



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

May 18, 2022

Ms. Virginia Spencer
Principal
Lumen Advocacy LLC
15200 Joseph Drive
Austin, Texas 78743

Dear Ms. Spencer:

This letter is in response to your April 22, 2022, correspondence addressed to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP) within the Department's Office of Special Education and Rehabilitative Services (OSERS) requesting clarification of the Individuals with Disabilities Education (IDEA) provision, 34 C.F.R. § 300.300(b)(1).

OSEP is responsible for administering the IDEA, which provides financial assistance to State educational agencies (SEAs), and through SEAs to local educational agencies (LEAs), to help meet the unique educational needs of eligible children with one or more of the specified disability areas, as defined at 34 C.F.R. § 300.8 of the Federal regulations implementing Part B of IDEA (Part B). You can access the Part B regulations at: <https://sites.ed.gov/idea/>.

In your correspondence, you mentioned that a high school student was "found eligible under IDEA category of specific learning disability." You further stated that "the student's parent agreed with the identification and provided written consent to placement in special education. The student's individualized education program (IEP) was developed, and because the parent disagreed with the construction of the IEP the student remains on a 504 plan. Hence, you provided further clarification and asked the following:

1. When a parent and LEA agree that the parent's child meets criteria as a child with a disability under §300.8 and, the parent gives written consent to the initial provision of special education and related services to the child, can the LEA refuse to provide any special education services on the basis that the parent disagrees with the IEP developed under §300.320 and §300.324?
2. Can an LEA assert that at the initial provision of a free appropriate public education [FAPE]: a) non-consensus IEP cannot be provided because consent to services and agreement with an IEP are inseparable? And,
b) thereby, claim an exception to the state's implementing regulations: 19 TAC §89.1050(g)(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

The IDEA, Part B regulations found at 34 C.F.R. 300.300 require that a public agency obtain parent consent to provide services for children who have been evaluated and determined eligible to receive services under the IDEA. However, parental consent for initial evaluation must not be construed as consent for initial provision of special educational and related services ((34 CFR §300.300(a)(1)(ii). Consent for evaluation and consent for initial provision of services are

separate. A parent may consent for evaluation and consent for initial provision of services and in the development of the IEP, disagree with the services provided in the IEP. In this instance the LEA may provide prior written notice informing the parent of its intent to implement the IEP, and the parent may use IDEA's dispute resolution options to resolve the dispute. In addition, 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 (34 CFR §300.300(d)(3)).

Alternatively, a parent may also consent for evaluation and consent for initial provision of services and in the development of the IEP disagree with the services provided in the IEP and revoke consent in writing for the continued provision of special education and related services. In this instance under 34 C.F.R. §300.300(b)(4) if a parent revokes consent in writing for 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 §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 §300.506 or the due process procedures under §§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 §§300.320 and 300.324 for the child for further provision of special education and related services.

The IEP Team meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the (1) child's needs and appropriate goals; (2) extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and (3) services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising their child's IEP (34 CFR §300.324(a)(ii)).

In addition, the IEP Team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. 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 as required by 34 C.F.R. § 300.503, and the parents have the right to seek resolution of any disagreements by using the IDEA's dispute resolution procedures, which are described below in this letter.

Under IDEA, parents of children with disabilities have the following options available to them for resolving disputes with public agencies concerning their child's education: (1) the right to file a state complaint pursuant to 34 C.F.R. §§ 300.151-153; (2) the right to request mediation

pursuant to 34 C.F.R. § 300.506; and (3) the right to file a due process complaint to request a due process hearing pursuant to 34 C.F.R. §§ 300.507-300.516. Please note that any individual or organization, including one from another State, may use IDEA's State complaint procedures to resolve allegations that a public agency has violated an IDEA requirement. 34 C.F.R. § 300.151(a).

Because the IDEA provides these mechanisms to resolve disputes between a parent and a public agency, OSEP does not investigate child-specific complaints and generally, does not intervene in matters involving litigation, matters based on specific administrative or judicial decisions, or matters raised in judicial filings in a specific case.

If you have not done so already, you may also wish to contact the Texas Education Agency (TEA) to share your concerns and/or to find out how the above requirements are implemented in the State of Texas. For your convenience, I have provided their contact information below:

Justin Porter, Ed.D., Executive Director
Special Populations
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701
Telephone Number: (512) 463-9734
E-mail Address: justin.porter@tea.texas.gov

In addition, I have highlighted below resource information which you may find informative.

- *OSEP's Q&A on IDEA Dispute Resolution Procedures* (including State complaints, mediation, and due process complaints) available at: https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_accombinedoserdisputeresolutionqafinalmemo-7-23-13.pdf
- *OSEP's Q&A on Individualized Education Programs (IEPs), Evaluations, and Reevaluations* available at: https://sites.ed.gov/idea/files/IEP.QA_September_2011_FINAL.pdf
- *Q&A on Parent Participation*, available online at: <https://www.parentcenterhub.org/qa2>
- A series of parent guides and videos developed by The Center for Appropriate Dispute Resolution in Special Education (CADRE), are available at <https://www.cadreworks.org/>. CADRE receives funds from OSEP to support parents and schools in understanding and implementing effective ways to resolve special education disputes.

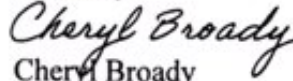
You may also wish to review other resources on the Department's IDEA web site available at: <https://sites.ed.gov/idea/topic-areas/>. Please select the "Resources" tab then select from the list of "Topic Areas."

I would also like to direct you to the Center for Parent Information and Resources (CPIR) funded by OSEP to serve as a central resource of information and products for the community of Parent Training and Information Centers (PTIs) and the CPIRs. You may also wish to contact the PTI

for your area to find out about any organizations or other resources that may be able assist you. To locate the PTI for Texas, visit: <https://www.parentcenterhub.org/find-your-center/>.

I thank you for contacting Department to share your concerns. If this Office can be of any further assistance, please feel free to contact me at (202) 245-7280 or via email at cheryl.broady@ed.gov.

Sincerely,



Cheryl Broady

Customer Service Specialist

Office of Special Education Programs

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