

Workshop 14

Parents and Their Rights Under the IDEA and Related State Law: What Does "Parent Participation" Really Mean?

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PARENTAL RIGHTS TO PARTICIPATE IN IDEIA'S EDUCATIONAL PROCESS

I. IDEIA's Criteria For Denial of FAPE

20 USC 1415(f)(3)(e)(ii) states that a hearing officer may find a denial of a free and appropriate public education only if procedural inadequacies (a) impeded the child's right to a free appropriate public education; (b) *significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education*; or (c) caused a deprivation of educational benefit. (emphasis added)

II. Holding An IEP Meeting Without The Parents

34 CFR 300.322. The school district is required to "take steps to ensure that one or both parents" are present at each IEP team meeting or are afforded the opportunity to participate" including (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) scheduling the meeting at a mutually agreed on time and place. 34 CFR 300.322.

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Standard of "reasonableness" determines the amount of advance notice parents must receive. Rejecting a set time requirement of ten days advance notice, OSEP articulates a standard of reasonableness determines whether notice of an IEP meeting is timely. *Letter to Anonymous*, 25 IDELR 1208 (OSEP 1996); *Letter to Constantian*, 17 IDELR 118 (OSEP 1990).

IEP meetings held without reasonable notice.

Board of Educ. of the Nyack Union Free Sch. Dist., 42 IDELR 78 (SEA NY 2004) (violation when meeting held with only five days written notice); *Salem-Leizer Sch. Dist.*, 52 IDELR 149 (SEA Or. 2009) (denial of FAPE when written notice given at start of IEP meeting).

IEP meetings held without parents when parents asked to reschedule.

Letter to Thomas, 51 IDELR 224 (OSEP 2008); *Shapiro by Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 38 IDELR 91, 317 F.3d 1072 (9th Cir. 2003) (denial of FAPE where IEP meeting held despite parents request to reschedule even though IEP generated based on previous meetings with parents; district "simply prioritized its representatives scheduled over that of [the] parents.").

M.L. v. Federal Way Sch. Dist., 341 F.3d 1052 (9th Cir. 2003) (no procedural violation where school district "went to great lengths" to include ML's parents in the IEP meeting, they refused to come at 4:00 pm when the record showed they could do so, and instead insisted that the meeting be scheduled at times such as 4:15 am or on the weekend).

Mr and Mrs. M ex. rel. K.M. v Ridgefield Board of Educa., 47 IDELR 258, 47 IDELR 258 (D. Conn. 2007) (Denial of FAPE where parents emailed District eight days in advance of scheduled IEP meeting requesting it be rescheduled because attorney could not attend; fact that district emailed parents three days in advance to ask if they could proceed with the meeting as scheduled did not relieve the district of the obligation to follow up when it did not hear back from the parents, particularly when this was not a case of parents' repeated veto of proposed meeting times.).

E.P. v. Ramon Valley Unified Sch. Dist., 48 IDELR 66 (ND Cal. 2007); (where a District had to choose between violating IDEA by holding an IEP meeting without parents or violating IDEA by failing to hold an IEP meeting in a timely fashion, no denial of FAPE *provided* the district discussed several possible meeting times with the parents but the parents' attorney rejected all offers, insisting the parents could not meet before the beginning of the school year to design the IEP)

III. Content of Invitation To IEP Meeting

34 CFR 300.322(b). The school district must (1) indicate the purpose, time, and location of the meeting and who will be in attendance; and (2) inform the parents of the provisions in Section 300.321(a)(6). 34 CFR 300.322(b). This notification may be written or oral but the agency must keep a record of its efforts to contact the parents. " 34 CFR Sec. 300.345, Note.

Letter to Livingston, 23 IDELR 564 (OSEP 1995)(quoting Appendix C to 34 CFR Part 300, Question 28)(if possible, the agency should give the name and position of each person who will attend an IEP meeting, but sufficient to state only the positions, and not the names; "position" means the position held within the school district, not within the IEP team)

Anchorage Sch. Dist. v. Parents of M.P., 45 IDELR 253 Alaska Sup. Ct. 2006), the Court found a denial of FAPE where the school district did not give the parent prior written notice that it intended to include the student's kindergarten teacher as a special education provider.

