

**WHEN PARENTS SAY NO:  
RESPONDING TO REVOCATION  
OF CONSENT**

**ICASE SPRING CONFERENCE**

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**WHAT IS REVOCATION OF  
CONSENT?**



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Effective December 31, 2008, at any time after the initial provision of special education, a parent may revoke consent for the continued provision of special education and related services.

34 C.F.R. §300.300(b)(4)

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The revocation of consent is for ALL special education and related services and the student is treated as a general education student.

73 F.R. 73011 (12/1/2008)

☐ A parent's revocation of consent covers all instruction, services, and supports included in the student's IEP, including, but not limited to, the following:

1. Specialized instruction
2. Related services
3. Accommodations
4. Adaptations
5. Modifications
6. Supports for the student or personnel on behalf of the student
7. Assistive technology devices and services
8. Placement outside of a general education classroom.

☐ A parent may not revoke consent for fewer than all of the special education and related services included in the student's IEP.

511 IAC 7-42-15 (e), (f)

### WHO CAN REVOKE CONSENT FOR SPECIAL EDUCATION?



☐ A "Parent," as defined in *IDEA* regulations

☐ A student, age 18 or over, to whom educational rights have transferred

Only one parent need revoke consent. A subsequent evaluation request by either parent is treated as a request for an initial evaluation. *Letter to Cox* ( OSEP 8/21/2009)

The parent revoking consent need not be the parent who provided consent for initial special education placement. *Letter to Ward* ( OSEP 8/31/2010)



*Val Verde Unified Sch. Dist. (SEA CA. 2014)*

- ☐ Unless a divorce or custody order provides that only one parent has educational decision making authority, then either parent acting alone may consent or revoke consent to special education.
- ☐ The district committed a procedural violation of *IDEA* by waiting to obtain both divorced parents' consent for an evaluation and thereby failing to timely assess the student.

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### HOW DOES A PARENT REVOKE CONSENT?



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At any time after the parent gives consent for initiation of special education, the parent may revoke that consent by:

- ☐ putting revocation of consent in writing
- ☐ signing the revocation
- ☐ submitting the written revocation to licensed personnel.

511 IAC 7-42-15

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*Grasmick v. Matanuska Susitna Borough Sch. Dist.* (D. AS. 2014)

- ☐ In its due process complaint, the district argued that parents had "effectively revoked their consent" to special education services by threatening and inhibiting service providers from working with homebound student in their home.
- ☐ Parents did not formally revoke consent, so the district was required to continue to provide FAPE. The court interpreted the district's complaint as a request for cooperation and parents were ordered to stop interfering with the homebound program.

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*Capistrano United Sch. Dist.* (SEA CA. 2014)

- ☐ Frustrated with their child's behavior in early childhood, parents wrote the district a letter revoking consent to the IEP, requesting an IEE by evaluators experienced with cochlear implants, and indicating that parents would seek reimbursement for services they would unilaterally provide their child.
- ☐ District terminated services and did not respond to the IEE demand.
- ☐ IHO ruled that district waived its right to contest the IEE. Parents' letter was not a revocation of all special education services, but a statement of a FAPE dispute.

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**HOW MUST A DISTRICT  
RESPOND TO REVOCATION OF  
CONSENT?**



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In response to the revocation of consent, the District must provide the parent Prior Written Notice, before ceasing services, within 10 days of receiving the revocation.



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PWN includes confirmation of revocation of services, notice that services will stop and that the student will be treated as a general education student, and notice that if the parent wants to consider special education later, the parent must request a new evaluation.

34 C.F.R. §300.300(b)(4)(i)

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- ☐ Within 10 instructional days of the date licensed personnel receive the parent's written revocation, the public agency must provide the parent with a copy of prior written notice.
- ☐ The school may not terminate special education and related services until 10 instructional days after the parent receives prior written notice unless the parent provides written consent for services to be terminated prior to the expiration of 10 instructional days after receipt of the written notice.

511 IAC 7-42-15 (e), (f)

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The District may not file due process against the parent in an attempt to override the revocation and may not require the parent to attend mediation or a resolution session.

34 C.F.R. §300.300(b)(4)(ii)

The school may not use mediation or a due process hearing to override the parent's revocation of consent for services.

511 IAC 7-42-15 (b), (g)

A district may offer to meet with parents to discuss their concerns, but the meeting must be optional to the parent and must not delay discontinuation of services.

*Letter to Gerl, (OSEP 6/6/2012)*

The school may ask the parent why the parent is revoking consent, but the school may not require the parent to provide an explanation, either orally or in writing, as a condition of terminating the provision of special education and related services. The school may not use the inquiry to delay or deny the termination of special education and related services.

