



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

September 24, 2001

Mr. H. Douglas Cox  
Assistant Superintendent  
Division of Instructional Support Services  
Commonwealth of Virginia  
Department of Education  
P.O. Box 2120  
Richmond, Virginia 23218-2120

Dear Mr. Cox:

This is a response to your letter to JoLeta Reynolds, Special Assistant to the Director of the Office of Special Education Programs (OSEP), requesting clarification regarding whether a parent may withhold or refuse consent for initial provision of special education and related services. Although your letter uses the term placement, Dr. Reynolds' telephone conversation with you subsequent to receiving your letter clarifies that you intended to use the phrase *consent for initial provision of special education and related services* rather than the term *placement* of a child with a disability under the Individuals with Disabilities Education Act (IDEA). Specifically, you ask two questions regarding parental consent for initial services, which are restated below with our response to each question.

***1. May the public agency establish an override provision that permits the public agency to presume consent when a parent has been properly notified and withholds initial consent?***

Part B of the IDEA requires parental consent for the initial provision of special education and related services and does not permit public agencies to override a parental refusal to consent to the initial provision of special education and related services. Part B specifically requires at 34 CFR §300.505(a)(1) that informed parental consent must be obtained before initial evaluation, reevaluation, or the initial provision of special education and related services to a child with a disability.

Section 614(a)(1)(C)(i) of the IDEA Amendments of 1997 states that parental consent must be obtained before an evaluation is conducted. It further states that "parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services." This provision is immediately followed by section 614(a)(1)(C)(ii), which states that if the parents of such child refuse consent for evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent. Therefore, Congress was clearly aware of the long-standing regulatory requirement that parental consent must be obtained before the initial provision of special education and related services and in the section immediately following reference to that consent requirement only provided for override of consent to evaluations. This statutory language is reflected in the regulations at 34 CFR §300.505(b). The

IDEA regulations permit override only if a parent refuses consent for an initial evaluation and reevaluation and State law does not otherwise prohibit such an override. The IDEA regulations do not permit an override for initial provision of special education and related services.


***2. May the public agency initiate informal (e.g., mediation) or formal (due process) measures when a parent refuses consent to initial services?***

The IDEA does not permit public agencies to initiate a due process hearing if a parent refuses to consent to the initial provision of special education and related services. Consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication (see 34 CFR §300.500(b)(1)). However, a public agency may offer mediation and informally attempt to explain to the parent the potential consequences to their child's education if the parent chooses not to provide consent for the initial provision of special education and related services for their child.

As an additional point of clarification, if a State or agency adopts parent consent requirements in addition to the consent required before initial or reevaluation and initial provision of services as addressed in 34 CFR §300.505(a)-(c), (for example, consent before a change in the services provided to a student), it must have "effective procedures to ensure that a parent's refusal of that consent does not result in a failure to provide the child with FAPE." 34 CFR §300.505(d).

Finally, we understand from your telephone conversation that the State of Virginia may have State statutes and regulations that are inconsistent with respect to this matter. If there are State statutes, regulations, and policies that are inconsistent with the IDEA regarding these issues, then the State must change these State-level rules so that there is no conflict with the IDEA requirements. We hope that you find this explanation helpful. If you need further assistance, please call Dr. JoLeta Reynolds at 202-205-5507 or Mr. Troy Justesen at 202-205-9053.

Sincerely,



Patricia J. Guard  
Acting Director  
Office of Special Education Programs