



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

November 5, 2001

Honorable Vito A. Gagliardi, Sr.
Commissioner of Education
New Jersey Department of Education
100 River View Plaza
P.O. Box 500
Trenton, New Jersey 08625-0500

Dear Dr. Gagliardi:

Secretary Paige has asked that I respond to your letter dated September 17, 2001, regarding the need to amend New Jersey's State special education policy that permits school districts to initiate a due process hearing if a parent refuses to consent to the initial provision of special education and related services. You state that elimination of this policy will jeopardize the education of students who are eligible for special education and related services and do a disservice to students in need of services. Specifically, you ask that the Department rethink its decision and allow the due process system to "remain available in those instances where the districts believe that the child's best interest is served by receiving programs and services that they are entitled to by law."

Your letter raises an important issue under the Individuals with Disabilities Education Act (IDEA). The upcoming reauthorization of the IDEA will offer an opportunity for us to review the issue of overriding a parent's lack of consent to initial special education and related services, along with other aspects of this important legislation. The issue you raise concerning appropriate education for children with disabilities whose parents do not consent to initiation of services is important and deserves careful attention.

I would, however, like to make sure you understand the Department's current position. Based on the IDEA Amendments of 1997, Part B regulations require parental consent for the initial provision of special education and related services and do not permit public agencies to override a parental refusal to consent. 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. 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.

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

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(see 34 CFR §300.500(b)(1)). However, a public agency may offer mediation and informally attempt to explain the potential consequences to their child's education if parents choose not to provide consent for the initial provision of special education and related services for their child.

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,

A handwritten signature in black ink, appearing to read "Andrew Pepin", with a long horizontal flourish extending to the right.

for/

Robert H. Pasternack, Ph.D.