Prejudice from inadequate meeting notice required for denial of FAPE

Scituate Sch. Comm. v. Robert B, 620 F. Supp 1224, 128-29 (DCRI 1985)(notice of meeting that did not specify attendees and failed to indicate the purpose of the meeting not prejudicial because parents knew the purpose of the meeting and the attendees were the same individuals who had attended previous IEP meetings, thus not a surprise). *But see Amanda S. by Susan S. v. Webster City Community Sch. Dist.*, 27 IDELR 698 (NDI

1998) (prejudice found in failure to list IEP participants and titles because staffing meetings had occurred for many different reasons over time, and parents were deprived of the ability to participate in the meeting by the lack of notice)

Notice of attendance of school district's attorney.

Letter to Anonymous, 50 IDELR 259 (OSEP 2008) (school district may invite its attorney to an IEP meeting at its discretion as an individual with special expertise even if the parents' attorney does not attend; but meeting must be rescheduled at parents' request if school district doesn't include attorney in notice of meeting participants). However, OSEP "strongly discourages" an attorney's presence at IEP meetings as potentially creating an adversarial atmosphere. *Letter to Clinton*, 37 IDELR 70 (OSEP 2001).

IV. Miscellaneous Factors Showing Exclusion Or Inclusion of Parents In the Educational Process

Lack of access to educational records before the IEP meeting:

300 CFR 500 et. seq. With regard to providing parents with copies of all evaluations, 34 CFR 300.501 (a), consistent with 20 USC 1415 (b)(1), affords parents an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. Specific procedures for access to records are contained in the confidentiality provisions in 34 CFR 300.610 through 34 CFR 300.627. A district must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the district under the IDEA. The district must comply with the request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to 34 CFR 300.507 or 34 CFR 300.530 through 34 CFR 300.532, or resolution session, and in no case more than 45 days after the request has been made. 34 CFR 300.613.

Amanda J. by Annette J. v. Clark County Sch. Dist., 260 F.3d 1106) (9th Cir. 2001) (denial of FAPE where school district failed to provide parents with copies of reports by a psychologist and speech and language pathologist diagnosing student with autism); *Board of Educ. of the City Sch. Dist. of The City of New York*, 36 IDELR 228 (SEA N.Y. 2001) (denial of FAPE where parent did not have access to her son's educational file before the IEP meeting; *Holland v. District of Columbia*, 23 IDELR 552, 71 F.3d 417 (DC Cir. 1995) (denial of FAPE where school district fails to provide parents with a "clinical interview" of the student conducted by the school district despite parents' request, private school reimbursement ordered).

School district personnel failed to discuss placement and educational services proposed by parents.

WG v. Board of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1469, 18 IDELR 1019 (9th Cir. 1992) (District IEP team members' refusal to consider alternatives to District's pre-prepared IEP at meeting); *Melodee H. and Jon H. ex rel. Kelii H. v. Dept. of Educ.*, 50 IDELR 94 (DCHi 2008) (private school reimbursement ordered where IEP team did not discuss alternative settings for the student); *Briere v. Fair Haven Grade Sch.*

Dist., 25 IDELR 55 (D.Vt. 1996); *Deal ex. rel Deal v. Hamilton County Board of Educ.*, 392 F3d 840, 42 IDELR 109 (6th Cir. 2004) (school district refused to discuss providing 1:1 Lovaas services despite student's impressive progress under system); *But see Hjortness by Hjortness v. Neenah Joint Sch. Dist.*, 498 F.3d 655, 48 IDELR 119 (7th Cir. 2007) (no predetermination where school district failed to discuss parent's alternative placement request at IEP meeting because IDEA favors mainstreaming and once team determined public placement appropriate, no further inquiry needed).

School district's discussion of placement alternatives, including parents' requested placement.

Hanson ex rel. Hanson v. Smith, 212 F. Supp. 2d 474, 486 (DC Md. 2002) (Parents included in educational process where IEP participants' notes establish a number of placements, including parents' requested placement, discussed by team at meeting).

School district adopted some of parents' recommendations.

JL v. Mercer Island Sch. District, 52 IDELR 241 (9th Cir. 2009) (no predetermination where IEP incorporated many of the recommendations of parents' expert); *T.P. and S.P. ex. rel. S.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247, 51 IDELR 176 (2nd Cir. 2009) (no predetermination where behavior consultant and head of IEP team said no pre-meeting agreement on IEP and where team adopted some of parents' recommendations including observing child over summer, meeting with home providers and receive training on how to educate child); *Fuhrmann ex rel. Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1036 (3d Cir. 1993)(no predetermination where draft IEP discussed at IEP meeting and district incorporated some of the parents' suggested changes in the IEP).

