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May 29, 2007

MEMORANDUM

TO: Superintendents, Special Education Directors

FROM: Denise Koscielniak, State Director of Special Education
Kristine Meurer, Director, School and Family Support Bureau

RE: PARENTAL CONSENT

This memorandum is to clarify the policy interpretation of the requirement at 34 CFR § 300.154 of the “federal regulations interpreting the reauthorized Individuals with Disabilities Education Act (IDEA).”

The IDEA Part B regulations at CFR § 300.154 (d)(2)(iv) state that each time the public agency proposes to access the child’s or parent’s public benefits or insurance to provide or pay for services required to provide a free appropriate publication (FAPE) to an eligible child, the agency must obtain parental consent.

Guidance received from Alexa Posney, Director, Office of Special Education Programs (OSEP) states that “parental consent” means-

- The parent has been fully informed of all information relevant to the activity for which the consent is sought, in his or her native language or other mode of communication;
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought and the consent describes that service and lists the records that will be released and to whom;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- If a parent revokes consent, that revocation is not retroactive (i.e. it does not negate an action that has occurred after the consent is given and before it is revoked).

The consent may be obtained one time for the specific services and duration of services identified in a child’s individualized Education Program (IEP). For example, if a child is to receive 2 hours of physical therapy (PT) each week for 24 weeks, parents should be asked to give consent once to the local education agency’s (public agency’s) billing of the child’s/parent’s public benefits or public insurance for up to 48 hours of PT services for that 24 week period. (The amount billed would depend on the amount of PT service that was actually provided.) The consent may be obtained at an IEP meeting but may also be obtained after the IEP has been developed.

If an IEP meeting is held to change the service(s), such as adding another service or increasing or reducing the duration or scope (time and /or length) of the service being provided and would like to access the child's or parent's public benefits or public insurance for those costs, the local education agency (public agency) must obtain parental consent covering the additional amount or reduced amount of the current service, or a new service. The Part B regulation provisions are intended to ensure that parents are fully informed of a local education agency (public agency's) proposed access of the child's or parent's benefits under public benefits or public insurance program and provide written parental consent prior to the local education agency's (public agency's) access to those public benefits or public insurance.

KM/DK/gg

cc: Catherine Cross Maple, Ph.D, Deputy Secretary, Learning and Accountability