511 IAC 7-42-15 (d)

**WHAT ARE THE DISTRICT'S  
RESPONSIBILITIES AFTER A  
PARENT REVOKES CONSENT?**



☐ A district is not required to hold an IEP meeting or develop an IEP for the student. The district will not be in violation of FAPE for not providing services.



The school is not required to convene a case conference or develop an IEP when it receives the parent's written revocation.

The school shall not be considered to be in violation of the requirement to make FAPE available to the student subsequent to the parent's revocation of consent in accordance with this section.

511 IAC 7-42-15 (c), (k)

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The school is not required to amend the student's records to remove reference to the student's special education and related services when the parent revokes consent for services. This does not preclude a parent from requesting that the student's educational record be amended in accordance with the procedures contained in 511 IAC 7-38-2.

511 IAC 7-42-15 (j)

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☐ A district is required to respond to a request for evaluation as an *initial* evaluation for special education services.

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If, after revoking consent, a parent wants the student to receive special education and related services, the parent must request an initial evaluation and the case conference must determine if the student is eligible for special education and related services as a student with a disability.

511 IAC 7-42-15 (e)

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☐ The district's CHILD FIND responsibility continues.

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*Houston Independent Sch. Dist. (SEA TX. 2014)*

- ☐ Parent revoked consent for special education services and subsequently her son's grades declined and his inappropriate behavior increased.
- ☐ Parent did not request a new evaluation, but argued that the district violated its child find responsibilities.
- ☐ Parent argued that student had needs not previously identified that the district should have evaluated. The district asserted that the needs were previously identified and addressed by the student's IEP before revocation of consent.

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*Houston Independent Sch. Dist. (SEA TX. 2014)*

The IHO agreed with the district and ruled that although the district's child find obligation did not end with the parent's revocation of consent, it would not be triggered absent evidence that the student had new or different needs than those previously identified and addressed in the student's IEP.

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*Cheyenne Mountain Sch. Dist. 12 (SEA CO. 2013)*

- ☐ In 2008, the student was struggling academically and the district requested consent for an initial evaluation. Although parents initially agreed, parent revoked consent for the evaluation.
- ☐ Although student initially responded to RTI, the next year he had failing grades, could not concentrate in class, did not turn in assignments, was not organized.
- ☐ Parent provided the district with a physician's diagnosis of ADHD.
- ☐ Based on revocation of consent provided in 2008, the district did not offer to evaluate the student until parent requested an evaluation in 2013.

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*Cheyenne Mountain Sch. Dist. 12 (SEA CO. 2013)*

The IHO ruled that parent's refusal to consent to an evaluation in 2008 did not eliminate the district's future child find responsibility. Although a district is not required to "continually pester" parents with evaluation requests, if a body of data collected over time shows that the child continues to struggle despite RTI, the district should renew its evaluation request.

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**HOW DOES REVOCATION OF  
CONSENT AFFECT STUDENT  
DISCIPLINE?**



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If a student violates the school's Code of Conduct *after* a parent revokes consent for special education, the student is treated as a general education student; *IDEA's* discipline protections do not apply.

*Questions and Answers on Discipline Procedures (OSERS 6/1/2009)*

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Upon revocation of consent and termination of special education and related services, the student is no longer eligible as a student with a disability and is not entitled to the protections of *IDEA*.

511 IAC 7-42-15 (i)

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Although a student without an IEP may assert *IDEA* discipline protections if the school has knowledge that the student had a disability before the misconduct, a district is *not* deemed to have knowledge that a child has a disability if the student's parent has refused or revoked consent for *IDEA* services.

34 C.F.R. § 300.534(c);

*King Philip Regional Sch. Dist. (SEA MA. 2014)*

- ☐ Student was charged with a felony for an incident that occurred on 9/30/12 when he was a special education student.
- ☐ After an IEP team dispute as to whether the student required a private day program or a residential placement, the student and his parent revoked consent to special education on 10/29/14 and student withdrew from school.

*King Philip Regional Sch. Dist. (SEA MA. 2014)*

- ☐ On 11/17/14, the student sent a letter indicating that he wished to retract his withdrawal of consent and his withdrawal from school.
- ☐ The district sent student a notice of expulsion on 12/4/14 based upon his 2012 felony conviction.
- ☐ The district did not conduct a manifestation determination

*King Philip Regional Sch. Dist. (SEA MA. 2014)*

The IHO ruled that because the student was a child with a disability at the time of his behavior that resulted in the felony conviction, he was entitled to a manifestation determination before an expulsion. Pursuant to its child find responsibility, the district was obligated to respond timely to the student's request for an evaluation and to determine his needed services.

