

PHEA Special Need Update

The following is on the PDE website, "Home Education & Private Tutoring":

Terminating an IEP

If a parent terminates the Individualized Education Program (IEP) of their homeschooled child, the requirement for pre-approval of the educational plan no longer applies and the school district will not provide services.

Withdrawing your child from a special needs program or terminating an IEP is possible but should be done with caution and awareness of consequences.

Having a special needs child adds an extra pre-approval to the process of the home education program. (24 P.S. Section 13-1327 (d)) This was a compromise when the Home Education law was written in 1988, but federal regulations have changed since then.

The United States Department of Education issued amendments to regulations governing Part B of the Individuals with Disabilities Education Act (IDEA) on December 1, 2008, taking effect on December 31, 2008. Of particular interest for home educators of PA, was the regulation about parental consents. (Federal Code 34 § 300.300 (b)(4))

Parents have always had the choice of whether their child enters the special education system. Parents have the right to refuse initial special needs IEP meetings with the public school. In the past, if a parent wanted to withdraw their child from special education services, terminating the IEP, and the school disagreed, the parent could request mediation or ask for a due process hearing (not to be confused with a home education program due process hearing). If the public school prevailed in due process, the child could be forced to keep the IEP, in spite of the parental choice.

The December 2008 amendment explicitly gives parents the right to revoke special education services unilaterally. The Revocation of Consent must be in writing. (There is a sample letter at the end of the paper.) The public school does not have to agree with the parents to discontinue special education services or an IEP. The public school can no longer request mediation or due process to compel a student to receive special education services or have an IEP. The logic behind this change was that if parents could refuse the initial entry into special education, they should also be able to revoke special education.

By the new Federal regulations, when a parent of a public school student revokes consent on special education services and the IEP, the public school is mandated to treat the child as a general education student, without disability. By the same process, if a parent of a home educated child previously "identified pursuant to the provisions of the Education of the Handicapped Act (Public Law 91-230, 20 U.S.C. §

1401 et seq.) as needing special education services,” (24 P.S. Section 13-1327(d)) revokes consent of any services or an individualized education program (IEP), the school district must treat the child as a general education student, without disability. If the child is treated as a general education child, there is no pre-approval required for the home education program.

This is a strong position on behalf of parental choice. But this choice comes with a responsibility to understand what it will mean for your child. This is more than just “eliminating pre-approvals for the home education program.”

Before you make the decision to terminate your child’s IEP (formal IEP from a school or informal education program for your home education program), there are some very important things you should consider that are in the regulations and in the home education law.

If you revoke your child’s special needs status, you are turning down all of the child’s public services. You can’t pick and choose the services you want to keep from the public school system.

If you have revoked your child’s special needs status, and later decide your child needs public special education services after all, you may ask for a public school special needs evaluation just as you would for an initial special needs evaluation (not to be confused with a home education program evaluation). The school is not necessarily required to conduct new testing though. The school district may make its decisions based upon previous information.

The school district’s responsibility for Child Find (located under section 612 of IDEA 2004 — State Eligibility and in section 14.121 of PA Chapter 14 — Special Education Services and Programs) is still in effect. If the school district feels that your child might have a disability and should be evaluated for special education services, they could notify you. The purpose of the Child Find and screening process is to fulfill a school district’s federal law obligation to ensure that all children who are eligible for special education and related services are identified, located, and evaluated. You have the right to refuse these special needs screenings and evaluations. It is probably not harassment if the school district sends you a notice every year, even if you refuse every year.

Revoking special needs status means your child is considered by the public school to be a student without a disability. This may affect the views of the superintendent when he determines “appropriate education.” Ideally, the superintendent should only be looking for “sustained progress in the overall program,” but that can be a very subjective criterion. Your child, of course, will still need to be tested in 3rd, 5th and 8th grades. You may choose the level of the test. In other words, a child in 3rd grade may take a 1st grade test. Although there is no minimum score required by law, the superintendent may use a low score in his determination that “appropriate education” has not occurred for a child without any disabilities.

Caution should be taken so that you are fully aware of the consequences before terminating an IEP or revoking your child's special needs status. Extensive research was done on this issue, but there may be other unintended consequences that have not yet come to light.

24 P.S. Section 13-1327 (d)

Instruction to children of compulsory school age provided in a home education program, as provided for in section 1327.1 of this act, shall be considered as complying with the provisions of this section, except that any student who has been identified pursuant to the provisions of the Education of the Handicapped Act (Public Law 91-230, 20 U.S.C. § 1401 et seq.) as needing special education services, excluding those students identified as gifted and/or talented, shall be in compliance with the requirements of compulsory attendance by participating in a home education program, as defined in section 1327.1, when the program addresses the specific needs of the exceptional student and is approved by a teacher with a valid certificate from the Commonwealth to teach special education or a licensed clinical or certified school psychologist, and written notification of such approval is submitted with the notarized affidavit required under section 1327.1(b). The supervisor of a home education program may request that the school district or intermediate unit of residence provide services that address the specific needs of the exceptional student in the home education program. When the provision of services is agreed to by both the supervisor and the school district or intermediate unit, all services shall be provided in the public schools or in a private school licensed to provide such programs and services.

http://www.portal.state.pa.us/portal/server.pt/community/laws_and_regulations/20314/general_laws_and_regulations/975030

Federal Code

34-Education

§ 300.300 Parental consent.

(b)(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process (not to be confused with a home

education program due process) procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for further provision of special education and related services.

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=38c92bc642eca03a905fd0623f0e4106&rgn=div8&view=text&node=34:2.1.1.1.4.55.1&idno=34>

Revocation of Consent Termination of Individualized Education Program

Date

Your Name
Address
City, State ZIP
Daytime Telephone
email

Name of Superintendent
Name of School District
Street Address
City, State ZIP

Dear (Name of Superintendent):

Pursuant to C.F.R. 34 § 300.300 (b)(4), this letter is to inform you that I hereby revoke my consent for my child, (child's name), to receive any public special education services, if applicable, and terminate any individualized education programs or IEPs. I understand that my decision will result in the termination of all public special education services to my child. I further understand that public services, if applicable, will not end until you have provided me with prior written notice about the termination of special education services.

As such, (child's name) will be considered a student without a disability and will not require preapproval of an individualized program by a teacher with a valid certificate from the Commonwealth to teach special education or a licensed clinical or certified school psychologist, submitted annually with the home education program affidavit per 24 P.S. Section 13-1327(d).

Sincerely,

Your signature

Your name