

IDEA Part B regulations: Proposed Amendment

DATES: Comments must be received on or before December 12, 2011.

Comments can be delivered: Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about these proposed regulations, address them to:

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U.S. Department of Education,
400 Maryland Avenue, SW., room 5103,
Potomac Center Plaza, Washington, DC
20202-2600.

Go to <http://www.regulations.gov> to submit comments electronically.

**Include in comments: [Docket ID ED-2011-OSERS-0012]
RIN 1820-AB64**

Proposed:

The Part B regulations allow public agencies to use public benefits or insurance (**e.g., Medicaid**) to provide or pay for services required under Part B with the consent of the parent of a child who is enrolled under the public benefits or insurance program. Public insurance is an important source of [[Page 60311]]financial support for services required under Part B. **With respect to the use of public insurance, Sec. 300.154(d)(2)(iv)(A) specifically provides that a public agency must obtain parental consent, consistent with Sec. 300.9, "each time that access to public benefits or insurance is sought."**

Public agencies have continuing concerns about the meaning of the phrase "each time" in Sec. 300.154(d)(2)(iv)(A). They also have concerns about the overall costs and administrative burdens imposed by requiring parental consent to access public benefits or insurance in addition to the parental consent required by FERPA and the parental consent required by IDEA for the initial evaluation of a child with a disability and the initial provision of special education and related services. SEAs and LEAs have continued to express concerns about the significant administrative and financial burdens that they believe Sec. 300.154(d)(2)(iv) imposes.

We propose to amend current Sec. 300.154(d)(2)(iv). **Under the proposed change, the public agency responsible for providing special education and related services to a child would be required, before accessing a child's or parent's public benefits or insurance, to provide to the child's parents written notification consistent with current Sec. 300.503(c).** The notification would include: (1) A statement that parental consent must be obtained under 34 CFR part 99 and Sec. 300.622 before the public agency discloses, for billing purposes, their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid); (2) a statement repeating the no cost provisions in current Sec. 300.154(d)(2)(i)

through (iii); (3) a statement that the parents have the right under 34 CFR part 99 to withdraw their consent to disclosure of personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and (4) a statement that withdrawal of consent or refusal to provide consent under 34 CFR part 99 and Sec. 300.622 to disclosure of personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Thus, under these proposed regulations, the public agency would no longer be required to obtain parental consent each time that it seeks access to public benefits or insurance in order to provide a service to a child. Public agencies would provide the written notification to parents of children who receive special education and related services prior to seeking access to the child's or parent's public benefits or insurance. The exact timing and frequency of a public agency's provision of the one-time written notification to the parent would be at the discretion of the public agency, so long as the public agency provides the notification before the public agency seeks access to the child's or parent's public benefits or insurance.

Written notification may be provided to parents when it is most appropriate and convenient for the family, but must be provided before the State seeks to use the child's or parent's public benefits or insurance; as a practical matter this may be at the child's initial IEP meeting, when the parent consents to the initial provision of special education services, at a parent-teacher conference, or at another time when it is most convenient for the parent. We are interested in receiving comments, however, on whether requiring the notification be provided at a specific time or meeting, such as the initial IEP meeting, would be desirable from the parents' or the LEA's perspective.