

**Special Education Leadership Meeting  
January 23, 2009**

*Regulation Review*

Prior Written Notice

Parental Revocation of Consent for Continued  
Provision of Special Education Services

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## *When Is PWN Required?*

A school district must give parents PWN no less than 10 business days before the school district proposes to or refuses to initiate or change -

the identification, evaluation, educational placement of a child with a disability, or the provision of FAPE to a child with a disability.

14 DE Admin Code § 926.3.1.; 34 C.F.R. § 503(a)

## *When Is PWN Required?*

In cases involving a change of placement for a disciplinary removal, the PWN must be provided no less than 3 business days before the school district proposes to change the child's placement.

14 DE Admin Code § 926.3.1.; 34 C.F.R. § 503(a)

## *What Does PWN Have to Contain?*

- Description of the action proposed or refused
- Explanation of why the action was proposed or refused
- Description of other options the IEP team considered and the reasons those options were rejected
- Description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action
- Description of other relevant factors
- Statement that parents are protected by the procedural safeguards of the IDEA and DOE regulations
- Sources for parents to contact for help in understanding IDEA and DOE regulations
- A full explanation of the procedural safeguards available to parents

## *PWN “Fact Pattern Q & A”*

Child enters 5<sup>th</sup> grade. Team meets September 1<sup>st</sup> and develops revised IEP. IEP goals are updated; classroom accommodations added; and child’s placement changed to self-contained classroom. Parent signs in agreement with IEP.

- (1) Is PWN required?
- (2) Can the IEP serve as PWN?
- (3) When can the revised IEP be implemented?

## *PWN “Fact Pattern Q & A”*

During the September 1<sup>st</sup> meeting, the special education coordinator took minutes of the IEP meeting. Parent signed in agreement the minutes accurately reflected the team’s discussion.

(4) Can the meeting minutes serve as PWN?

## *PWN “Fact Pattern Q & A”*

In December, the child is due for a triennial reevaluation. The school district determines an updated speech and language evaluation is needed. Parent has provided written consent for the District to conduct the speech and language evaluation.

- (5) Is PWN required for the triennial reevaluation?
- (6) Can the parent’s consent satisfy the PWN requirement?

# *Federal Regulatory Changes*

- U.S. Department of Education issued final regulations December 1, 2008
- Addresses Parental Revocation of Consent for Continued Provision of Special Education and Related Services
- Amendments to 34 C.F.R. §§ 300.300(b)(4) and 300.300.9(c)(3)
- Effective December 31, 2008



# *Federal Regulatory Changes*

Why the amendments?

*“Allowing parents to revoke consent for special education and related services at any time is consistent with the IDEA’s emphasis on the role of parents in protecting their child’s rights and the Department’s goal of enhancing parent involvement and choice in their child’s education.”*

*“The [IDEA] presumes that a parent acts in the best interest of their child.”*

See, *Analysis of Comments and Changes, OSERS, 73 Fed. Reg. 73009 (Dec. 1, 2008)*

# *Federal Regulatory Changes*

## What's Next at the State Level?

- DOE revision to state regulations
- Revision to DOE's Notice of Procedural Safeguards

*Available & Posted on DOE website February 2, 2009*

# *Federal Regulatory Changes*

34 C.F.R. § 300.300(b):

- (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 PWN before ceasing the provision of special education and related services;

## *Federal Regulatory Changes*

- (ii) May not use mediation or due process procedures 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 for the child.

# *Federal Regulatory Changes*

34 C.F.R. § 300.9(c)(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.

# *Federal Regulatory Changes*

*This Sounds Fairly Straightforward,  
Doesn't It?*

# *Federal Regulatory Changes*

*But, What About The Following:*

- (1) Does the school district hold an IEP meeting before discontinuing services?
- (2) How soon after a parent's revocation must services be discontinued?

## *Federal Regulatory Changes*

- (3) Can a parent revoke consent for the continued provision of some services, but not others?
  
- (4) What does the PWN have to contain for a parent who revoked consent?



## *Federal Regulatory Changes*

- (5) Can a school place a child with a disability whose parent revoked consent for special education and related services in a general education classroom that is co-taught by a special education teacher?
- (6) Do the disciplinary protections apply to children when consent is revoked?

*Take Caution!*

*Remember Section 504 and the ADA too.....*

## *Federal Regulatory Changes*

- (7) Can a teacher provide accommodations to a child with a disability whose parent has revoked consent for the continued provision of special education and related services?
  
- (8) How does child find relate to parents who revoke consent? Is the revocation of consent permanent?

# *Federal Regulatory Changes*

- (9) Can a school district ask parents to explain their reasons for revoking consent?

# *Federal Regulatory Changes*

For guidance on questions (1) through (9), see *Analysis of Comments & Changes*, U.S. Department of Education, 73 Federal Register, 73006 through 73029 (December 1, 2008).