

The Minnesota Department of Education (MDE) Division of Compliance and Monitoring has developed this document to address questions raised by parents and school districts regarding the revocation of parental consent for the provision of special education services. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law.

Question 1: Effective December 30, 2008, the federal regulations addressing parental consent promulgated after the enactment of the 2004 Individuals with Disabilities Education Act (IDEA) was amended. What does the new parental consent regulation say about a parent's right to revoke consent for a child's special education services?

Answer: A parent can now revoke consent for special education and related services at any time. A district cannot use mediation or due process hearings in an attempt to continue special education or related services when a parent revokes consent.

Authority: 34 C.F.R. § 300.300 (b)(4); 34 C.F.R. § 300.9(c)(3). *See* 73 Fed. Reg. 73,006-73,016 (2008).

Question 2: Does the revocation of consent need to be in writing?

Answer: Yes. A parent's revocation of consent for continued special education and related services must be in writing to ensure that both the district and the parents have documentation that the child will no longer receive special education and related services.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008; 34 C.F.R. § 300.9(c)(3); 34 C.F.R. § 300.300(b)(4).

Question 3: When a parent revokes consent, does the district need to remove any reference to the child's receipt of special education and related services from the child's education record?

Answer: No. A district is not required to amend a child's education record because of the revocation of consent.

Authority: 34 C.F.R. § 300.9(c)(3). *See* 73 Fed. Reg. 7,306-73,016 (2008).

Question 4: Is a district liable for denial of a Free and Appropriate Public Education (FAPE) to a child when special education and related services are discontinued following parental revocation of consent?

Answer: No. Districts will not be found to have denied a child FAPE because of a failure to provide the child with special education and related services after the parent refuses to or fails to provide consent.

Authority: 34 C.F.R. § 300.300(b)(4). See *also* 34 C.F.R. § 300.301.

Question 5: When a parent revokes consent for special education services, does the Individual Education Program (IEP) get reviewed annually anyway?

Answer: No. Once a parent revokes consent for the continuation of special education and related services, the district is not required to hold an IEP team meeting or develop an IEP for the child. 34 C.F.R. § 300.300(b)(4)(iv). Furthermore, the review of a child's IEP by the IEP team does not replace a parent's right to revoke consent for the continued provision of special education and related services to his or her child. A parent's revocation effectively removes the child from special education and moves the child into the general curriculum; thus, the child's IEP does not get reviewed once the child is no longer receiving special education or related services.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,009 (2008).

Question 6: Is the removal of a child from special education upon a parent's revocation of consent for special education a change of placement?

Answer: Yes. The district must provide prior written notice consistent with Title 34 of the Code of Federal Regulations, section 300.503. This notice is explained in the answer to Question No. 7 below.

Authority: 34 C.F.R. § 300.300(b)(4); 73 Fed. Reg. 73,008 (2008); 34 C.F.R. § 300.503(a).

Question 7: What kind of notice does the district need to provide the parent before stopping special education services when a parent revokes consent for continuing special education services?

Answer: When a parent revokes consent for the continuation of special education services, the district must provide the parent with prior written notice consistent with Title 34 of the Code of Federal Regulations, section 300.503 before special education and related services are discontinued. This notice must be in writing and given to the parent within a reasonable time before the public agency removes the child from special education. 34 C.F.R. § 300.300(b)(4)(i); 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008. This notice must also inform the parent about the change in educational placement and services that

will result from the revocation of consent. This notice must include, among other things, information on resources for the parents to contact that can assist the parent in understanding the requirements of Part B of IDEA and implementing its regulations.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008, 34 C.F.R. § 300.503.

Question 8: Does the prior written notice need to be in the parent's native language?

Answer: Yes. Any prior written notice required by Title 34 of the Code of Federal Regulations, section 300.503 must be provided in the native language of the parent or another mode of communication used by the parent, unless it is clearly not feasible to do so. 34 C.F.R. § 300.503(c)(1)(ii). Additionally, if the parent's native language or other mode of communication is not a written language, the district must take additional steps to communicate the information contained in the notice to the parent. 34 C.F.R. § 300.503(c)(2). These additional measures include taking steps to have the notice translated orally or by other means to the parent in the parent's native language or other mode of communication. The district must ensure that the parent understands the content of the notice and that there is written evidence that the prior written notice requirement has been met.

Authority: 34 C.F.R. § 300.503(c); 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008.

Question 9: Is there a timeline for how soon the district can stop providing special education services to the student?

Answer: There is no specific timeline outlined in federal or state law for discontinuing special education services upon receipt of a revocation of consent by a parent. However, the comments to the federal regulations provide that a district cannot stop providing special education services until the appropriate prior written notice has been provided to the parents. 34 C.F.R. § 300.300(b)(4)(i). Districts must promptly respond to a parent's written revocation of consent to continue special education services through the provision of a prior written notice. Additionally, the district must provide the parent with the required prior written notice within a reasonable time before discontinuing special education services. Giving this notice within a reasonable time gives parents the necessary information to fully consider the change to their child's educational services and decide whether they have additional questions or concerns regarding the revocation.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008; 34 C.F.R. § 300.503.

