ANDREWS & PRICE

SPECIAL EDUCATION ALERT

Published in Cooperation with the University of Pittsburgh Tri-State Area School Study Council

FEBRUARY, 2026

SPECIAL POINTS OF INTEREST:

- Parents have the legal right to revoke consent for special education at any time. This decision cannot be overridden through due process or mediation
- Carefully review requests for homebound instruction to determine if an evaluation for 504 or IDEA services is needed.
- IEP Teams should discuss which staff members need training on implementing a child's PBSP

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Revocation of Services

One of the key components of the IDEA is parent participation and informed decision -making. One of the core procedural safeguards under the IDEA is the parents' right to consent to services and also their right to revoke that consent.

The IDEA requires informed parental consent prior to the initial provision of special education services. Services cannot begin until the District receives that consent. Parental consent is not permanent. Parents have the right to revoke consent for special education services at any time.

The revocation must be in writing. Once consent is revoked, the school district is no longer permitted to continue to provide special education services to the student. Moreover, the District may not use mediation or due process to override the parent's decision.

District's are often concerned about the liability of not providing services. This article will outline requirements to ensure that parents' rights are not violated once consent is revoked and also provide insight on protecting Districts in this situation

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Homebound Requests

Depending on the reason for the request, a parent who seeks homebound instruction, especially when due to an emotional or mental health condition may trigger a District's child find obligation. Such information may constitute notice that the student has a disability that could require special education service. When provided with notice, Districts have an obligation to seek consent to evaluate. Failure to do so can result in a denial of FAPE. Ensure that your District's attendance department and special education departmentsare on the same page!

Test Your Knowledge on Homebound Requests on Page 6

CASE LAW UPDATE

Laboratory Charter School v. AM

Eastern District of PA

FAPE

Facts: During the 2020-2021 school year, AM's mother became concerned about his academic and social progress during virtual instruction and requested an evaluation. AM was identified as having a learning disability and an IEP was developed. AM repeated 2nd grade.

During AM's repeat 2nd grade, Lab continued with the prior year's IEP, but did not fully implement the Plan. Despite calling for AM to be pulled out, he was only provided pull out services a handful of times through November. Progress reports did not show progress. A new IEP was developed in February, but appeared to be substantially similar to the prior IEP, despite minimal progress.

The following year, in 3rd grade, progress reports showed a decline in progress, particularly in math. In January, 2023 a new IEP was developed. Although PELs indicated behavior issues, no PBSP was included. SDI continued to be the same as prior IEPs and despite the decline in progress, the IEP decreased his time in the special education classroom.

Fourth grade continued much the same with Lab failing to consistently provide learning support or counseling sessions. A new RR was completed. Autism rating scales were "very elevated" yet the RR continued to conclude that AM's disability was LD and ADHD. Behavior was not assessed through an FBA. The IEP did not address identified needs from the RR, including organization, attention, emotional regulation, language, sensory processing or behavior.

Parents obtain an outside diagnosis of autism. However, his IEP was not revised until the following year, but still did not recognize autism as a disability category. As a result, AM's IEP did not address all of his needs. Parents filed for due process.

Hearing Officer's Decision: The HO found that Lab violated the IDEA and denied AM FAPE by:

1. continuing to repeat and recycle goals despite testing showing stagnant progress;
2. Not identifying and programming for all of AM's needs, including executive functioning and behavior;
3. Not timely or appropriately considering autism as a disability category even though testing showed "very elevated" autism traits
4. Failing to provide sufficient pull out special education services to allow AM to make progress.

Court Decision: Lab Charter appealed the decision to federal court. The Court affirmed the decision in its entirety. The Court upheld the Hearing Officer's credibility determinations, finding the parent more credible than district witnesses who "could not answer basic questions."

Key Legal Takeaways:

- Merely repeating goals year to year without meaningful adjustment, especially when progress data shows stagnation or regression is legally insufficient.
- IEP Teams must use progress data to drive instruction and make changes to the child's IEP to ensure progress and FAPE
- The IEP must be individualized and address all known disability related needs that are identified through an evaluation.
- The IEP Team must timely consider and address new diagnosis that are provided and changing needs of the student.
- Failure to provide FAPE can lead to an award of an IEE, retrospective compensatory education and prospective compensatory education until a new IEP is developed as was awarded in this case.

