

Connections from Jerr!

Parent Revocation of Special Education

Recently the Office of Special Education Programs revised federal regulations at 34 C.F.R. 300.300 which changes the ability of a parent to revoke consent for special education services. Below is a summary.

- A parent may now revoke consent for continuing special education services at any time. **A parent's revocation of consent will have the effect of returning a child to general education as a non-disabled student.**
- The District may not use mediation or due process hearings to attempt to continue services when a parent revokes consent for continuing special education services.
- The parent must put the revocation of consent in **writing**. **Oral revocation of consent is not sufficient to trigger this process.**
- In response the District must issue a prior written notice of termination of services based on parent revocation of consent.
- The District **may not** discontinue services until the Prior Written Notice (PWN) has been given to the parent.
- The new regulations indicate that the PWN must be given within "a reasonable time" before discontinuation of services. In the absence of further guidance from OSEP or DEED regarding the length of time, ASD considers 5 school days to be a reasonable time.
- The District is not required to conduct an evaluation before discontinuing services under these circumstances.
- The revocation is not retroactive and does not erase what has already happened.
- If the parent requests to resume special education services after executing a written revocation, then, the parent must request an evaluation to determine if the student is eligible, at that time, for special education services. This would then be considered an initial evaluation. The team must then consider existing information in determining what assessment is needed for eligibility and identifying special education and related service needs.
- A revocation of consent releases the District from liability for providing FAPE from the time the parent revokes consent for special education and related services until the time, if any, that the child is determined to be eligible for special education services.
- The revocation rule applies to the revocation for all special education and related services.

Parents with questions about this new regulation are encouraged to seek assistance from one of the following information sources to ensure that the parent makes an informed decision prior to executing a written revocation of consent for special education services:

Disability Law Center of Alaska
3330 Arctic Blvd., Suite 103
Anchorage, AK 99503
Phone: (907)565-1002

Stone Soup Group
307 E. Northern Lights Blvd., #100
Anchorage, AK 99503
Phone: (907) 561-3701

New ASD Guidance on Special Education



Have you been wondering if you missed any memo's from the Special Education Division? You never have to worry about whether you are up to date!

The Anchorage Special Education Handbook is online at: <http://www.asdk12.org/depts/sped/policy/index.asp>. All changes to the handbook that were made this school year are located in the section entitled "Newest Guidance" at: <http://www.asdk12.org/depts/sped/policy/changes/index.asp>.

Common Questions about Manifestations

✓When must a Manifestation Determination be completed?

The 2006 regulations at 34 CFR 300.530(e) require that the manifestation determination be made within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct. A change of placement is defined by ASD as 10 school days within a school year.

✓ Does the IEP team need to complete a manifestation determination when a new suspension occurs and they've previously completed a manifestation determination that school year?

Yes, teams are required to conduct a manifestation determination after the 10th cumulative day and every suspension or removal thereafter. IDEA 2004 and the 200 regulations are consistent with OSEP's interpretation of prior law that a manifestation determination does not have to take place in circumstances when a student is removed for less than 10 days in any school year.

✓Who makes a manifestation determination?

The manifestation review is conducted by the district, the parent, "and relevant members of the IEP team (as determined by the parent and the district). It appears that the manifestation determination does not have to be conducted by the full IEP team. ASD indicates that the administrator is required so he or she can describe the conduct in question. A special education and regular education teacher should also be present. The attendance of the school psychologist is also strongly recommended.

✓How to define "relevant" information?

The individuals involved in making the manifestation determination are charged with reviewing all relevant information in the student's file, including the IEP, any teacher observations and any relevant information provided by the parent.

✓Why is it so important that the team understand a student's disability?

The ADHD example is a good illustration. The DSM IV (Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition) provides that the essential feature of Attention-Deficit/Hyperactivity Disorder is a persistent pattern of inattention and/or hyperactivity-impulsivity manifests itself as impatience, difficulty in delaying responses, blurting out answers, difficulty waiting one's turn, and frequently interrupting or intruding on others. The manual further states that impulsivity may lead to accidents and to engagement in potentially dangerous activities without consideration of possible consequences. Finally, DSM IV describes associated stubbornness, excessive and frequent insistence that requests be met, mood lability, demoralization, dysphonia, rejection by peers, and poor self-esteem. Teams need to understand how a disability presents itself to answer a question regarding causality.

✓Can a manifestation determination be made without a meeting?

No. The IDEA mandates that within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, "the local educational agency, the parent and relevant members of the IEP team (as determined by the parent and the local educational agency)" must review relevant information to determine if the conduct in question was a manifestation of the student's disability. Implicit in this requirement is the necessity of a collective decision making and therefore some sort of meeting.

Want more guidance? See my full memo on <http://www.asdk12.org/depts/sped/policy/changes/index.asp>.

Recent Guidance

All of the following guidance is available on the ASD Special Education Handbook at <http://www.asdk12.org/depts/sped/policy/changes/index.asp>.

1. Statements About Disability on Report Cards and Transcripts, 1/26/2009.
2. ASD Letter to Parents Regarding Parental Revocation of Special Services, 1/26/2009.
3. Regulations Regarding Parental Revocation of Special Services, 1/26/2009.
4. Parent Revocation of Consent for Special Services, 1/26/2009.
5. Summary of Recent Changes to FERPA, effective December 9, 2008, 1/26/2009
6. Special Education Services Provided During Intensives at ASD Optional Programs, 1/20/2009.
7. Alternate Assessment Submission, 1/5/2009
8. Common Questions Regarding Manifestation Determinations, 12/18/2008
9. Transition in Preparation for Zangle Conversion, 12/18/2008
10. Physician Statement of Other Health Impairment, 12/11/2008
11. Notice of Procedural Safeguards, 9/18/2008



ALWAYS USE CURRENT NOPS

The Notice of Procedural Safeguards, NOPS, is available on the Forms and Publications page of The District Connection, <https://home.asdk12.org/index.asp?>, in the following languages, English, Hmong, Korean, Russian, Samoan, Spanish, and Tagalog. You should ensure that all special education professionals use the current one posted to the ASD website.

When should you give NOPS?

Special education staff and administrators should offer a copy of the notice of procedural safeguards at all of the following times:

- a. When a parent requests a copy of the notice of procedural safeguards;
- b. Upon initial referral for evaluation;
- c. Upon receipt of a state complaint or due process complaint;
- d. Prior to the suspension or recommendation for expulsion of a student with a disability or a student who is presently being evaluated for a disability;
and
- e. Upon receipt of an Out of District IEP.