



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 23, 2007

Margaret A. Smith, D. Ed.
Superintendent of Schools
Volusia County Schools
P.O. Box 2410
723 Loomis Avenue
Daytona Beach, Florida 32115-2410

Dear Dr. Smith:

This is in response to your August 31, 2006 letter to the Office of Special Education Programs (OSEP), regarding the parental consent requirements relating to accessing public benefits or insurance in 34 CFR §300.154(d)(2)(iv)(A) of the final regulations for Part B of the Individuals with Disabilities Education Act (Part B). I apologize for the delay in our response. In your letter, you point out potential effects on local educational agencies (LEAs) if they are required to obtain a separate consent from the parent each time access to Medicaid or other public benefits or insurance is sought to pay for required special education and related services provided to Medicaid-eligible children, and propose for our consideration the following interpretation.

“Due to the very nature of IDEA and its requirements for an Individualized Education Plan (IEP), interpretation of “each time that access to public benefits or insurance is sought” should be consistent with the timeframe of the IEP. School districts should be allowed to obtain consent at the initial development of the IEP and its subsequent reviews. Such an interpretation would lessen what will be a paperwork burden to teachers, service providers and public school systems.”

We believe that permitting a public agency to obtain parent consent for a specified amount of services for a specified period of time would be sufficient to enable parents to make an informed decision as to whether to consent before a public agency can access their or their child's public benefits or other public insurance.

This consent may be obtained one time for the specific services, and duration of services identified in a child's individualized education program (IEP), and an LEA would not be required to obtain a separate consent each time a Medicaid agency or other public insurer or public program is billed for the provision of required services. For example, if it is known that a child is to receive three hours per week of occupational therapy (OT) for 36 weeks, parents could be asked to give consent to the public agency's billing of the parent's public benefits or insurance for 108 hours of service. While this type of consent may be obtained at an IEP meeting, it could also be obtained at some point after the IEP is developed.

However, if the public agency seeks to use the child's or parents' public benefits or public insurance to pay for additional hours of service (due to the IEP being revised) or the public

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agency is charging different amounts for such services, and would like to access the child's or parents' benefits or insurance for those additional costs, the public agency must obtain parental consent, covering the additional amount of service or costs to be charged to the child's or parents' public benefits or public insurance.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

I hope that this information is helpful. If you have any questions regarding this letter, please contact Dr. Deborah Morrow, at 202-245-7456.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive style with a large initial "A".

Alexa Posny, Ph.D.
Director
Office of Special Education Programs