Question 10: Can a state establish additional procedures for implementing the amendment to the federal parental consent regulation?

Answer: Yes. A state can choose to establish additional procedures for implementing Title 34 of the Code of Federal Regulations, section 300.300(b)(4), including requiring a public

agency to offer to meet with parents to discuss concerns. The state must ensure that any additional procedures are voluntary for the parents, do not delay or deny the discontinuation of special education and related services, and are consistent with other Part B requirements under IDEA. Minnesota has not established additional procedures through statutory or rule amendment.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008.

Question 11: Can a district ask why a parent is revoking consent for special education and related services?

Answer: Yes. A district can ask a parent why they are revoking consent; however, a parent is not required to provide an explanation, either orally or in writing, prior to a district discontinuing a child's special education and related services.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008.

Question 12: Do parents need to acknowledge in writing that they have been fully informed of the special education and related services and supplementary aids and supports they are declining for their child by revoking consent?

Answer: No. The required prior written notice informs parents of the educational services and supports they are declining and provides a sufficient record that parents have been appropriately informed.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008.

Question 13: How do parents find out about their right to revoke consent to special education and related services?

Answer: The district or public agency should provide to parents, at least annually, a procedural safeguards notice that includes a full explanation of the procedural safeguards available to the parents of a child with a disability. The procedural safeguards notice must explain that parents have the right to revoke their consent for special education services in writing under Title 34 of the Code of Federal Regulations, section 300.300 (b)(4). This notice must also be given to parents when they request an evaluation, which would occur if a parent revokes consent and then requests re-enrollment in special education. One exception is if the request for reinstatement occurs within 12 months of the discontinuation of special education services as described more fully in the answer to Question No. 17 below.

Authority: 34 C.F.R. § 300.504; 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008; 34 C.F.R. § 300.504(a)(1); 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,015.

Question 14: Can an IEP team consent to the provision of special education and related services to a child?

Answer: No. Although the IEP team plays an important role in the special education decision-making process, the **Authority** to consent to the provision of special education and related services to a child rests exclusively with the parent. This right emphasizes the role of parents in protecting their child's rights and the U.S. Department of Education's goal of enhancing parent involvement and choice in their child's education.

Authority: 20 U.S.C. §§ 1414, 614(a)(1)(D)(i)(II); 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,009.

Question 15: Does the parent need to continue working with the child's school after revoking consent for the provision of special education and related services?

Answer: Yes. It is assumed that after a parent revokes consent for the continued provision of special education and related services that the parent will continue to work with their child's school to support their child in the general education curriculum.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,009.

Question 16: How do districts document a parent's revocation of special education services?

Answer: A parent's revocation of consent for special education services must be in writing. In addition, districts must inform parents of the change in education placement and services that will occur when special education services are discontinued through a prior written notice within a reasonable time before special education services are stopped. 34 C.F.R. § 300.300(b)(4)(i); 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,008. This process sufficiently documents the parent's revocation of consent.

Authority: 34 C.F.R. § 300.300(b)(4).

Question 17: When a parent revokes consent for special education services, does the student need to re-qualify later to receive special education services?

Answer: If a parent revokes consent for special education services and a child subsequently experiences academic difficulties, a parent can request an evaluation to determine if the child is eligible, at that time, for special education and related services. If the parent is seeking reinstatement of special education services within 12 months from the date the district discontinued the child's special education services, an evaluation is not required if two conditions are met. The first condition is that the district has access to data on the child's present levels of academic achievement and functional performance. The second condition is that the child's most recent special education evaluation was conducted within the last three years. If those two conditions are met, the district, upon parental request,

can reinstate the child's special education services without first conducting a special education evaluation or documenting two pre-referral interventions.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,010; Minn. R. 3525.3100; *See* 34 C.F.R. § 300.320(a)(1).

Question 18: Does a parent's revocation of consent for special education services serve as "stay put?"

Answer: No. A parent's revocation of consent for special education services will have the effect of returning a child to the general education environment and the child will no longer be treated as a special education student.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,010-11, 73,013.

Question 19: If custody or guardianship is an issue with a child with a disability, do both parents need to agree to a revocation of consent for special education and related services?

Answer: The federal comments are unclear on this question. The U.S. Department of Education declined to add language to the regulation that would specify that both parents who are legally responsible must revoke consent when custody is in dispute. The comments to the regulations state that under the federal definition of a parent (34 C.F.R. § 300.30), when guardianship or custody of a child with a disability is an issue, the parental rights established under IDEA apply to both parents, unless a court order or state law specifies otherwise.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,011; *See also* MDE Question and Answer Document "Parental Consent Requirements for Evaluations, Reevaluation and Special Education Services" (2012).