District staff or experts visited parents proposed placement.

Fuhrmann ex rel. Fuhrmann v. E. Hanover Bd. of Educ., 993 F.2d 1031, 1036 (3d Cir. 1993) (district's experts visitation of parents' requested placement is factor in finding of no predetermination).

Pre-existing policy of not providing certain educational programming or related services.

Deal ex. re. Deal v. Hamilton County Board of Educ., 42 IDELR 109 (6th Cir. 2004) (denial of FAPE where school system had an unofficial policy of refusing to provide one-on-one ABA programs and school system personnel thus did not have open minds and were not willing to consider the provision of such a program).

Placement before programming.

Spielberg ex rel. Spielberg v. Henrico County Public Schools, 853 F.2d 256, 258-59. (4th Cir. 1988)(denial of FAPE where a series of letters written before the IEP meeting focusing on a change in placement established school district decided to change the disabled student's placement before developing an IEP to support the change.) *But see Doyle v. Arlington County Sch. Bd.*, 806 F.Supp. 1253, 1262 (E.D. Va. 1992)(no denial of FAPE where school district merely proposed a placement before IEP was completed and had not "fully made up its mind before the parents ever [got] involved," thereby denying

the parents "the opportunity for meaningful input"); *Hjortness by Hjortness v. Neenah Joint Sch. Dist.*, 498 F.3d 655, 48 IDELR 119 (7th Cir. 2007)(no denial of FAPE where IEP team discussed only two of four annual goals before deciding placement when team attempted to discuss specific goals and objectives and parents sought to limit the discussion to reimbursement for the private placement)

Lack of majority vote at the IEP team does not exclude parents from the educational process.

Notice of Interpretation, Appendix A to 34 CFR Part 300, Question 9 (1999 regulations)("It is not appropriate to make IEP decisions based upon a majority vote. If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing."); *Doe v. Maher*, 557 IDELR (9th Cir. 1986) (Absent consensus, agency obligated to create IEP to the best of its ability and offer due process hearing opportunity to the parents, majority vote not required); *Ryan v. Shawnee Mission Unified Sch. Dist.*, 46 IDELR 15 (D. Kan. 2006) (majority vote not required); *Buser v. Corpus Christi Indep. Sch. Dist.*, 20 IDELR 981 (SD Tex. 1994), *aff'd* 22 IDELR 626 (5th Cir. 1995) (majority vote not required).

Completion of a draft IEP or other IEP documents before the IEP meeting.

Letter to Anonymous, 25 IDELR 1208 (OSEP 1996) (District may create IEP document in advance of IEP meeting but it is "critical in this situation that participants at the IEP meeting have a bona fide opportunity to discuss all aspects of the IEP and to participate in the final determination of what will be included in the final IEP"; *T.P. and S.P. ex. rel. S.P. v. Mamoroneck Union Free Sch. Dist.*, 554 F.3d 247, 51 IDELR 176 (2nd Cir. 2009) (no error where district's behavioral consultant designed chart in advance of IEP meeting showing parent's expert's recommendations and consultant's own recommendations labeled "school response" since school can discuss potential services in advance of IEP meeting.)

Informal or unscheduled discussions among school staff before the IEP meeting.

N.L. by Ms. C v. Knox County Schs., 38 IDELR 62, 315 F.3d 688 (6th Cir. 2003)(Discussion by District experts concerning assessment report without parent being present did not deny participation as long as parent active participant in final determination; evaluators may come to the meeting with opinions regarding educational needs "as long as they are willing to listen to the parents and the parents have the opportunity to make objections and suggestions.")

V. Parents' Failure To Participate In The Evaluation Process Relieving District Of Obligation To Provide FAPE

Failure to make student available for evaluation: *Ash v. Lake Oswego*, 980 F.2d 585 (9th Cir. 1982) (where student was unilaterally enrolled in private school within state without request for evaluation or private services and later in private school out of state, school district had no obligation to provide an IEP until after student had been brought back within district boundaries for evaluation); *Patricia P. ex. rel. Jacob P. v. Board of*

Educ. of Oak Park and River Forest High Sch. Dist. No. 200, 203 F3d 462, 31 LRP 5779 (7th Cir. 1999) (parents' unilateral placement of student in boarding school in Maine with no subsequent attempts to bring him back within state for evaluation by the school district deprived school district of opportunity to evaluate, resulting in denial of reimbursement amounts); *Schwartz v. The Learning Center Academy*, 34 IDELR 3 (WD Mich. 2001)(parents' refusal to let charter school evaluate student relieved school district of obligation to offer Section 504 plan); *Hunter v. Seattle Sch. Dist. No. 1*, 558 IDELR 302 (Wash. Ct. App. 1987) (parents not entitled to reimbursement when the district was not given an opportunity to assess a child's needs because the student was unilaterally placed out of state and not returned home to enable evaluation)

Expert reports in possession of parents and not provided to school district.

