

FRCD Newsletter

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U.S. Dept. of Ed Proposes New IDEA Rules on Revocation of Parental Consent & Other Issues

The U.S. Department of Education, (DOE) on May 13, 2008, published proposals to amend the Individuals with Disabilities Education Act (IDEA) Regulations in the following areas:

- Parental revocation of consent for special education services
- Representation of parents by non-attorneys in due process hearings
- State monitoring, technical assistance, and enforcement of the Part B program
- A state's or local education agency's (LEA's) obligation to make positive efforts to employ qualified individuals with disabilities
- The allocation of funds, under sections 611 and 619 of the IDEA, to LEAs that are not serving any children with disabilities.

Parental revocation of consent is the DOE proposal which has produced the most interest and controversy from the above list.

Organizations serving parents of children with disabilities, and independent living centers, most notably, Access Living, are expressing concerns that revocation of parental consent for services may occur without sufficient information to the parents about the possible consequences involved. They are requesting the DOE to: 1) provide the same procedural safeguards to revocation of consent as now exists in IDEA to obtain initial parental consent; 2) that parents be required to sign a revocation of consent form for special education services, and that the form indicate what the withdrawal of services means, including allowing the school district to discipline the child in the same manner as a non-disabled child.

Some school districts have also expressed concerns about the IDEA proposal, indicating that parental revocation of consent would:

- give parents unilateral authority to withdraw their child from services – instead of allowing the IEP team to make that decision.
- services which have allowed a child to progress would be withdrawn, and the child might regress.

At a recent meeting of the FRCD Special Education Committee, the FRCD put together the following list of reasons for and against the DOE IDEA proposal:

Reasons for revoking consent:

- 1) the child may have been placed in an inappropriate program;
- 2) the educational needs of the child may have changed;
- 3) some teachers may be unqualified and may be providing inappropriate services;

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- 4) the child has improved and is ready to return to a less restrictive environment
- 5) the parent wants to exercise her rights under IDEA

Reasons against revoking parental consent:

- 1) the school officials are absolved of responsibilities to provide FAPE (Free Appropriate Public Education)
- 2) the child will be losing services
- 3) the child is losing discipline protections under IDEA
- 4) the parent may be revoking consent out of pressure or intimidation
- 5) the parent may not have received appropriate information about the child's education needs

Other DOE IDEA Proposals include:

- **State Monitoring of Part B Programs.** States would be required to closely monitor local school districts, adopting OSERS evaluation techniques for measuring local education agencies (LEAs) in their performance and compliance with IDEA requirements, and imposing a one-year deadline for compliance when deficiencies are identified.
- **School Districts' obligations to hire people with disabilities.** Local and state education agencies would be required to "make positive efforts to employ, and advance in employment, qualified individuals with disabilities." The proposed rule is based on Section 606 of IDEA.
- **Allocation of Part B funds to districts that do not serve special education students.** All local school districts will be eligible to receive IDEA funds, even if they do not provide special education services – to ensure sufficient funds for child find activities, and future enrollment of students with special education needs.

Comments regarding the proposed IDEA Rules **must be made by July 28, 2008**, on line at: www.regulations.gov; or via postal mail to: Tracy R. Justesen, U.S. Department of Education, 400 Maryland Ave., SW., Room 5107, Potomac Center Plaza, Washington, DC 20202-2600. Please include the Docket ID (ED-2008-OSERS-0005) at the top of your documents.

(Information from: Rod Estevan, Access Living, draft proposals; Bev Johns' comments; the Special Educator, Vol. 23, Issue. 22; Center for Law and Education, undated.)

OSERS Proposed Rule Okays State Bans of Non-Attorneys in Due Process Hearings

The U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) is proposing a rule which allow states to prevent non-attorneys from representing parents in due process hearings. In Illinois, however, state special education law/regulations allow parents to be advocates for their own child and others.

The OSERS proposed rule, issued May 13, seeks to clarify the IDEA provision which states that parents "have the right to be accompanied and advised by counsel and by individuals with special knowledge and training with respect to the problems of children with disabilities."

However, OSERS also cites a ruling by the Delaware Supreme Court stating that a state ban on non-attorney representation did not violate IDEA (In re Arons, 32 IDELR 253 (2000).)

"Given that the language of the Act and regulations is not clear, we are persuaded now that this position best reflects an appropriate regard for the principle of federal-state comity", OSERS stated.

OSERS also stated that parents can continue to represent themselves in due process hearings and court proceedings, regardless of state, law citing the Supreme Court's ruling in *Winkelman by Winkelman v. Parma City Sch. Dist.*

Comments regarding the OSERS proposed rule are due by July 28, 2008 and can be made at www.regulations.gov.

(Information from the Special Educator, 6/06/08)
