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Revocation of Parental Consent: State Approaches

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INTRODUCTION

Parental consent has always been a central tenet of the education disabilities law, most recently reauthorized in 2004 as the Individuals with Disabilities Education Act (IDEA). For example, parents' informed consent is required before a local education agency (LEA) can conduct an initial evaluation or reevaluation of a child to determine eligibility for special education and related services, or provide special education and related services to a child for the first time.

On December 1, 2008, the U.S. Department of Education adopted substantially revised provisions of the 2006 IDEA regulations to allow revocation of parental consent for continued special education and related services [34 CFR 300.300(b)(4)]. According to the new provision:

(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 34 CFR 300.503 before ceasing the provision of special education and related services;*
- (ii) May not use the procedure in subpart E of this part (including the mediation procedures under 34 CFR 300.506 or the due process procedures under 34 CFR 300.507 through 300.516) in order to obtain agreement in 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 34 CFR 300.320 and 300.324 for the child for further provision of special education and related services.¹*

¹ For more information on the implications of this new provision, please see Norlin's handbook titled *Revocation of Consent and Other Key Changes to the IDEA Part B Regulations* (2009).

The purpose of the present document is to determine whether revocation of parental consent is currently posing a challenge for states and to describe how states are responding to this new provision. Project Forum at the National Association of State Directors of Special Education (NASDSE) completed this document as part of its cooperative agreement with the U.S. Department of Education Office of Special Education Programs (OSEP).

DATA COLLECTION

In collaboration with the Mid-South Regional Resource Center, Project Forum developed a survey on how states were approaching the new provision pertaining to revocation of parental consent. During the months of November and December 2009, and January 2010, the survey was conducted using Zarca Interactive[®] (an online survey management program). Project Forum received survey responses from 42 states and non-state jurisdictions. Data were analyzed using Zarca and survey findings are reported in the following sections of this document.

SURVEY FINDINGS

Overview of Challenges and Issues

Respondents were asked to what extent the new IDEA provision pertaining to revocation of parental consent is posing a challenge to their states. No states reported that the provision was creating a significant challenge; 22 reported that the provision is creating a moderate challenge; and 20 reported that the provision is not creating a challenge at all.

Of the 22 states that reported that the provision was creating a moderate challenge, all provided additional information regarding the most common issues that have arisen for them regarding revocation of parental consent.

Respondents from 13 states reported misunderstandings and uncertainties among parents, schools and LEA staff regarding the actual meaning of the new provision and its implications for services. For example, some confusion was reported as to the fact that revocation pertains to *all* special education services, not just to a particular service. Respondents raised concerns that LEAs may be communicating with parents in a way that could be construed as counseling them to revoke consent. Respondents also noted that questions have arisen as to what the LEA's responsibilities are to a child for whom special education services are still needed; and what recourse LEAs have, if any, once a parent has revoked consent.

Respondents from nine states expressed concerns regarding the dangers of parents using the new provision as a way of "picking and choosing" services, and several states reported that parents are revoking consent when consensus is not reached through the individualized education program (IEP) team process – what one respondent described as "bouncing 'in' and 'out' of special education services" whenever the parent is in disagreement with the IEP team decision rather than mediating a dispute or going to due process. Several respondents expressed concern that there is no limit to how many times parents are allowed to change their minds – i.e., revoking consent and then later requesting a special education evaluation and/or services.

Respondents from three states noted the need for revising guidance documents and/or forms (e.g., notices pertaining to full disclosure of forfeited rights); respondents from two states noted that the timeline for revocation is unclear (i.e., determining when services actually

come to an end following revocation of consent); and respondents from two states raised concerns about whether Section 504 services are still available to students for whom parental consent has been revoked.² One respondent raised questions as to how revocation of consent applies to divorced parents with differing opinions as to whether their child ought to receive special education and/or related services.

Guidance and Technical Assistance

Forty respondents noted that their state provides some form of guidance or technical assistance (TA) for LEAs pertaining to revocation of parental consent. For example, states provide:

- conference sessions or workshops for local directors of special education and special education staff (13 states);
- revisions to state regulations and/or special education policies and procedures (11 states);
- one-on-one problem-solving guidance for local directors of special education regarding specific cases (7 states);
- sample notice forms along with guidelines/instructions (6 states);
- notification of this new requirement via e-mail or letter (5 states);
- webinars, conference calls or 'lunch-and-learn' trainings (5 states);
- written guidance or TA documents (3 states);
- frequently asked questions (FAQ) documents (2 states); and
- TA from consultants or regional special education cooperatives (2 states).