Union Sch. Dist. v. Smith, 15 F.3d 1519, 1523 (9th Cir. 1994) (Parents' intentional failure to turn over report of their autism expert did not excuse school district from fully evaluating child to obtain "same information for itself"

VI. Parents' Refusal to Participate In The Educational Process

Parents' refusal to participate does not relieve school district of obligation to offer IEP.

W.G. v. Board of Trustees of Target Range School District No. 23, 960 F.2d 1479 (9th Cir. 1992)(fact that parents walked out of IEP meeting did not excuse school district from affirmative duty to offer appropriate IEP); *Id. Friedman v. Vance*, 24 IDELR 654 (D. Md. 1996) (failure of parents to cooperate irrelevant).

Parents' refusal to participate in IEP development relieves school district of obligation to develop IEP.

MM ex rel. DM, 303 F.3d 523, 533-34 (4th Cir. 2002) (where parents opt out of IEP process before finalization of the IEP, and evidence shows parents would have accepted no IEP that did not place student at private school, parents' assertion that failure to finalize IEP constitutes denial of FAPE fails); *Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 1065-66 (7th Cir. 2007) (where parents refused to discuss any alternatives to residential placement at an IEP meeting, then claimed they were excluded from participation when the district drafted an IEP on its own that did not provide residential placement, no denial of FAPE);

VII. Failure to invite statutorily required team members may significantly exclude parents from educational process

20 USCA 20 USC 1414 (d)(1)(B) identifies mandatory IEP team members as: (i) the parents of a child with a disability; (ii) not less than one regular education teacher of such child (if the child is, or may be, participating in the regular education environment); (iii) not less than one special education teacher, or where appropriate, not less than one special education provider of such child; (iv) a representative of the local educational agency who -- (I) is qualified to provide, or supervise the provision of, specially designed

instruction to meet the unique needs of children with disabilities; (II) is knowledgeable about the general education curriculum; and (III) is knowledgeable about the availability of resources of the local educational agency; (v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi); (vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (vii) whenever appropriate, the child with a disability. *See also* 34 CFR 300.321.

The 2006 IDEA Part B regulations state that the regular education teacher(s), the special education teacher(s) or provider(s), the public agency representative, and individual(s) who can interpret instructional implications of evaluation results are "not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting." 34 CFR 300.321 (e)(1). 34 CFR 300.321 (e)(2) provides that a member of the IEP team described in 34 CFR 300.321 (a)(2)-(5) may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent, in writing, and the public agency consents to the excusal **and** the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Failure to include district representative.

Pitchford ex rel. M. v. Salem-Keizer Sch. Dist. No. 24J, 155 F.Supp.2d 1213, 35 IDELR 126 (DC Or.)(denial of FAPE where school district did not have a "knowledgeable representative" at the IEP meeting so parents did not have an opportunity to discuss the resources available to change the student's educational services); *Werner ex rel. Werner v. Clarkstown Cent. Sch. Dist.*, 363 F. Supp. 2d 656, 43 IDELR 59 (SDNY 2005) (school district's failure to include a representative from a therapeutic school recommended to parents prevented parents from participating in formulation of IEP since the parents could not obtain information about the school from someone knowledgeable about it; parents' stated intention to visit the school did not relieve the school district of this responsibility).

Student attendance.

Whenever appropriate, the IEP team should include the student with a disability. 34 CFR 300.321 (a)(7). 34 CFR 300.320 states public agency must invite the child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under 34 CFR 300.320 (b). If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

Transition agencies.

To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the transition planning requirements of the act, the

public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. 34 CFR 300.321.

Special education teacher.

