



AMERICAN
SPEECH-LANGUAGE-
HEARING
ASSOCIATION

ASHA Analysis

2008 IDEA Part B Supplemental Final Regulations

The American Speech-Language-Hearing Association (ASHA) has prepared this analysis of the 2008 IDEA Part B supplemental final regulations, released by the U.S. Department of Education (ED), to aid members in the implementation of the regulations.

Published in the *Federal Register* on December 1, 2008 and can be found at <http://edocket.access.gpo.gov/2008/pdf/E8-28175.pdf>. They became effective December 31, 2008. The final regulations amend current Part B regulations as published in the August 14, 2006 *Federal Register* in the areas of:

- parental consent for continued special education and related services;
- non-attorney representation in due process hearings, State monitoring, technical assistance, and enforcement; allocation of funds; and
- positive efforts to employ and advance in employment individuals with disabilities.

Parental consent, State issues, and hearing right have been identified, with input from a member advisory group, as important to the professions of speech-language pathology and audiology.

Parental Consent

§300.300 – Parental Revocation of Consent for Special Education Services

Major Changes:

Section 300.300(b)(4) has been revised to require that parental revocation of consent for the continued provision of special education and related services must be in writing and that upon revocation of consent a public agency must provide the parent with prior written notice in their native language or other mode of communication in accordance with §300.503.

ED's rationale for giving parents the unilateral right to revoke consent for special education and related services is consistent with IDEA's emphasis on the role of parents in protecting their child's rights and ED's goal of enhancing parent involvement and choice in their child's education. Parents have the authority to determine whether a public agency may begin to provide special education and related services. It was the Department's position that this right needed to be extended to revocation of services.

In the Analysis of Comments and Changes section, the Department responded to some questions that were raised regarding a parent's option to request dismissal for a particular service or services. ED responded that parental revocation of consent is for the initial provision of special education and related services generally, not for a particular service or services.

Once a public agency receives a parental revocation of consent in writing for all special education and related services for a child, the agency must, within a reasonable time, discontinue all special education and related services to the child. However, under §300.300(d)(2) States are free to create additional parental consent rights, such as allowing parents to revoke consent for particular services.

ASHA Position:

ASHA supports the provision allowing parents to unilaterally revoke consent for special education and related services and applauds ED's inclusion of ASHA's recommendation to require written notification of withdrawal of consent. ASHA recommended that communication between all parties be maintained while attempting to resolve any issues causing parents to request revocation of services by outlining detailed procedures and timelines.

While ED did not include specific procedures and timelines, the Analysis of Comment and Changes section of the regulations included an acknowledgement that a State may choose to establish additional procedures for implementing §300.300(b)(4). Any procedures established by the States must be voluntary for the parents and must not delay or deny the discontinuation of special education or related services. While written notification is required for the revocation of consent of special education and related services, a parent is not required to provide an explanation, in person or in writing, in order to revoke consent for services.

Impact on Members:

ED, in its comments, acknowledged that this decision may have an impact on the SLP's caseload however a parent's right to determine their child's education services must be held paramount.

Once parents revoke consent, their child is now considered to be a general education student no longer covered under a free appropriate public education (FAPE). SLPs and audiologists may be asked to consult or provide support to teachers and students in the general classroom environment. This consultation may take many forms including: in-service training, curriculum selection, technical assistance, classroom modification, and provision of services under RTI.

In keeping with ED's discussion in the Analysis of Comments and Changes section of the regulations, if a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, a local education agency (LEA) must treat this request as an initial evaluation under §300.301. However, depending on the currency and nature of the data available, a complete new assessment may not always be required.

Members will need to be familiar with their State requirements for carrying out specific provisions related to the cessation and possible reinstatement of special education services under this law. They should also become familiar with any additional regulations that a State may choose to create, such as those allowing parents to revoke consent for particular services.

State Issues

§300.177 – States Sovereign Immunity and Positive Efforts to Employ and Advance Qualified Individuals with Disabilities

Major Changes:

Regulations require States and LEAs to make positive efforts to employ and advance qualified individuals with disabilities. ED declined to define the term “positive efforts” in the regulations “because the positive efforts taken by States will vary based on the unique and individual needs of a State and public agency, and those needs may change over time.”

ASHA Position:

ASHA supports the provisions designed to require States to make “positive efforts” to recruit and employ qualified individuals with disabilities under Part B of the Act, and encourages States to document and publicize their efforts in this regard. In light of the shortages of special education and related services providers this provides an opportunity to continue to expand recruitment efforts to those with disabilities.

Impact on Members:

This is an opportunity to play a role in assisting administrators to understand the nature of appropriate accommodations that may be needed by individuals with communication disabilities.

§300.600 – State Monitoring and Enforcement

Major Changes:

Provisions specify that any non-compliance by LEAs identified by the State education agency (SEA) must be corrected no later than one year following identification of the non-compliance. In the Analysis of Comments and Changes section of the regulations, while some commentators indicated that one year was an insufficient time frame to correct all areas of non-compliance, ED illustrated implementation of short-term strategies while developing a plan for long-term change using speech-language pathology as an example. ED noted that LEAs may contract with qualified SLPs to provide services to identified students while developing a district plan to upgrade speech-language pathology assistants (SLPAs) to become fully qualified SLPs. This allows districts flexibility in correcting deficiencies.

ASHA Position:

ASHA supports these provisions that require the States to effectively monitor the performance of its LEAs and not simply report on its overall performance. The provisions clarify the accountability of each State particularly with regard to the performance of its LEAs and also set realistic timelines and reporting mechanisms for doing so.

Impact on Members:

Members should be mindful that any identified non-compliance of speech-language pathology or audiology service delivery in their LEA will need to be corrected within one year or a short-term strategy implemented while developing a long-term solution will need to be instituted. SLPs and audiologists should be active participants in the development of efforts in their district to implement

any short or long-term solutions to the non-compliance of speech-language pathology or audiology service provisions.

§300.602 – Timeframe for Public Reporting about LEA Performance Public Reporting & Privacy

Major Changes:

The timeline for the States public reporting on the performance of LEAs has been changed from 60 to 120 days following submission of the State’s annual report.

ASHA Position:

ASHA appreciates this extension of the reporting timeline as it allows for more accurate analysis of data that would be reported to the public while continuing to ensure that States provide information in a transparent and timely manner.

Impact on Members: Minimal.

§300.606 Notifying the Public of Enforcement Actions

Major Changes:

Provisions clarify the public reporting requirements by indicating that a State must provide public notice of any enforcement action taken by the Secretary pursuant to §300.604 by posting the notice on the SEA’s Web site and distributing the notice to the media and through public agencies.

ASHA Position:

ASHA agrees with ED that requiring SEAs to post information on enforcement actions taken by the Secretary on their Web site and distributing the notice to the media is appropriate and necessary for public accountability. We further agree with ED’s recommendations to States to post all information concerning corrective and enforcement actions on their Web site to increase transparency and ensure public accountability.

Impact on Members: Minimal.

Hearing Rights

§300.512 – Hearing Rights

Major Changes:

The section addresses representation of parents by non-attorneys in due process hearings. The exception clause in §300.512(a)(1), regarding the right to be represented by non-attorneys, has been revised to apply to any party to a hearing, not just parents.

ASHA Position

ASHA supports the language stating that non-attorneys should have special knowledge or training regarding children with disabilities just as attorneys are required to have.

Impact on Members:

Minimal. Members may need to be prepared to provide more technical and disability information as related to a communication disorder to all parties involved.