Question 20: Can a parent revoke consent to some services and not others?

Answer: No. A parent can only revoke consent to special education and related services in their entirety. In situations where a parent disagrees with the provision of a particular service and the parent and the district agree that the child would still receive FAPE if the child did not receive the service, the service should be removed from the child's IEP. If the child would not receive FAPE if the child did not receive a particular service, the parent may use the mediation or due process procedures available under IDEA to obtain a ruling regarding the service with which the parent disagrees.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,011; 34 C.F.R. § 300.300(b)(4).

Question 21: Does a general education teacher have to provide the same accommodations previously identified in a student's IEP when a parent revokes consent for special education?

Answer: No. Once a parent revokes consent in writing for continued provision of special education services a general education teacher is not required to provide the accommodations included in the child's IEP. However, the teacher can provide accommodations that are available to non-disabled students under State standards. A district's obligation to provide accommodations for students who meet eligibility criteria under the 504 Rehabilitation Act of 1973 is not addressed in this technical assistance document.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,102.

Question 22: If a parent revokes consent for continued special education services and the child subsequently engages in behavior that violates a code of student conduct, can the child assert any of the protections of IDEA as provided for in Title 34, section 300.534, of the Code of Federal Regulations?

Answer: No. When a parent revokes consent for special education and related services, the district is deemed to not have knowledge that the child is a child with a disability and thus the child may be disciplined as a general education student according to the district's discipline procedures and the child is not entitled to the Act's discipline protections. Parents are expected to consider the possible consequences of discipline procedures when making the decision to revoke consent for the provision of special education and related services.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,012-3; 34 C.F.R. § 300.534.

Question 23: When a parent has revoked consent for continued special education services, where should the district place the child for education services?

Answer: Once a parent revokes consent for special education and related services, the child is considered a general education student and may be placed in any classroom where other general education students are placed.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,013.

Question 24: Can a child whose parent has revoked consent for continued special education and related services be placed in a classroom that is co-taught by a general education teacher and a special education teacher?

Answer: Yes. If a child's parent revokes consent for special education services and that child is then placed in a classroom co-taught by a general education teacher and special education teacher, the child is placed in the classroom as a general education student.

The child should be treated the same as all other general education students in the classroom. As set forth in the comments to the amended parental consent regulation, general education teachers provide a critical role in ensuring that all children make academic progress regardless of their disability status.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,010-73,011; 73,013.

Question 25: When a parent revokes consent for continued special education and related services under IDEA, how does this affect a district's obligations under Section 504?

Answer: The comments to the federal regulations do not attempt to address any possible overlap between the protections and requirements under IDEA and those found in Section 504 and the American with Disabilities Act (ADA). It is unclear if the language in a 1996 Office of Civil Rights decision is still valid. In that decision, OCR held that revocation of services under IDEA was also a revocation of services under Section 504.

Authority: 34 C.F.R. § 300.300(b)(4), cmts. at 73 Fed. Reg. 74,013-14; *Letter to McKethan*; 25 IDELR 295 (OCR 1996).

Question 26: If a parent revokes consent for the continued provision of special education and related services, can a parent subsequently request an initial evaluation?

Answer: Yes. A parent always maintains the right to subsequently request an initial evaluation to determine if the student is a child with a disability who needs special education and related services.

Authority: 34 C.F.R. § 300.300(b)(4), cmts. at 73 Fed. Reg. 73,014.

Question 27: Is there a limit on the number of times a parent can revoke consent and then subsequently request reinstatement in special education services?

Answer: No. There is not a limit on a parent's right to revoke consent and then request reinstatement in special education services as this flexibility is important to address the unique and individualized circumstances surrounding each child's education. A district will not be found in violation of not providing FAPE to the child following a parent's revocation. A district is only responsible for providing FAPE during the time period the parent has provided consent for special education and related services.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,014; *See* 34 C.F.R. § 300.101.

Question 28: When a parent revokes consent for special education and related services and then requests re-enrollment in special education services, is the subsequent evaluation considered an initial evaluation or a re-evaluation?

Answer: When a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, the district must treat this request as a request for an initial evaluation, not a reevaluation. Depending on the data available, a new evaluation may not always be required.

Authority: 34 C.F.R. § 300.300, cmts. at 73 Fed. Reg. 73,015; 34 C.F.R. § 300.301; *See also* Minn. R. 3525.3100.

Question 29: When a parent revokes consent for continued provision of special education and related services for his or her child, is this the same as the district finding that the child is no longer a child with a disability?

Answer: No. A parent revoking consent is not the same as a district finding that the child is no longer a child with a disability under IDEA. When a parent revokes consent, the district is discontinuing the provision of special education and related services based on the decision of the parent, and the district no longer has an obligation to evaluate the child and provide special education.

Authority: 34 C.F.R. § 300.300(b)(4), cmts. at 73 Fed. Reg. 73,015.