

Revocation of Consent for Continued Services When Parents Disagree: New OSEP Letter

In December 2008, the federal IDEA regulations were amended to allow parents to revoke consent, in writing, for continued special education and related services. 34 C.F.R. § 300.300(b)(4). Iowa's special education rules were amended to conform to the new federal law. Iowa Admin. Code r. 281 – 41.300(2)“d”. If a parent revokes consent, in writing, for continued services, the public agencies must provide prior written notice and cease services.

Recently, a state official asked OSEP to address situations in which the parents disagree about whether to revoke consent for continued services. OSEP's response, in *Letter to Cox*, is surprising and requires close attention. OSEP stated that if a parent who has legal authority to make decisions about the child's education revokes consent, services must cease even if the other parent disagrees. The letter further stated that the parent who wanted services to continue could not request mediation or a due process hearing on the issue of continued services. It further stated that parents, including parents who disagreed with the decision to revoke consent, may request an initial evaluation after revocation of services. *Letter to Cox* is at the following link: <http://www2.ed.gov/policy/speced/guid/idea/letters/2009-3/cox082109revocationofconsent3q2009.pdf>

What happens if one parent revokes consent for continued services, and the other parent demands an initial evaluation? OSEP apparently recognizes that this may set up an endless cycle of granting and revoking consent, stating: “Accordingly, the IDEA does not provide a mechanism for parents to resolve disputes with one another; such disputes must be settled privately or through whatever state law processes exist.”

AEAs and school districts who are confronted with parents who disagree about consent to evaluate, consent to begin services, and revoking consent for continued services must consider the hierarchy set out in special education law, including determining whether a court order or decree appoints a particular person to make a child's educational decisions. *See, e.g.,* Iowa Admin. Code r. 281 – 41.30(2). Here are some general points to consider.

No Court Order. According to Iowa family law, in the absence of a court order, presume both parents have equal decision making power, even if the child lives with one parent more than the other parent.

Court Order with Specific Language about Educational Decisions. If a court decree specifically grants a parent exclusive power to make educational decisions, follow that provision. (Orders with such specific language are relatively rare; school officials should never take a parent's word that the language exists.)

Court Order with No Specific Language about Educational Decisions. In the absence of specific language about educational decisions, look for the following language or terms:

1. “Joint Custody.” If there is a court order (divorce decree, final custody decree, temporary custody and visitation order) that grants parents “joint custody” or “joint legal custody,” the parents have equal decision making power, even if the court order provides that the child lives with one parent more than the other. *See* Iowa Code § 598.1(3).
2. “Sole Custody.” If there is a court order granting one parent “sole custody,” “legal custody,” or “sole legal custody,” that parent acts as the child’s parent for IDEA purposes, even if the child lives for a significant amount of time with the other parent. *See id.* § 598.1(5).

Juvenile Court Orders. Juvenile court orders may change frequently, and may change the authority of biological or adoptive parents to make educational decisions. If questions arise, contact the local office of the department of human services for additional information or clarification.

Domestic Abuse Protective Orders. Courts frequently issue domestic abuse no-contact orders on a temporary basis. Those orders frequently grant custody of minor children to the protected party, and prohibit the abuser from having any contact with the children. *See* Iowa Code § 236.5. Unless the order otherwise specifies, consider the protected party as the only party who can make educational decisions for the child, until the order is modified or expires. Sometimes, courts issue domestic abuse protective orders as part of a divorce case. In those cases, the domestic abuse protective order will not discuss custody but will refer to other orders in the case, which should be consulted.

What should public agencies do if parents are in a cycle of granting and revoking consents? As noted by OSEP, this matter is to be resolved privately by the parents or by state law processes (family law court). Public agencies may offer the parents the services of an AEA Resolution Facilitator. Public agencies may wish to consult with counsel if parent disagreement becomes intractable or disruptive.

Note that *Letter to Cox* concerns only parent disagreements about whether services should continue. This letter does not govern circumstances in which parents with decision making authority disagree about other matters, such as particular placements or services. In those instances, IEP teams should continue to determine what is required to offer a FAPE and provide prior written notice to the parent who disagrees.

Feel free to contact the Department with questions.