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Publications

December, 2008

School Law Update

New IDEA Regulations Allow Parents To Withdraw Consent And Increase State Monitoring Requirements

In less than one month, school districts must be prepared to implement important changes in special education law. Released just yesterday, the revised regulations to the Individuals with Disabilities Act (IDEA) will become effective on December 31, 2008. Some of the most significant changes relate to withdrawal of consent for special education services and DPI's monitoring of local school districts.

Withdrawal of Parental Consent

Effective December 31, 2008, parents will have the right to revoke consent for their child to receive special education services at any time. In other words, even after a parent signs initial consent for placement, a parent can withdraw a child from special education. See 34 C.F.R. § 300.300. To be effective, parents must revoke their consent in writing. When a school district receives written revocation of consent, it must send the parents written notice of the following: (1) that the district is discontinuing the child's receipt of special education and related services; (2) that the discontinuation is due to the district's receipt of the parents' written withdrawal of consent for special education and related services; (3) that the parents have protection under the procedural safeguards of the IDEA and the means by which they can receive a copy of the safeguards; (4) a list of sources the parents may contact to obtain assistance in understanding the IDEA; (5) any options considered and rejected and reasons for doing so; and (6) any other factors relevant to the discontinuation of services. School districts must send this notice to the parents before discontinuing special education services, but within "a reasonable amount of time."

When a parent withdraws a child from special education, the district will have no further obligation to convene a child's IEP team or to provide the student with FAPE. While schools cannot file a due process hearing request to override the withdrawal of consent, school staff should carefully consider appropriate strategies to resolve disputes before withdrawal, and should encourage parents to allow their children to continue receiving necessary supports and services.

State Monitoring

The revised regulations require state educational agencies, including the Wisconsin Department of Public Instruction (DPI), to determine whether each school district in the state meets the requirements of the IDEA,

needs assistance in implementing the IDEA, or needs some type of intervention to implement IDEA. When DPI identifies a school district not in compliance, DPI must ensure compliance within one year.

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If you have questions or concerns regarding these revisions and how they may affect your district's practices, please contact Gary M. Ruesch at 414-277-5313 / gmr@quarles.com, Renae Waterman Aldana at 414-277-5165 / Renae.Aldana@quarles.com, Katie A. Featherston at 414-277-5146 / kfeather@quarles.com, or your local Quarles & Brady attorney.