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*Jefferson County Board. of Education (SEA AL. 2009)*

- ☐ Student receives special education during the 2007-2008 school year. He is suspended multiple times and the IEP team meets 8 times to revise his BIP. Student stops attending school after a 4/21/08 incident for which he would have attended an alternative school.
- ☐ Parent withdraws child from school for the 2008 fall term and home schools him.
- ☐ On 1/26/09, parent reenrolls student, but revokes consent for special education to avoid student's placement at alternative school.

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*Jefferson County Board. of Education (SEA AL. 2009)*

- ☐ During Spring 2009, student was sent to the alternative school several times as a general education student for various discipline incidents.
- ☐ On 3/25/09, parent requests a Section 504 Plan and a week later consents to a Section 504 evaluation. Her request states that if the district did not agree to a Section 504 plan, she was requesting an IDEA evaluation.
- ☐ On 4/3/09, the district writes the parent that an IEP, not a 504 plan is needed.

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*Jefferson County Board. of Education (SEA AL. 2009)*

- ☐ On 4/14/09, student is accused of setting a smoke bomb, which would result in placement at an alternative school.
- ☐ On 6/3/09 parent writes that she is requesting an *IDEA* evaluation. When the district requests consent for the evaluation, the parent instead files due process and argues that student should have been immediately reclassified as an *IDEA* eligible student after several disciplinary infractions.

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*Jefferson County Board. of Education (SEA AL. 2009)*

The IHO ruled that the district did not deny the student FAPE by not providing special education services before re-evaluating the student's eligibility. The IHO also noted that the parent was using revocation of consent to attempt to avoid discipline and that parent should not "turn on and off services like a water faucet."

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*DOE Analysis of Comments and Changes 73 F.R. 73014*

**Comment:** Some commenters expressed concern that allowing parents to revoke consent for special education would result in parents pulling their children in and out of special education...which would have a negative effect on student progress, would cause a loss of instructional time and could affect the provision of FAPE. Others expressed concern that parents who previously revoked consent will ask for services when the child has a discipline issue or is at risk of not graduating. A few commenters asked for a limit on how frequently parents can revoke consent and then subsequently request reinstatement.

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*DOE Analysis of Comments and Changes 73 F.R. 73014*

**Discussion:** After revoking consent, a parent always maintains the right to subsequently request an initial evaluation to determine if the child has a disability and needs special education. We do not agree to limit how frequently the parent can revoke and subsequently request reinstatement because retaining flexibility to address the unique and individualized circumstances surrounding each child's education is important.

**IS A STUDENT ENTITLED TO A  
SECTION 504 PLAN WHEN THE  
PARENT REVOKES CONSENT  
FOR IDEA SERVICES?**

*DOE Analysis of Comments and Changes 73 F.R. 73013*

These final regulations implement provisions of the *IDEA* only. They do not attempt to address any overlap between the protections and requirements of the *IDEA* and those of Section 504 and the ADA.



*Letter to McKethan* (OCR Southern Division 1996)

When a district has found a student eligible for services and developed an IEP under *IDEA*, the parent may not refuse to accept *IDEA* services and require the district to develop a 504 plan. For students who qualify for services under both *IDEA* and Section 504, an IEP is the way the requirements of Section 504 are met. A rejection of services under *IDEA* is the equivalent of rejecting services under Section 504.

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*Kimble v. Douglas County Sch. Dist. RE-1* (D.CO. 2013)

- ☐ Parent revoked consent to the student's May, 2010 IEP because she did not agree with the placement the district proposed. Parent then requested a Section 504 meeting.
- ☐ The 504 plan offered by the district was to "implement the services as identified in the May, 2010 IEP"
- ☐ Because the substance of the 504 plan was identical to the rejected IEP, parent refused to accept the 504 plan.

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*Kimble v. Douglas County Sch. Dist. RE-1* (D.CO. 2013)

- ☐ The court rejected the district's reliance on *Letter to McKethan*, but concluded that the district had acted appropriately by holding a meeting and developing a Section 504 plan. Parent could not hold the district liable for failing to provide accommodations they rejected as part of the 504 plan.
- ☐ The district has a continuing obligation under Section 504 to protect the student from disability discrimination and therefore is required to continue to offer accommodations and services required to ensure that the student is provided an opportunity to receive FAPE.

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*Lamkin v. Lone Jack C-6 Sch. Dist.*, 58 IDELR 197 (W.D. Mo. 2012)

Court criticized Letter to McKethan as not providing full analysis, but indicated that District had relied on the US DOE in good faith.

*D.F. v. Leon County Sch. Bd.* (N.D. FL. 2015)

- ☐ Parent withdrew consent to IEP that proposed LD class for student and requested a 504 plan. The district denied the parent's request.
- ☐ The court held that although the letter is not a full and correct analysis of the relationship between *IDEA* and Section 504, the district did not retaliate against the parent for revoking *IDEA* services because the district relied on *Letter to McKethan*, USDOE authority, in good faith.

## SCENARIOS

