



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES  
STATEWIDE COORDINATOR FOR SPECIAL EDUCATION  
Room 1624 One Commerce Plaza • Albany, NY 12234  
www.vesid.nysed.gov/specialed/

Telephone (518) 402-3353 Fax: (518) 473-5769

January 2009

To: District Superintendents  
Superintendent of Schools  
New York City Board of Education  
Principals of Public Schools  
Directors of Pupil Personnel Services  
Directors of Special Education  
Chairpersons of Committees on Special Education  
Chairpersons of Committees on Preschool Special Education  
Impartial Hearing Officers  
Commissioner's Advisory Panel for Special Education Services  
Commissioner's Advisory Panel for Nonpublic Schools  
SETRC Professional Development Specialists  
Regional School Support Centers  
Organizations, Parents and Individuals Concerned with Special Education

From: James P. DeLorenzo 

Subject: New Requirements for Special Education Programs and Services: Amendments to Federal Regulations to Implement the Individuals with Disabilities Education Act (IDEA 2004)

This is to inform you that the United States Department of Education (USDOE) has issued final regulations that amend Part 300 of the Code of Federal Regulations (34 CFR), which implements IDEA 2004. The amended regulations were published in the Federal Register on December 1, 2008 and became effective December 31, 2008. Effective December 31, 2008, states and school districts are required, as applicable, to implement the new requirements of the federal regulations.

The following information is a summary of the new federal requirements in effect as of December 31, 2008. A copy of the revised federal regulations is available at <http://edocket.access.gpo.gov/2008/pdf/E8-28175.pdf>.

### **Revocation of Parental Consent (§§300.9 and 300.300)**

34 CFR section 300.300(b)(4) has been amended to add that if the parent of a student with a disability revokes his/her consent in writing for the continued provision of special education and related services to the student, at any time subsequent to the initial provision of



special education and related services, the school district:

- may not continue to provide special education and related services to the student, but must provide prior written notice to the parent before ceasing the provision of special education and related services;
- may not use due process procedures (i.e., mediation, resolution meeting, and/or an impartial due process hearing) in order to obtain agreement or a ruling that the services may be provided to the student without parental consent;
- will not be considered to be in violation of the requirement to make a free and appropriate public education (FAPE) available to the student because of the failure to provide the student with further special education and related services; and
- is not required to convene an individualized education program (IEP) meeting or develop an IEP for the student for the further provision of special education and related services.

The definition of consent in 34 CFR section 300.9 has also been amended to add that if the parent revokes consent in writing for his/her child's receipt of special education and related services after the child is initially provided special education and related services, the school district is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

### **Representation by Non-attorneys in Due Process Hearings(\$300.512)**

34 CFR section 300.512(a)(1) has been amended to add that the decision as to whether parties (i.e. parent and school district) have the right to be represented by non-attorneys at due process hearings is determined under state law.

### **State Monitoring, Technical Assistance, and Enforcement (\$300.600, 300.602, and 300.606)**

34 CFR section 300.600(a) has been amended to add:

- that a state must annually review and make determinations about the performance of each local educational agency (LEA) using the categories in section 300.603(b)(1) (i.e. meets the requirements for purposes of Part B of the Act; needs assistance in implementing the requirements of Part B of the Act; needs intervention in implementing the requirements of Part B of the Act; and needs substantial intervention in implementing the requirements of Part B of the Act).
- the specific enforcement mechanisms that a state must use to enforce Part B of IDEA (i.e. technical assistance; conditions on funding of an LEA; a corrective action plan or improvement plan; and withholding funds, in whole or in part, by the State Educational Agency).

34 CFR section 300.600(e) has been amended to require that, when a state identifies noncompliance with the requirements of Part B of IDEA by its LEAs, correction of noncompliance must be completed as soon as possible, but in no case later than one year after the state's identification of the noncompliance.

34 CFR section 300.602 has been amended to require:

- each state to report annually to the public on the performance of each LEA located in the state on the targets in the state's State Performance Plan (SPP) as soon as practicable but no later than 120 days following the state's submission of its Annual Performance Report (APR) to USDOE; and
- states to make the SPP, the state's APR and the state's annual reports on the performance of each LEA located in the state available through public means, which must include, at a minimum, posting the plan and reports on the state's web site and distributing the plan and reports to the media and through public agencies.

34 CFR section 300.606 has been amended to require states to provide public notice of any enforcement action taken by USDOE against the state and that each state's public notice of enforcement actions must include, at a minimum, posting the notice on the state's web site and distributing the notice to the media and through public agencies.

**Allocation of Funds Under Section 611 and 619 of IDEA to LEAs That Are Not Serving Any Children With Disabilities (§§300.705 and 300.815)**

34 CFR sections 300.705 and 300.815 have been amended to require each state to make a subgrant under sections 611 and 619 of IDEA to eligible LEAs, including public charter schools that operate as LEAs in the state, even if an LEA is not serving any students with disabilities. This requirement takes effect with funds that become available on July 1, 2009.

Please share this information with Directors of Special Education, Pupil Personnel Directors, Chairpersons of Committees on Special Education, Chairpersons of Committees on Preschool Special Education and other interested individuals. Questions may be directed to the Special Education Policy Unit at (518) 473-2878 or your local Special Education Quality Assurance Regional Office:

Eastern Regional Office (518) 486-6366  
Western Regional Office (585) 344-2002  
Hudson Valley Regional Office (518) 473-1185  
Central Regional Office (315) 428-3287  
Long Island Regional Office (631) 884-8530  
New York City Regional Office (718) 722-4544  
Nondistrict Unit (518) 473-1185