written notice must be given to both parents and student who is the age of majority (except if determined mentally incompetent under state law).
    - Revocation of consent for a particular service: If 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 a free appropriate

public education (FAPE) if the child did not receive that service, the public agency should remove the service from the child's individualized education program (IEP) and, since it does not disagree with the parents, would not have a basis for using the procedures in Subpart E of the regulations (mediation and/or due process) to require the service be provided to the child.

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

- ▶ Subsequent parental request for evaluation: After revoking consent for his or her child, a parent always maintains the right to subsequently request an initial evaluation to determine if the child is a child with a disability who needs special education and related services. If a parent who revoked consent for special education and related services later requests that his or her child be reenrolled in special education, an LEA must treat this request as a request for an initial evaluation under §300.301 (rather than a reevaluation under §300.303).
- ▶ Accommodations: Nothing in §300.300(b)(4) would prevent a general education teacher from providing a child whose parent has 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. However, once a parent revokes consent under §300.300(b)(4), a teacher is not required to provide the previously identified IEP accommodations in the general education environment.
- Review of recent case law that may provide clarification or interpretation of recent Federal regulations:
  - ▶ There are no decisions rendered by the Office of Administrative Hearings or the federal courts

[NAME OF SCHOOL DISTRICT]

**PARENTAL REVOCATION OF CONSENT  
FOR SPECIAL EDUCATION AND RELATED SERVICES**

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STUDENT:  
DOB:  
ADDRESS:  
PARENT/GUARDIAN:

DATE:

I understand that my child is currently receiving special education and related services. I am advising the school district in writing that I wish to revoke my consent for special education and related services for my child.

I understand that the school district will not terminate special education and related services until after prior written notice is provided to me by the school district regarding the termination of special education and related services.

I understand that the discontinuation of special education and related services must occur in a timely manner from the date of written revocation of consent provided by me.

I understand that I may provide consent for special education and related services in the future if my child does qualify for services, which would require the school district to provide a Free Appropriate Public Education (FAPE) to my child. I understand that if I wish to have my child receive special education and related services in the future, I must request in writing an assessment of my child to determine if my child is eligible for special education and related services.

I further understand that by revoking consent for special education and related services to be provided to my child, the school district may discipline my child in the same manner as a nondisabled child.

\_\_\_\_\_  
Parent Name

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date

[TO BE PLACED ON SCHOOL DISTRICT LETTERHEAD]

[Date]

Mr. and Mrs. \_\_\_\_\_ [name of parents]

[Address]

Re: Parental Revocation of Consent for Special Education and Related Services for  
\_\_\_\_\_ [student's name]

Dear Mr. and Mrs. \_\_\_\_\_:

The district has received in writing your request for the district to terminate special education and related services for your child.

Your child is currently receiving special education and related services provided by the District under the Individual with Disabilities Education Act (IDEA).

Please be advised that the school district cannot discontinue services your child is receiving until prior written notice is provided to you within a reasonable time before the district discontinues services. This letter serves as prior written notice to you.

Please be advised that Federal law requires that the discontinuation of special education and related services occur in a timely manner from the date of written revocation of consent provided by you.

Please be advised by revoking your consent for special education and related services to be provided to your child, your child will no longer be deemed eligible for special education and related services under the IDEA. Your child will be exited from the special education program, which means he/she will receive the same educational services and interventions available to any other student enrolled in the general education program and he/she 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 your child.

You may provide consent for special education and related services in the future if your child does qualify for services, which would require the school district to provide a Free Appropriate Public Education (FAPE) to your child.

If you wish to have your child receive special education and related services in the future, you must request in writing an assessment of your child to determine if your child is eligible for special education and related services.

Please be advised that by revoking consent for special education and related services to be provided to your child after your child is initially provided services, the school district may discipline your child in the same manner as a nondisabled child. In addition, the district is not required to amend your child's education records to remove any references to your child's receipt of special education and related services because of the revocation of consent.

The following notice is provided to you pursuant to federal law (20 USC §1415(b) and (c)), which requires prior written notice to the parents of a child whenever the district is proposing to initiate or change, or refusing to initiate or change, the identification, evaluation, or educational placement of a child, or the provision of a free and appropriate public education to the child.

Please take notice of the following:

**DISCONTINUATION OF SPECIAL EDUCATION AND RELATED SERVICES:**

Description of the Action Proposed or Refused by the District:

Pursuant to the district's receipt of your written revocation of consent for special education and related services for your child, the district is proposing to discontinue special education and related services. The last day your child will receive special education and related services will be on \_\_\_\_\_ **[date of last day of services]**. If you do not want your child to stop receiving special education and related services, please notify the school district in writing prior to this date.

Your child is currently receiving the following special education and related services: **[state services child is receiving]**

Please be advised that beginning on \_\_\_\_\_ **[first day general education placement begins]** your child will be receiving the following general educational services: **[state classroom, school site]**

Explanation Why the District Proposes or Refuses to Take Action:

The District is proposing to discontinue special education and related services because it received your written revocation of consent for your child to receive special education and related services.

Federal law requires that a school district discontinue services to an individual with exceptional needs when the individual's parent revokes consent in writing. The District has received your written revocation of consent.

Description of Each Evaluation, Procedure, Assessment, Record, or Report the Agency Used as a Basis for the Proposed or Refused Action:

The district is proposing to discontinue special education and related services for your child because it received your written revocation of consent for your child to receive special education and related services.

Federal law does not allow a school district to require a parent to consent to have their child assessed prior to exiting the child from special education. Federal law allows a parent to

revoke their consent for special education services to be provided to their child even if prior assessments indicate that your child is still eligible for special education and related services.

Description of Other Options Considered and Why Those Options Were Rejected:

No other options were considered in the district's proposal to discontinue special education and related services for your child. Federal law requires a school district to discontinue special education and related services for a child when it receives a parent's revocation of consent in writing, which you have provided to the district.

Description of Other Factors Relevant to the Proposal:

Please be advised that the general education setting may not meet your child's educational needs. In addition, the protections afforded to individuals with exceptional needs during a disciplinary action will no longer apply to your child as your child will be considered a general education student. Therefore, if your child faces disciplinary action in the future, the District may discipline your child in the same manner as a nondisabled child. Please also be advised that any modifications for testing your child received pursuant to his/her IEP will no longer be provided. In addition, by revoking your consent for special education and related services under the IDEA for your child, you are also rejecting the accommodations and/or services your child may otherwise qualify for under Section 504 of the 1973 Rehabilitation Act.

Although the District may have reservations about the termination of special education and related services for your child, the District will be terminating special education and related services provided to your child per your written revocation of consent.

Procedural Protections under IDEA and State Law:

There are safeguards set out in the Individuals with Disabilities Education Act, the California Education Code, and corresponding regulations which grant procedural protections to parents of a child with a disability. Those procedural safeguards are summarized in the enclosed Notice of Procedural Safeguards and Parents' Rights.

Sources to Obtain Assistance in Understanding the Provisions of IDEA:

Sources for obtaining assistance in understanding the provisions of the IDEA are described in the enclosed Notice of Procedural Safeguards and Parents' Rights.

If you have any questions, please feel free to give me a call.

Very truly yours,

[Name of Administrator]