

MEMORANDUM

**TO: All District Directors of Special Education
All Special Education Cooperative Directors**

**FROM: Elizabeth Hanselman
Assistant Superintendent for Special Education & Support Services**

DATE: August 4, 2009

RE: Impact of New Code of Federal Regulations Revision on 23 IAC 226.540

On December 1, 2008, new revisions to Title 34, Part 300 of the Code of Federal Regulations, which implement the requirements of the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA 2004”), were issued by the US Department of Education that took effect on December 31, 2008. Specifically, the newly revised 34 CFR 300.300 has outlined significant changes to the manner in which local school districts must respond to instances where a parent (or student 18 years of age or older) chooses to revoke consent for a student’s special education eligibility or where a parent refuses to provide consent to an initial offer of special education and related services by the district. We will discuss each circumstance separately below.

A. Revocation of Consent

In summary, the new rule provides that where a parent revokes consent, the parent must do so in writing. In response, a local district must cease the provision of special education services upon providing prior written notice of the termination of services and may not utilize due process or mediation procedures in an effort to override the parent’s revocation of consent. As the language of the new Federal rules makes clear, revocation may occur at any time subsequent to the student’s initial placement in special education.

By contrast, 23 Illinois Administrative Code Section 226.540 provides that a parent may revoke consent orally or in writing, but that the district must memorialize the parent’s oral revocation in a written summary to be provided to the parent within five days of the parent’s oral revocation. The state rule further provides that the district may seek to override the parent’s revocation by requesting a due process hearing to challenge the parent’s decision.

In reviewing the language of these provisions, we believe the following should be the appropriate course of action that school districts should undertake:

- 1) Because the Illinois provision serves to enhance the protections afforded to students with disabilities and their parents under IDEA 2004, we believe that districts must continue to honor both written and oral revocations of consent, and must continue the process of memorializing a parent’s oral revocation in a written summary to be communicated to the parent within five days of the oral revocation.

- 2) We believe that the language in 23 IAC 226.540(b), requiring that revocation be given immediate effect is preempted by language in the new Federal rule, which now requires a local district to provide prior written notice before terminating special education services. However, we further believe that districts are not permitted to delay providing prior written notice for an inappropriate amount of time. In considering the overall process of the initial provision of special education and related services as described in Federal and State rules, we believe that a district should provide prior written notice no later than the “reasonable time” period set out under 34 CFR 300.503(a), which is defined as ten days under 23 IAC 226.520.
- 3) The portion of the rule which allows a district to override the parent’s revocation through a due process hearing must be deemed preempted by the new Federal provision. Thus, a local district may not, as of December 31, 2008, request either a state-sponsored mediation or a due process hearing to challenge the parent’s revocation.
- 4) In response to a parent’s oral or written revocation of consent, districts will be expected to document its acknowledgement of the revocation through an appropriate prior written notice to the parent before terminating special education services. In the case of oral revocation, districts may provide similar prior written notice for purposes of providing the written memorialization of the oral revocation, per the requirements of 23 IAC 226.540.

B. Withholding of Consent for Initial Provision of Special Education and Related Services

In addition to the foregoing, the new 34 CFR 300.300 also covers situations in which a parent (or student 18 years of age or older) refuses to give consent to an initial offer of special education and related services by a local school district. Unlike scenarios involving revocation of consent, school districts are not required to provide a prior written notice or other documentation attesting to the parent’s refusal to provide consent (although districts are certainly free to do so based on their own practices in such situations). As in the case of parental revocation of consent, districts may no longer utilize mediation as a means of obtaining the parent’s consent. Districts are reminded that they cannot utilize due process in order to override the parent’s refusal to consent to an initial provision of special education and related services.

Please feel free to contact us at 217/782-5589 and ask to speak with any special education consultant, if you have further questions pertaining to the contents of this memorandum.

**CONFIRMATION OF REVOCATION OF CONSENT &
PRIOR WRITTEN NOTICE OF TERMINATION OF SERVICES**

Date: _____

Student Name: _____ **DOB:** _____

Parent Name: _____

Dear _____:

In response to your oral/written (*circle one*) communication of _____ (*date*), please treat this notice as confirmation of your decision to revoke consent for the provision of special education and related services to _____.
(Student Name)

You are hereby notified that, effective immediately, all special education and related services set forth in the Individualized Education Program (IEP) dated _____ will cease. In addition, you are further notified that, as appropriate, the student's schedule and classroom placement will be modified to reflect the student's status as a general education student. All rights and responsibilities previously held by your child, including special education disciplinary protections, will be modified to reflect his/her status as a general education student.

In the event you decide at some future date that you wish to consider special education and related services for the student, you will be required to request a new evaluation for the student in order to determine if special education eligibility is appropriate.

If you have further questions or concerns regarding the contents of this notice, please contact _____ at _____.
(District Contact Name) (Phone Number)

Sincerely,

(District Representative)

(Title)