R.B. by F.B. v. Napa Valley Unified Sch. Dist., 48 IDELR 60 (9th Cir. 2007)(school district's not required to include child's current special education teacher in IEP meeting, only a special education teacher who has worked with the student. Where district's special education director had never taught student, he could not qualify as special education teacher attendee); *Mahoney ex rel. B.M. v. Carlsbad Unified Sch. Dist.*, 52 IDELR 131, (SD Ca. 2009) (No denial of FAPE where three special education teachers, but not the student's current private provider, were invited to IEP meeting since IDEA 2004 only requires the team to include a special education teacher who has actually worked with the student).

General education teacher.

M.L. v. Federal Way Sch. Dist., 394 F.3d 634 (9th Cir. 2005)(failure to include general education teacher a "critical structural defect" since there was a possibility the student would be placed in an integrated classroom); *S.B. by Dilip B. and Anita B. v. Pomona Unified Sch. Dist.*, 50 IDELR 72 (CD Ca. 2008)(Court held preschool programs are general education environments, and even though the teacher provided information through interviews and questionnaires, this did not substitute for the teacher's presence at the IEP meeting; thus there was a denial of FAPE); *Anchorage Sch. Dist. v. Parents of M.P.*, 45 IDELR 253 (Alaska Sup. Ct. 2006): District denied FAPE by failing to include general education teacher at IEP meeting, excluding parent from educational process)

Failure to include professionals knowledgeable about the student and his disabilities.

Seattle School Dist. v. B.S., 82 F.3d 1493 (9th Cir. 1996)(denial of FAPE where school district failed to include in evaluation team professionals with knowledge of the student's disabilities and did not reconcile student's private provider's opinions); *Taylor v. Board of Educ.*, 558 IDELR 243 (N.D.N.Y. 1986) (where the district did not bring the doctors and teachers from the child's then-current placement outside the school system into the IEP process and, as a result, proposed a set of services that was totally inadequate for the needs of the child, it violated the procedural requirements of the IDEA by failing to give sufficient consideration to the opinions of the individuals who knew the child best); *Melodee H. and John H. ex rel. Kellii H. v. Dept of Educ.*, 50 IDELR 94 (DC Haw. 2008), (denial of FAPE where student's psychologist testified student lacked the social and emotional capabilities needed to tolerate large groups of students and heart condition made school physically unsafe, and IEP team did not even discuss the physical location for the student's placement or potential harmful effects.)

VIII. Failure to Provide Notice of Action.

Sec. 300.503(a). Written notice is required when an agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child *or* the provision of FAPE to the child. The required content of the notice is also broad, requiring the agency to specify the action proposed or refused, reasons for proposing or refusing the action, a description of reports or procedures the agency used as a basis for its decision, any other options considered by the IEP team and the reason for rejecting those options, and "other factors that are relevant" to the agency's "proposal or refusal." Sec 300.503(b)

Union School Dist. v. Smith, 15 F.3d 1519, 1524-25 (9th Cir. 1990)(notice of action identifying placements advises parents of what educational placements the district is actually offering, and court will not consider at due process hearing placements not formally offered); *See A.K. ex rel. J.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672 (4th Cir. 2007) (Court will not consider placement not written into the IEP).

PARENTS RIGHTS TO CONSENT OR REFUSE EDUCATIONAL SERVICES

Sec. 300.300 Parental consent.

Parental Consent

(a) Parental consent for initial evaluation.

(1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under Sec. 300.8 must, after providing notice consistent with Sec. 300.503 and 300.504, obtain informed consent, consistent with Sec. 300.9, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under Sec. 300.506

or the due process procedures under Sec. Sec.300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under Sec. 300.111 and Sec. Sec. 300.301 through 300.311 if it declines to pursue the evaluation.

(b) Parental consent for services.

(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency--

(i) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency--

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with Sec. 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507

through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under Sec. 300.320 and 300.324 for the child for further provision of special education and related services.

(c) Parental consent for reevaluations. (1) Subject to paragraph (c)(2) of this section, each public agency--

(i) Must obtain informed parental consent, in accordance with Sec. 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under Sec. 300.111 and Sec. 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that--

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(d) Other consent requirements.

(1) Parental consent is not required before--

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements

effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), (c), or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

(ii) The public agency is not required to consider the child as eligible for services under Sec. 300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in Sec. 300.322(d).

(Authority: [20 U.S.C. 1414](#) (a)(1)(D) and 1414(c))

Sec. 300.9 Consent.

Consent means that--

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) 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 activity and lists the records (if any) that will be released and to whom; and

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(3) If the parent revokes consent in writing for their child's receipt of special education services after the

child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.