



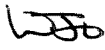
PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | June St. Clair Atkinson, Ed.D., *State Superintendent*

WWW.NCPUBLICSCHOOLS.ORG

Date: December 9, 2014

To: Directors and Coordinators, Exceptional Children Programs

From: William J. Hussey, Director 
Exceptional Children Division

Subject: **Parent Requests for Private Providers
Local Education Agency (LEA) Offers of Free, Appropriate, Public Education (FAPE)
Revocation of Consent for Services**

The Division has experienced a number of technical assistance calls related to parents agreeing to parts, but not all, of the Individual Education Programs (IEP). This has become evident specifically in IEPs offering speech therapy as a related service. Parents are requesting that their private provider be used for speech therapy rather than have therapy services through the LEA, as determined by the IEP Team.

The definition of FAPE from the *Policies Governing Children with Disabilities* is cited below.

NC 1500-2.13 Free Appropriate Public Education

Free appropriate public education or FAPE means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of IDEA;
- (c) Include an appropriate preschool, elementary school, or secondary school education; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of NC 1503-4 and NC 1503-5.1.

The LEA makes an offer of FAPE through the proposed IEP and subsequent services. The proposed IEP should be based on data and reflect a plan to address the unique needs of the student. While the IEP Team should consider all data available when determining FAPE, a parent's request to use a private provider does not constitute an appropriate revision to the IEP or a change to the district's offer of FAPE. Services proposed in the IEP are deemed necessary for the student to make educational progress; services provided in the community may or may not meet "educationally required" criteria.

The parent must be provided an explanation of why the LEA's proposal of services, as documented in the IEP, meets the requirement of FAPE. If the parent chooses to continue with services provided privately and does not accept the full offer of FAPE articulated by the IEP, then the parent is rejecting the LEA's offer of FAPE and as a result revokes consent for the provision of all services.

In order to address the revocation of consent for the provision of services, *Policies* indicates that the parent must revoke consent in writing. In the scenario above, the parent may not understand that rejecting part of the IEP, or the district's offer of FAPE, equates to revoking consent for the entire IEP. This request may have been made through participation at an IEP Team meeting or other communication. Therefore, revocation for the provision of services is not clear or in written form.

EXCEPTIONAL CHILDREN DIVISION

William J. Hussey, Director | bill.hussey@dpi.nc.gov

6356 Mail Service Center, Raleigh, North Carolina 27699-6356 | (919) 807-3969 | Fax (919) 807-3243

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

The U.S. Department of Education, in the Federal Register, further addressed the issue of ensuring that parents are fully informed about the revocation of consent in the *Analysis of Comments and Changes* section of the December 1, 2008 final Part B regulations.

Concerning the comment about ensuring that the parent receives the time and information needed to make informed decisions regarding their child's continued need for services, a public agency cannot discontinue services until prior written notice consistent with §300.503 has been provided to parent.

While the notice is required under §300.503 provides sufficient information to parents regarding revocation of consent for special education and related services, a State may choose to establish additional procedures for implementing §300.300(b)(4), such as requiring a public agency to offer to meet with parents to discuss concerns for their child's education. However, the State must ensure that any additional procedures are voluntary for the parents, do not delay or deny the discontinuation of special education and related services, and are otherwise consistent with the requirements under Part B of the Act and its implementing regulations.

Office of Special Education Programs- Letter to Gerl 2012

Since the revocation of consent for services may not originate in writing, but rather as a request to use a private provider, it is recommended that the LEA offer an IEP Team meeting to discuss the request. Parent participation is voluntary. If the LEA is unable to convince the parent to participate and it is clear that the parent does not wish to accept the services provided by the LEA but prefers those of their private therapist, the IEP Team should meet, document the parent's request for the use of a private therapist as an option considered and rejected on the prior written notice. The LEA should also document the reasons for its decision including:

- the requirement to make FAPE available;
- the appropriateness of the proposed or current IEP based on existing data; and
- a clear explanation that the parent's rejection of part of the IEP constitutes a revocation for consent for all services.

Be certain to allow a reasonable amount of time, within the context of the prior written notice, for the parent to request a new IEP Team meeting or call with additional questions prior to implementing the decision.

LEAs should clearly make an effort to explain the outcome of the parent's decision and potential educational impact regardless of their participation in an IEP Team meeting. The LEA should also clarify that any request for service by a private therapist and not the LEA constitutes a revocation of consent and should be made in writing. The goal throughout this process is for parents to make **informed decisions** regarding their child's education and special education services.

If there are questions or concerns, please contact:

Carol Ann Hudgens, Section Chief for Policy, Monitoring and Audit
(919) 807-3976
CarolAnn.Hudgens@dpi.nc.gov

Lauren Holahan, Medicaid Consultant
(919) 428-7201
lauren_holahan@med.unc.edu

WJH/CAH/cah

Attachment