
FOR YOUR INFORMATION

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News for School Clients

Parental Right to Revoke Consent for Special Education Services

The 1993 federal regulations implementing the Individuals with Disabilities Education Act (IDEA) provided that a school district could override a parent's refusal to consent to the provision of special education and related services by using the administrative hearing procedures to seek an order that services be provided to the child. At that time, the U.S. Department of Education required public agencies to ensure that a parent's refusal to consent to special education services did not result in the school district's failure to provide a child with a disability a free appropriate public education (FAPE).

Since then, the U.S. Congress has strengthened the role of parents in the special education decision-making process. In a controversial new federal rule, parents can now unilaterally withdraw their children from special education and related services, in spite of any recommendation from members of a child's individualized education program (IEP) team that the child needs services in order to benefit from his or her education. (When all rights under the IDEA transfer to a student at age eighteen, an adult student may withdraw him- or herself from special education). School districts are now prohibited from using the administrative hearing process to override the parent's decision to withdraw a child from services. Many professionals have lamented that this federal regulation has removed the IEP team from an important decision-making role regarding the educational needs of students for whom the school district is responsible.

A parent revoking parental consent for his or her child to receive special education services must do so in writing. In response to such a parental written notification, the school district must provide the parents with a written notice that they will honor the parent's request that special education services cease and will discontinue providing the student with any and all services. This must be done without delay, and the school district may not deny a parent's directive that services be discontinued. Although a school district may ask a parent why they are withdrawing consent for services, the parents are not obligated to respond.

There may be unintended consequences that the parent has not considered when revoking his or her consent for services. To assist the parents in making an informed consent, it is advisable to conduct an individual analysis of the impact of the child's dismissal from special education and inform the parents of the consequences of their decision. The revocation of consent for services means that the student will be dismissed from services and will not be provided *any* special education or related services. The child will no longer be considered to have a disability and, therefore, will not have the benefit of specialized instruction and will be provided instruction at the same curriculum level as his or her same-age peers. The student will be expected to complete homework assignments consistent with classroom policy, and to take course examinations, with an expectation that failure may result in retention at the same grade level.

No transition plan and services will be available. District regulations related to a student's participation in extracurricular activities, such as "no pass, no play," will apply.

Importantly, the special disciplinary rules provided under the IDEA do not apply if a child is withdrawn from special education services. The student will be treated as a general education student. This includes enforcement of the student code of conduct and the school board's right to expel the student for misconduct without consideration that the student was at one time identified as a child with a disability. The school district is relieved of liability for providing the child a FAPE from the time consent for services is revoked and discontinued, and until such time a future initial evaluation is requested, the student is again determined to be a child with a disability, and parental consent is provided to implement an IEP.

The Wisconsin Department of Public Instruction has prepared a model form for school districts to use when providing the parent with prior written notice of its intent to cease all special education and related services. School districts may want to customize the information provided in such a form to add specificity about the impact of the parent's decision on a particular child.

A parent's revocation of a student's placement in a special education program also has implications for a school district's decision-making regarding such a student's open enrollment application. Simply put, a student removed from the special education program must be considered under the rules applicable to a student in regular education. A former special education student may not be denied open enrollment under the exceptions to open

enrollment provided by Wisconsin law, that is, (1) when the special education or related services required in a student's IEP are not available in the district; or (2) if space is not available in the district's special education or related programs; or (3) when the cost of implementing a student's IEP would create an undue financial burden on the district.

One area of ambiguity and confusion regarding this issue is whether a child who has withdrawn from special education has any right to services under Section 504 of the Rehabilitation Act of 1973 (Section 504). At a minimum, it is advisable to seek consent to evaluate a child for eligibility under Section 504, consistent with the district's child find obligations, keeping in mind that the criteria for eligibility is different than that under the IDEA. When a child is determined to meet the eligibility requirements as a qualified person with a disability under Section 504 *and* requires special education services in order to receive a FAPE, the Office of Civil Rights has provided guidance that suggests that the IEP offered to the child under the IDEA satisfies the district's obligations under Section 504 and the student, therefore, does not have the right to select a Section 504 plan over an IEP offered by the school district.

However, when an eligible student does not need special education services, but only requires a reasonable accommodation to ensure that the student is not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity, the school district may be required to offer an eligible Section 504 student an accommodation plan. This should be done on an individualized basis and may include, for example, test accommodations or services that provide physical access to facilities.

This FYI was prepared by members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team. If you have any questions regarding this topic, please call either of the following members:

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