



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB 11, 2003

Ms. Barbara Gantwerk
Director, Office of Special Education Programs
N.J. Department of Education
P.O. Box 500
Trenton, New Jersey 08625-0500

Dear Ms. Gantwerk:

I write to respond to your letter that requested clarification of school district documentation and other issues when parents refuse to consent for the initial provision of special education and related services under the Individuals with Disabilities Education Act (IDEA). Your letter asked generally about school districts' documentation on this issue and related potential "liability" and whether school districts should treat students whose parents refuse to consent to the initial provision of special education and related services as "general education" students for purposes of disciplinary actions.

You also asked about whether the lack of a parent signature was sufficient for purposes of documenting the parent's refusal to consent to the initial provision of special education and related services and what efforts school districts must make to attempt to obtain consent. The IDEA statute and regulations require school districts to obtain parent consent prior to conducting an initial evaluation or reevaluation and prior to the initial provision of special education and related services. 20 U.S.C. §§1414(a)(1)(C) and (c)(3); 34 C.F.R. §300.505(a). School districts also are required to fully inform parents of all information relevant to the activity for which consent is sought, which for the initial provision of special education and related services includes information enabling the parent to determine the appropriateness of the services to be provided. 34 C.F.R. §300.500(b)(1)(i). Documentation of attempts by school officials to fully inform parents in order to obtain their consent is encouraged in the event there are any later questions as to whether the school district met its duty to fully inform the parent. If you are concerned about school officials being able to demonstrate that they made good faith efforts to obtain consent for the initial provision of special education and related services, they may wish to consider the measures used to document attempts to obtain consent for reevaluations (described below).

For purposes of consent for the initial provision of special education and related services, there is no difference between a refusal to consent and a parent's failure to respond. The statute and regulations carve out a specific exception for the need to obtain parent consent if the school district can demonstrate it took reasonable measures to obtain parent consent for reevaluation, but the parent failed to respond. See, 20 U.S.C. §1414(c)(3); 34 C.F.R. §300.505(c). In the case of reevaluations, documentation of reasonable measures to

Page 2 – Ms. Barbara Gantwerk

obtain consent can include (1) detailed records of telephone calls made or attempted and the results of those calls; (2) copies of correspondence sent to parents and any responses received; (3) detailed records of visits to the parent’s home or place of employment. No such exception exists for the initial provision of special education and related services for which parental consent must be obtained.

We now turn to your question as to whether school districts should treat students whose parents refuse to consent to the initial provision of special education and related services as “general education” students for purposes of disciplinary actions. School districts are not required to provide the discipline protections of 300.520 – 300.529 to children who are not receiving special education because their parents have refused to provide consent to the initial provision of special education and related services by the school district. The provisions of 300.527(d)(2)(iii) do not apply to these children since the purpose of 300.527 is to ensure the prompt identification and evaluation by school districts of children with disabilities.

We hope that you find this explanation helpful. If you need further assistance, please call Dr. JoLeta Reynolds at 202-205-5507.

Sincerely,



Stephanie S. Lee
Director
Office of Special Education Programs

cc: Commissioner Vito A. Gagliardi, Sr.