

TO: AEA Directors of Special Education
Student and Family Support Services Staff
Early Childhood Services Staff
FR: Thomas A. Mayes
DA: June 28, 2011
RE: Revocation of Consent for Continued Special Education Services

Some of our colleagues have asked for assistance in explaining the consequences of revoking consent to continued special education services, which special education law now allows. Iowa Admin. Code r. 281 – 41.300. Here is a suggested “Q&A” format to explain this process and its consequences to parents and educators. Please adapt it as needed, such as by inclusion in prior written notices.

Q: May I revoke my consent to my child’s special education?

A: Yes. The Individuals with Disabilities Education Act (IDEA) regulations allow a parent to revoke consent to continued special education services.

Q: How do I revoke consent to my child’s special education?

A: You must give your child’s school, your child’s AEA, or both, a written statement revoking your consent for special education.

Q: I have verbally told the school to stop my child’s special education, but they refuse to do so. Is this legal?

A: Yes. You must stop your child’s special education in writing.

Q: What happens after I revoke my consent in writing?

A: The public agencies will give you a prior written notice before special education services stop. That notice will explain that you requested your child’s special education to stop, will explain that all services and accommodations in your child’s Individualized Education Program (IEP) will stop, and will explain the alternatives to stopping your child’s special education. These procedures should occur very soon after you revoke your consent in writing.

Q: Can the school ask for mediation or file for a due process hearing if it disagrees with my decision to stop my child’s special education?

A: No, but the school can ask you to have informal discussions or use other processes (such as the AEA’s resolution facilitator); however, those processes or discussions must be voluntary and must not delay or deny your right to stop your child’s special education.

Q: I do not want my child's special education to stop, but my child's other parent wants to revoke consent. Is my consent required, too?

A: According to the United States Department of Education, the law requires only one parent's revocation of consent. As long as your child's other parent has decision-making power (for example, joint legal custody), that parent's revocation of consent must be honored. Special education will stop, even if you disagree. If you and your child's other parent disagree about whether to stop your child's special education services, that dispute needs to be resolved through other processes (in district court, for example), not through the IDEA's process.

Q: I have given a written revocation of consent to the school. The school says we have to have an IEP team meeting and review data before the team decides whether to exit my child from special education. Is that correct?

A: No. While it might be a good idea to meet to review your child's data, the decision to stop special education services is yours and is not made by the IEP team. For more information, see the final "Q&A" in this document.

Q: If I stop my child's special education, can I ask for my child's special education to start again?

A: Yes. The district and AEA will need to do an initial evaluation for your child and determine eligibility before starting your child's special education again.

Q: I stopped my child's special education. The school and AEA have since asked for my consent to evaluate my child for special education. Can they do that?

A: Yes. Schools and AEAs are required to seek parental consent whenever they suspect a child might need special education. If the school and AEA suspect your child might need special education, they are required to seek your consent. You may always refuse to give your consent.

Q: What are the consequences of stopping my child's special education services?

A: Your child will be a general education student. The school will no longer need to provide your child with an IEP or with a free appropriate public education (FAPE) under special education law. This includes instructional services, support services (such as speech), program accommodations and modifications (such as extra time on tests). The least restrictive environment provisions will also not apply.

Q: If I stop my child's special education, will my child's teachers still be required to provide the accommodations listed in my child's IEP?

A: No. Your child will be a general education student with no IEP-provided services or supports. Your child's general educators may still provide your child with accommodations provided to other general education students.

Q: If I stop my child's special education, will my child still receive the specially designed instruction listed in the IEP?

A: No. Your child will be a general education student. Your child's teacher may still provide your child with different instructional strategies, such as supplemental instruction, that are available to general education students.

Q: If I stop my child's special education and my child is suspended or expelled for violating a school rule, will the school be required to do a "manifestation determination"?

A: No. The IDEA's manifestation determination requirements and other discipline protections will no longer apply to your child. The school will discipline your child as it would any other general education student.

