

This is the text of an email sent by Gregory R. Corr, Ed. D, Division Director Monitoring and State Improvement Planning Office of Special Education Programs on Tuesday, April 23, 2013 to the State Directors of Special Education. It provides clarification for the Effective Date for Part B Insurance Regulations

Dear SEA Director,

Recently we have received inquiries regarding the IDEA Part B Final Regulations related to parental consent to access public benefits or insurance (e.g., Medicaid), which were published in the Federal Register on February 14, 2013 at 78 Fed. Reg. 10525. These regulations, which amended 34 CFR §300.154(d)(2), became effective on March 18, 2013. We have been asked whether parental notification described in the new 34 CFR §300.154(d)(2)(v) is required before a public agency continues to access the public benefits or insurance program of a parent who has provided consent to disclose personally identifiable information for billing purposes under the previous requirements of 34 CFR §300.154(d)(2)(iv).

These final regulations change the existing parental consent requirements in new 34 CFR §300.154(d)(2)(iv) and add a parental notification requirement in new 34 CFR §300.154(d)(2)(v). For further information on these new requirements please see the Non-Regulatory Guidance on the IDEA Part B Regulations Regarding Parental Consent for the Use of Public Benefits or Insurance to Pay for Services under IDEA at: <http://www2.ed.gov/policy/speced/reg/idea/part-b/part-b-parental-consent.html>

While we encourage States to comply with these new regulations as soon as possible, under long-established U.S. Supreme Court precedent from the 1980's, the general rule is that as a condition of receiving Federal fiscal year or FFY 2012 grant funds, State educational agencies agreed to comply with the grant terms and conditions in place when each State accepted its FFY 2012 grant funds. Those terms and conditions include compliance with the requirements of the prior 34 CFR §300.154(d)(2)(iv) of the regulations that were in place when States received and accepted their IDEA Part B funds, which occurred, for almost all States, on July 1, 2012. Thus, the prior 34 CFR §300.154(d)(2)(iv) that was in effect on July 1, 2012 is the regulation that States are required to implement throughout the FFY 2012 grant year.

States will be required to fully implement new 34 CFR §300.154(d)(2)(iv) and (v) once they accept their FFY 2013 awards, which for most States will be when they receive and accept their FFY 2013 Part B grant funds, beginning on July 1, 2013. Therefore, as of July 1, 2013, a public agency must provide the written notification described in new 34 CFR §300.154(d)(2)(v) to parents, including to those parents who provided consent under the previous regulations, before the public agency may access, or continue to access, the child's or parent's public benefits or insurance. States also must fully implement the parental consent requirements in accordance with new 34 CFR §300.154(d)(2)(iv)(A)-(B). See the nonregulatory guidance on how public agencies must implement this new parental consent requirement for parents who previously consented to use of their or their child's public benefits or insurance.

I hope that you find this clarification helpful. If you have any questions please get in touch with your OSEP State contact.

Gregg

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