Revocation of Consent

(Continued from page 1)

FOLLOWING PROCEDURES

1. Provide Prior Written Notice (PWN)

Before discontinuing services, the district must issue Prior Written Notice under 34 C.F.R. § 300.503. The notice should:

- Acknowledge receipt of the written revocation
- Identify the services that will cease
- Explain that the district will no longer provide FAPE under IDEA
- State the effective date services will end

The discontinuation cannot occur immediately upon receipt of parent's written request; it must follow issuance of PWN within a reasonable time. Additionally, issue parents a Procedural Safeguard Notice.

2. Discontinue All Special Education and Related Services

Once the PWN is issued, approved by the parents and the effective date arrives:

- The student is no longer entitled to services under IDEA and is considered a regular education student
- The IEP is no longer in effect
- The district is no longer obligated to provide FAPE under IDEA
- Procedural safeguards under IDEA no longer apply

3. Update Records

Administratively, the district should:

- Exit the student from special education
- Update reporting systems (e.g., child count, special education databases)
- Ensure cumulative records reflect revocation of consent
- Notify appropriate staff

The student remains enrolled in general education unless otherwise withdrawn.

WHAT IS NOT REQUIRED

The district:

- **Does not need to convene an IEP meeting**
- **Does not need to conduct a reevaluation**
- **Cannot challenge the parent's decision through due process**
- **Is not required to amend past records**

Additionally, the district is not considered in violation of IDEA for failing to provide FAPE after services are discontinued.

SECTION 504 ELIGIBILITY

Revocation of consent under IDEA does **not automatically eliminate** a district's obligations under Section 504. If the student has a physical or mental impairment that substantially limits a major life activity, the district must consider:

- Whether the student qualifies under Section 504
- Whether accommodations are necessary to provide equal access

However, a parent's revocation of IDEA services does not automatically constitute consent for a 504 plan. The district should evaluate 504 eligibility separately, consistent with its procedures.

WHO CAN REVOKE?

Any person who is considered to be a "parent" under the IDEA with legal authority to make educational decision has the right to revoke. OSEP has advised that revocation occurs when **EITHER parent** who has educational rights revokes consent, even if the other parent disagrees. Similarly, either parent has the right to request a new evaluation. However, both parents would have to agree to consent to services beginning again.

Revocation of Consent

(Continued from page 3)

DISCIPLINE

After revocation:

- The student is no longer entitled to IDEA discipline protections.
- Manifestation determination procedures no longer apply.
- The student is disciplined as a general education student.
- The student is not considered to be a "thought to be exceptional" student.

This shift is significant and should be clearly explained in the Prior Written Notice.

CHILD FIND

Revocation does not eliminate a district's ongoing **Child Find** obligation. If:

- The student later demonstrates academic or behavioral concerns, or
- The parent requests a reevaluation. Notify parents on the revocation PWN that they can ask for an evaluation at any time.

The district must treat this as a new referral and proceed through standard initial evaluation procedures. A revoked student can later be re-identified as eligible, but the district must follow full evaluation timelines and obtain new parental consent. There is no limit to the number of times that a parent can revoke consent and request a new evaluation later.

Therefore, continued review of the student is necessary and ongoing communication with the parent should be maintained.

BEST PRACTICES

Although the law is procedurally straightforward, revocation situations can be emotionally and educationally complex. Consider the following best practices:

- **Schedule a meeting (optional)** to ensure the parent understands the implications (but do not delay honoring written revocation).
- **Document all communications carefully.**
- **Provide clear written explanation** of how supports may change.
- **Ensure general education staff are informed** about the change in status.
- **Evaluate potential Section 504 implications promptly.**

Transparency reduces later disputes.

LIABILITY

The IDEA is clear that Districts are responsible for providing FAPE only during the time period that the parent has provided consent for special education services. Once the District appropriately stops providing special education and related services based on revocation of consent, the District will not be in violation of the requirements to make FAPE available or a failure to continue to provide services. However, remember that Child Find obligations continue.

KEY TAKEAWAYS

- Revocation must be in writing.
- Districts must issue Prior Written Notice before stopping services.
- The district cannot override the parent's decision through Due Process or Mediation
- FAPE obligations under IDEA cease prospectively.
- Section 504 obligations may remain.
- Child Find duties continue.
- DOCUMENT!

Who Should Be Trained to Implement the PBSP?

