

CLIENT NEWS BRIEF

U.S. Department of Education Issues Revised Regulations Regarding Parent Consent for Accessing a Student's Public Benefits

The United States Department of Education (DOE) recently issued the final, revised regulations regarding when and how a school district or other local educational agency (LEA) must obtain parent consent to access a student's public benefits or insurance for purposes of special education services. The new regulations, which become effective March 18, 2013, will likely ease the administrative burdens and confusion LEAs face at times when seeking parent consent to access a student's public benefits or insurance.

The regulations to the Individuals with Disabilities Education Act (IDEA) permit an LEA to utilize a student's public benefits in order to pay for special education and/or related services required by the child's IEP. (34 C.F.R. § 300.154(d); see also 20 U.S.C. § 1412(a)(12), (e).) For example, in California, an LEA may bill Medi-Cal for a student's physical or occupational therapy services. However, the LEA must obtain written parent consent and adhere to certain additional requirements before doing so. (See 34 C.F.R. § 300.154(d).) In regards to parent consent, under the prior version of the regulation, the LEA was required to obtain informed consent *each time* it sought to access a child's public benefits or insurance. This created some concern among LEAs regarding administrative costs, excessive paperwork, exactly how often consent must be sought, and the duration of such consent. Additionally, because student information would have to be released to an outside agency, such as Medi-Cal, in order to bill for the student's services, this had also caused some concern with how to efficiently and effectively ensure compliance with state and federal laws regarding the confidentiality of student information.

Effective March 18, 2013, under the new regulations, an LEA is only required to obtain written parental consent *one time* before accessing a student's public benefits for *the first time*. According to the DOE's Office of Special Education and Rehabilitative Services, such consent will remain in effect for the duration that the services are needed for the child within that same school district, even if a student transfers to a new school within the district. This written consent must specify that the student's personally identifiable information may be disclosed to an outside agency, such as Medi-Cal, the type of information that might be disclosed, and the purpose of the disclosure. The consent must specify that the parent understands and agrees that the LEA may access the student's public benefits to pay for services.

Prior to obtaining such parent consent, the LEA must also provide written notification to the parent informing them of their rights and protections. The written notice must also be given to the parents on an annual basis thereafter. The notice must include, for example, a statement that the LEA must obtain consent prior to disclosing a child's information to an outside agency such as Medi-Cal, that such consent may be withdrawn at any

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Deborah R.G. Cesario
Partner
San Diego Office
dcesario@lozanosmith.com



Karin M. Anderson
Associate
San Diego Office
kanderson@lozanosmith.com



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time, the withdrawal of consent does not relieve the LEA of its responsibility to ensure that the required services are provided at no cost to the parents, and other information pertaining to the circumstances under which an LEA may access a child's public benefits to pay for services.

These changes were made in an effort to ensure that parents understand their rights in terms of an LEA's access to public benefits, as well as student confidentiality laws. Additionally, the DOE opines that, as a result of these revisions, LEAs "will experience a reduction in paperwork and will be able to implement a simplified process to access a child's or parents public benefits or insurance."

For further detailed information regarding the revised regulations or how to ensure compliance with the regulations, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).