



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

September 5, 2007

Edward J. Sarzynski, Esq.
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P.O. Box 660
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Dear Mr. Sarzynski:

This letter is in response to your letter dated May 15, 2007 to Dr. Michael Slade of my office, requesting additional response to your letter dated April 18, 2006. In your April 18, 2006 letter you request the opinion of the Office of Special Education Programs (OSEP) regarding whether, under Part B of the Individuals with Disabilities Education Act (IDEA), a parent's written consent is required for all evaluations that are not standardized tests administered to all students. You also state that the New York State Education Department has taken the position that a parent's written consent is necessary if a functional behavioral assessment is an evaluation.

IDEA and 34 CFR §300.300 of the final Part B regulations implementing the 2004 reauthorization of IDEA require a public agency to obtain parental consent prior to conducting an initial evaluation or reevaluation.

Under 34 CFR §300.300(a)(1), a public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 CFR §300.8 must, after providing notice consistent with 34 CFR §§300.503 and 300.504, obtain informed consent, consistent with 34 CFR §300.9, from the parent of the child before conducting the evaluation. If the parent of a child enrolled in public school, or seeking to be enrolled in public school, does not provide consent for the initial evaluation, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of Part 300 (including the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507 through 300.516). See 34 CFR §300.300(a)(3)(i).

A public agency must also obtain informed parental consent, in accordance with 34 CFR §300.300(a)(1), prior to conducting any reevaluation of a child with a disability. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in 34 CFR §300.300(a)(3). Also, the informed parental consent to conduct a reevaluation need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain such consent; and the child's parent has failed to respond. See 34 CFR §300.300(c)(1)-(2).

Written parental consent, consistent with 34 CFR §300.300(a) and (b), is required for any evaluation that is conducted in accordance with 34 CFR §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. See 34 CFR §300.15. An initial evaluation of a child is the first completed assessment of a child to determine if he or she has a disability under IDEA, and the nature and extent of special education and related services required. Once a child has been fully evaluated the first time in a State, a decision has been rendered that a child is eligible under IDEA, and the required services have been determined, any subsequent evaluation of a child to determine whether the child is a child with a disability and the nature and extent of special education and related services that the child needs would constitute a reevaluation.

A public agency is not required to obtain parental consent before reviewing existing data as part of an evaluation or a reevaluation, or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. See 34 CFR §300.300(d)(1). In addition, the screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services, and therefore could occur without obtaining informed parental consent for the screening. See 34 CFR §300.300(d)(1).

Evaluations of student progress occur as a regular part of instruction for all students in all schools. If such evaluations are designed to assess whether the child has mastered the information in, for example, chapter 10 of the social studies text, and are the same or similar to such evaluations for all children studying chapter 10 of the social studies text, parental consent would not be required for such an evaluation. If, however, the evaluation is specific to an individual child and is, as you indicated in your letter, "...crucial to determining a child's continuing eligibility for services or changes in those services," OSEP believes such evaluations fall wider the provisions of 34 CFR §300.15 and require parental consent under the provisions of 34 CFR §300.300(a) and (c).

OSEP's letter to Dr. Kris Christiansen, dated February 9, 2007, and attached to this letter, specifically addressed the issue of parental consent for functional behavioral assessments (FBAs). As stated in that letter, if an FBA is being conducted for the purpose of determining whether the positive behavioral interventions and supports set out in the current individualized education program (IEP) for a particular child with a disability would be effective in enabling the child to make progress toward the child's IEP goals/objectives, or to determine whether the behavioral component of the child's IEP would need to be revised, OSEP believes that the FBA would be considered a reevaluation under Part B for which parental consent would be required under 34 CFR §300.300(c). However, if the FBA is intended to assess the effectiveness of behavioral interventions in the school as a whole, the parental consent requirements in 34 CFR §300.300(a) and (c) generally would not be applicable to such an FBA because it would not be focused on the educational and behavioral needs of an individual child.

Based on section 607(e) of IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of IDEA in the context of the specific facts presented.

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We hope this provides the clarification you requested. If you have further questions on this matter, please contact Deborah Morrow, of my staff, at 202-245-7456.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Guard". The signature is written in a cursive, flowing style.

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosure

Cc: Dr. Rebecca Cort