	When developing a Positive Behavior Support Plan for a child, the IEP Team should discuss who may be responsible for implementing the plan. Those individuals should receiving training on the child's plan. Think outside of just the child's teachers and paraprofessional to who is likely to encounter the student exhibiting a behavior and provide training on what they need to know if they do.
Teachers	This may include more than the child's classroom teachers. Does the behavior occur in the hallway or at lunch/recess? Hall and cafeteria monitors may need to be aware of how to work with the child if they are not following the rules. Do not forget the special subject teachers—gym, music, art, library.
Paraprofessional	Often the paraprofessional is tasked with managing the student's behavior. They should be familiar with the plan and know how to appropriately implement it. This would also include aides or paraprofessionals on the child's bus.
Substitute Teachers	Ensure there is a plan to notify substitute teachers if a child has an IEP and a PBSP. Teachers should always leave a copy of a student's plan in a substitute folder and substitutes must be required to review those plans. If they are not aware of how to implement the plan, case managers should work with the substitute to understand the child's needs and their duty to implement the PBSP.
School Police/SRO	A school police officer or SRO may be called to or respond to a report of a student misbehaving. Former or current police officers may have a different view of how to handle these situations. However, as employees and contractors of the District, they should be familiar with the child's PBSPs in order to understand the behavior, deescalate the student and avoid triggering more severe behavior. Additionally, they should be complying with requirements regarding restraint for children with disabilities.
Principals	Student misbehavior often ends in front of the school principal. Principals and Assistant Principal should understand a child's PBSP and how to respond to the child's behavior. A PBSP is not going eliminate all behaviors, but it is a blue print for what works for addressing a child's behaviors. Principals need to understand that failing to implement the PBSP will affect their ability to discipline the student if needed.

WHAT DO YOU THINK?

At the start of the school year, a parent of a 9th grade student informs the Principal and nurse that her daughter has a chronic medical condition that affects her stamina and mobility. She struggles to move through crowded hallways and cannot tolerate a full school day without fatigue. The parent also submits a doctor's letter confirming her condition and recommending intermittent homebound instruction when symptoms flare.

The District approves homebound instruction intermittently and when she is in attendance allows her to leave class early to avoid crowded hallways. Informally, teachers are told to be flexible regarding attendance and assignment completion. Over the first semester, the student misses school and parents continue to communicate to the district regarding her medical condition.

Was the District's Child Find obligation triggered by the request for Homebound Instruction?

A. No. A medical diagnosis alone does not qualify a student for services
B. No. The parent did not request an evaluation and the Doctor did not recommend it
C. Yes. The information provided gave the District notice that the student has a disability and is in need of accommodations or special education services.

While a medical diagnosis alone does not qualify a student for services, it can be a red flag that should trigger a discussion by the District team. Students need homebound for a variety of reasons and a short term request for a temporary injury or illness generally does not require an evaluation. In this scenario however, knowledge of a chronic medical condition that affects the student's attendance and mobility is likely sufficient to begin the evaluation process. A parent request or doctor's recommendation is not needed to begin the evaluation. While the District may have thought they were cooperating by providing homebound and informal accommodations, this is not a substitute for a timely evaluation of the student's needs.

If you said C you are correct! OCR recently analyzed a similar fact pattern and found that the District should have begun the evaluation for either eligibility under Section 504 or the IDEA when they had knowledge of the disability that was impacting the student's education.

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If you have a special education issue you would like to see addressed in subsequent issues of this newsletter, please write to or e-mail Trish Andrews at the above address.

Andrews & Price, LLP is the pre-eminent law firm in Western Pennsylvania in the practice of Public Sector Law. Our attorneys have more than 60 years of combined experience servicing School Districts. We provide a full range of legal services to our clients, including serving as Solicitor for various school districts, serving as special counsel for special education due process hearings, presenting seminars relating to the Reauthorization of IDEA and representing our clients in all types of litigation, including defense of numerous civil rights suits in federal and state Court.

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Tri-State Area School Study Council of the Administrative and Policy Studies Department of the School of Education of the University of Pittsburgh seeks ways to increase organizational capacity in schools through problem solving, technical service, and staff development so all students will be better prepared to make contributions to both our democratic society and the world community.

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Consult Your Solicitor!

The legal issues discussed herein are for the purpose of providing general knowledge and guidance in the area of special education. This newsletter should not be construed as legal advice and does not replace the need for legal counsel with respect to particular problems which arise in each district. As each child is unique, each legal problem is unique. Accordingly, when districts are faced with a particular legal problem, they should consult their solicitor or with special education counsel to work through the issues on a case by case basis.