One state noted that it has had a similar provision in the state statute since 1993, and is currently in the process of aligning its state statute with the federal regulatory language.

Information for Parents

Parental Safeguards Notices

Thirty-six respondents noted that their states had revised their official Parental Safeguards notice to include this new provision.

Additional Guidance Documents for Parents

Fourteen respondents noted that their LEAs or states had created guidance documents other than the Parental Safeguards notification or inserted information into current guidance documents specifically for parents pertaining to revocation of parental consent. For example, several states have revised their parent handbooks on special education to reflect the new provision.

Specific Forms for Parents

Twenty respondents noted that their LEAs or states had created specific forms for parents to sign when revoking consent (e.g., stating that they understand the implications of their

² Section 504 of the Americans with Disabilities Act protects the rights of individuals with disabilities in programs and activities, including schools, that receive federal funds.

decision). Several states have generated sample letters of revocation for parents to use and others have provided technical assistance to LEAs in drafting district-level forms for parents.

Working with Parent Training and Information Centers (PTICs)

Eighteen respondents said that their LEAs or state worked with their PTICs to draft language for forms for LEAs to use in obtaining written revocation of parental consent.

State and LEA Experience with New Provision

Twenty-six respondents noted that one or more parents have revoked parental consent under the new regulatory provision; 14 respondents noted that none have yet done so; and one reported that information on revocation of parental consent is not collected at the state level.

Serving Students with Disabilities

Of the 26 respondents who said that one or more parents have revoked parental consent under the new regulatory provision, 11 noted that LEAs in their states are providing other types of services (in lieu of special education) to children with disabilities for whom parental consent has been revoked. Thirteen respondents described briefly how LEAs are serving these children. Most commonly, respondents mentioned that students may be receiving accommodations and services under Section 504 of the Americans with Disabilities Act (ADA). Other respondents mentioned using positive behavioral interventions and supports (PBIS); using a response to intervention (RTI) model (especially their Tier II interventions) or other consultative teacher model; and/or utilizing other support services already in place in the school, such as Title I reading and math.

Grade Levels

Twenty-four respondents provided information on the grade levels for which revocation of parental consent is most frequently taking place (states could check all that applied), although several noted that this was just a "guess," since actual data were not available. Three said pre-K and kindergarten; four said first through third grade; seven said third through fifth grade; 15 said sixth through eighth grade; 14 said ninth through twelfth; and four were unsure.

Reasons for Revoking Consent

Seven respondents reported that based on anecdotal or stated rationales on revocation forms, the primary reasons families are opting to revoke parental consent included the following:

- disagreement between the LEA and parent regarding eligibility and/or services for the child in question;
- reactions to a student's being disciplined;
- students' refusing to access the special education services available to them; and
- parents' choosing not to have a child's special education status on his/her academic records.

Nineteen respondents reported that their states do not collect information on reasons for revoking consent.

Ensuring Provision is Being Adhered to at the Local Level

Thirty respondents provided information on what their state is doing, or planning to do, to ensure that the revocation of parental consent provision is being adhered to at the local level. For example, states are addressing revocation of consent via:

- monitoring LEAs (9 states);
- using complaint procedures (4 states);
- including this area as part of LEA self-assessments (2 states);
- adding a field to exiting data requested through annual Child Count that indicates a special education student exited through revocation of consent (1 state);
- embedding revocation of consent in electronic IEP (1 state);
- tracking LEAs' use of mandated online revocation form and notice (1 state); and
- requiring LEAs to adopt new procedures to receive approval of funding applications (1 state).

Several respondents reiterated that their states are ensuring the provision is being adhered to via training, technical assistance and guidance to LEAs, as well as work with PTICs. Four respondents noted that their states were taking no special actions to ensure adherence to the provision.

Data Collection

Six respondents noted that their states are requiring LEAs to provide data on revocation to the state (i.e., counts of total instances of parental revocation, reasons for revocation, etc.). For example, states are requiring LEAs to submit the following types of data: student information (e.g., name, disability, age, grade, school), reason for revocation of consent and/or a copy of the notice of revocation.

SUMMARY

Although parental consent has always played a central role in IDEA, the new provision allowing revocation of parental consent has created moderate challenges for a significant number of states. Most states are addressing these challenges via guidance and TA for local special education directors and their staff; revisions to state regulations or special education policies and procedures; and/or sample notice forms. States are primarily ensuring that parents are informed of their new rights through revision of parental safeguard notices, but also through revisions to parent handbooks and creation of sample revocation forms. Although only a few states currently collect data on revocation of parental consent, a number now address revocation through their monitoring procedures.

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