Q: If I stop my child's special education and my child is suspended or expelled, can I use the IDEA's disciplinary protections because the school had knowledge that my child might need special education?

A: No. According to the United States Department of Education, the IDEA's special disciplinary protections for children not yet eligible for special education will not apply to your child.

Q: I stopped my child's special education. I want my child's special education records destroyed, but the school is refusing to do so. Can the school keep those records?

A: Yes. The school must keep those records for audit and accountability purposes, and for as long as those records are relevant to your child's education.

Q: My child plays basketball and runs track for the school. I stopped my child's special education, and now the district wants to hold my child to general education academic requirements for competition eligibility. Can the district do this?

A: Yes. Your child is a general education student now. The law's athletic eligibility standards for children with IEPs no longer apply to your child.

Q: I stopped my child's special education. I have requested a "504" Plan. Is the school required to provide one?

A: According to the United States Department of Education, if you reject special education under the IDEA, the school is not required to provide your child with a 504 Plan. The school could still provide your child with a 504 Plan as a matter of good practice; however, it is not required to do so.

Q: I stopped my child's special education. Do Section 504 and the Americans with Disabilities Act protect my child from discrimination?

A: Yes. Those two laws still protect your child from disability-based discrimination because your child will have a "record" of being a person with a disability. This does not mean, however, that your child will receive a 504 Plan.

Q: I stopped my child's special education, but my child still has health needs, such as monitoring of my child's asthma. Is my child still entitled to an individualized health plan?

A: Yes. Health plans and medication administration plans are available to children in general education and special education.

Q: I am upset with my child's special education and disagree with a particular service. I want the service to stop, but the school wants it to continue. Can I stop a particular service?

A: You cannot unilaterally stop a particular service. If there is a disagreement about a service, the IEP Team meets to discuss the service. If the service can be removed and your child will still receive a FAPE, the service is to be removed. If the service cannot be removed without harming your child's right to a FAPE, the service must continue. If you disagree with the decision to continue the service, you can use the IDEA's dispute resolution options to challenge that decision.

Q: I told the school I was unhappy with a service. The school suggested that I revoke my consent for special education services and "sign my child out"? Is that appropriate?

A: No. Schools and AEAs must not counsel or encourage parents to revoke their consent to special education services. They can explain this option exists, however, and are to remind you of your parental rights, including the IDEA's dispute resolution options.

Q: My child, who has attained the age of majority, wants to stop his special education. Can my child stop special education without my input or approval?

A: As a general rule, yes. If rights have transferred to your child at the age of majority, your child may revoke consent to continued special education services. This is so even if your child has given you a power of attorney to share in your child's educational decision-making. You would still get a prior written notice telling you that your child has decided to stop special education. If, however, your child has a guardian or other person appointed to make educational decisions, that person decides whether to revoke consent to special education.

Q: If I stop my child's special education, will my child have problems with other services or programs, such as SSI, Medicaid waivers, vocational rehabilitation services, or accommodations in college?

A: Perhaps. Each of those services and programs, as well as similar services and programs, has its own eligibility criteria and priorities. If this concerns you, you should consult with a person responsible for that service or program prior to stopping your child's special education services. The schools and AEAs will not have enough information or authority to answer these questions for you.

Q: If I think my child no longer needs special education and do not want to revoke my consent for services, what can I do?

A: You can ask the AEA and LEA to reevaluate your child. If your child's data show your child no longer has a disability or no longer needs special education, your child's team (of which you are a member) will determine that your child is no longer eligible for special education. If your child's team determines that your child still needs special education, then special education does not stop. In either event, you will get a prior written notice. If you disagree with the team's decision, you can use the IDEA's procedural safeguards. Remember, a team decision to stop special education because a child's data show "no special education need" is different from the parent's unilateral authority to stop special education services.

Q: I stopped my child's special education. Can I allege the school violated the IDEA by stopping special education and not giving my child a FAPE?

A: No, according to the United States Department of Education. Parents have the right to stop their child's special education. When they do, schools are obligated to stop services. You cannot fault the school for doing what you asked and what is obligated to do.