



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

Dated March 17, 2008

Nan Gray, Director
At Risk and Special Education Services
Utah State Office of Education
P.O. Box 144200
Salt Lake City, UT 84114-4200

Dear Ms. Gray:

This is in response to your electronic mail (email) communication to Sheila Friedman, of my office, dated October 4, 2007, in which you pose five questions regarding secondary transition for children with disabilities, specifically related to consent required to invite agency representatives to an individualized education program (IEP) Team meeting conducted to meet the requirements of 34 CFR §300.320(b) of the regulations for Part B of the Individuals with Disabilities Education Act (Part B). Your questions and the Office of Special Education Programs' (OSEP) responses are provided below.

1. How often must consent be obtained? Annually from parent or student 18 or older? Once from the parent at the beginning of transition planning (student aged 15 or younger) and once again from the student when the student reaches 18 years old?

As explained below, a separate consent must be obtained from the parents or a child who has reached the age of majority for each IEP Team meeting, conducted in accordance with 34 CFR §300.320(b), before a public agency can invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to attend the meeting. The regulation at 34 CFR §300.320(b) provides as follows:

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the child's IEP must include--

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

Under 34 CFR §300.321(b)(3), "[t]o the extent appropriate, with the consent of the parents or a child who has reached the age of majority," if a purpose of an IEP Team meeting will be the consideration of postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b), "the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services." See also 34 CFR §300.622(b)(2) (requiring parental consent or the consent of an

eligible child who has reached the age of majority for the release of personally identifiable information to officials of participating agencies providing or paying for transition services in accordance with 34 CFR §300.321(b)(3)).

This consent requirement was included in the August 2006 final Part B regulations to protect the confidentiality of discussions that occur at IEP Team meetings that other agency representatives would be able to hear, as a result of their attendance at such meetings, "only because they may be providing or paying for transition services." In order to protect this confidential information about a child from unauthorized disclosure to these other agency representatives, the consent of the parent or a child who has reached the age of majority must be obtained before a public agency can invite representatives of other participating agencies to attend IEP Team meetings. Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children With Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46672 (Aug. 14, 2006). Since the conversations at each IEP Team meeting are not the same, and since confidential information about the child is always discussed, we believe that consent must be obtained prior to each IEP Team meeting if a public agency proposes to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. Therefore, it is not permissible under this regulation for a public agency to obtain the consent of the parents or eligible child only one time before the transition planning process is initiated for the child until the child leaves school. Although your question also asks about obtaining the requisite consent on an annual basis, one annual consent would not be sufficient if there is more than one IEP Team meeting conducted during a 12-month period where a purpose of the meeting will be the consideration of the child's postsecondary goals and the transition services needed to assist the child in reaching those goals under 34 CFR §300.320(b).

2. As a follow-up to question 1; what is preferred wording for indicating the duration of the consent if it is requested for multiple years? For example, would it be correct to say that parents are giving consent for agency involvement at every IEP meeting until the student turns 18?

As noted in our response to question 1 above, public agencies may not request a one-time consent from parents for multiple years for every IEP Team meeting until the student turns age 18. To be consistent with Part B, the consent of the parents or a child who has reached the age of majority must be obtained for each IEP Team meeting, if a purpose of the meeting will be the consideration of the child's postsecondary goals and the transition services needed to assist the child in reaching those goals under §300.320(b), before a public agency can invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to attend the meeting.

3. Is consent required only for IEP meetings or for any time that an agency representative meets with students, e.g. when a VR [vocational rehabilitation] counselor presents orientation and eligibility information to a group of students?

The consent requirements described above require parental or, where appropriate, student permission for a public agency to invite, to the IEP meeting, a representative of any participating agency that is likely to be responsible for providing or paying for transition services in

accordance with 34 CFR §300.321(b)(3). Whether parental consent or the consent of the child who has reached the age of majority is required under the circumstances described in your question would depend on whether personally identifiable information is being released to officials of vocational rehabilitation agencies. In the situation described in your question, it does not appear that personally identifiable information about the students is being released to officials of vocational rehabilitation agencies.

4. What information must be included in the request for consent, e.g., the duration of the consent, the name of the agency, the name of the individual representative? Must the request for agency involvement indicate that the agency representative will be invited or could it say that the representative may be invited?

When the term consent is used in the Part B regulations, we mean consent as defined in 34 CFR §300.9. Under 34 CFR §300.9, consent means that: (1) 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; (2) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (3) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). Therefore, the request for consent from the parents or a child who has reached the age of majority for a public agency to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to an IEP Team meeting if a purpose of the meeting will be the consideration of the child's postsecondary goals and the transition services needed to assist the child in reaching those goals under §300.320(b) must contain information sufficient to meet the standards in (1) through (3) above. As discussed earlier, a one-time consent or consent for multiple IEP Team meetings would not be consistent with these Part B requirements. In addition to the information you identify, to be consistent with 34 CFR §300.9 and the relevant consent requirements, the consent must specify that a public agency will invite the other agency representative to an IEP Team meeting if a purpose of the meeting will be the consideration of the child's postsecondary goals and the transition services needed to assist the child in reaching those goals only if the parents or eligible child consents to the invitation. In addition, the consent should explain that, and even if the parents of child gives their consent, the public agency cannot guarantee that the other agency representative will attend, but that the public agency is taking steps to obtain the other agency's participation.

5. From the agency folks - what is their responsibility in checking to see that consent has been obtained prior to attending an IEP meeting, if invited by the LEA?

The consent requirements in 34 CFR §300.321(b)(3) and 300.622(b)(2) apply to public agencies, as that term is defined at 34 CFR §300.33, that are responsible for providing education to children with disabilities, and do not apply to participating agencies that are likely to be responsible for providing or paying for transition services, unless those entities meet the Part B definition of public agency. See also 34 CFR §300.2. Accordingly, Part B does not require participating agencies that are likely to be responsible for providing or paying for transition

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services to ensure that the local educational agency has obtained the consent from the parents or the child who has reached the age of majority to invite them to attend an IEP Team meeting in accordance with 34 CFR §300.321(b)(3).

Based on section 607(e) of the 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 the IDEA in the context of the specific facts presented.

We hope this information is helpful to you. If you have further questions, please do not hesitate to contact Sheila Friedman at 202-245-7349.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Knudsen". The signature is fluid and cursive, with a long horizontal stroke at the end.

William W. Knudsen
Acting Director
Office of Special Education
Programs