



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 9 2010

THE ASSISTANT SECRETARY

Dr. Sherry Purcell
The LEAnet Board of Directors
Los Angeles Unified School District
29th Floor
333 South Beaudry Avenue
Los Angeles, CA 90017

Dear Dr. Purcell:

This is in response to your August 2, 2010, letter to U.S. Department of Education (Department) Secretary Arne Duncan. Your letter was forwarded to the Office of Special Education and Rehabilitative Services for a response. On behalf of a broad national coalition of public health, disability, education, hospital, organized labor, health care providers, and others across the country, you specifically request that the Department rescind the parental consent regulation for school based Medicaid billing.

The current regulations in 34 CFR Part 300 governing the Assistance to States for the Education of Children with Disabilities program and Preschool Grants for Children with Disabilities Program was published in the Federal Register on August 14, 2006. After the publication of the regulations, the Department received requests for clarification regarding the interpretation of 34 CFR §300.154(d)(2)(iv)(A).

Under 34 CFR §300.154(d)(2)(iv)(A), a public agency must obtain parental consent, consistent with §300.9, each time access to public benefits or insurance is sought. On May 3, 2007, the Office of Special Education Programs (OSEP) issued a Memorandum to State Directors of Special Education to further clarify the requirement. This Memorandum clarified that obtaining informed written consent from parents for a specified amount of services for a specified period of time complies with the regulation. Limiting the consent request to a specified amount of services for a specified period is considered sufficient to enable parents to make an informed decision as to whether to provide consent for a public agency to access their or their child's public benefits or other public insurance. Additionally, the Memorandum clarified that if the public agency seeks to use the child's or parents' public benefits or public insurance to pay for additional hours of service (due to the individualized education program being revised or extended), or the public agency is charging different amounts for such services and would like to access the child's or parents' benefits or insurance for those costs, the public agency must obtain parental consent covering the additional amount of service or costs to be charged to the child's or parents' public benefits or public insurance.

Since the publication of the August 2006 Part B regulations and OSEP's May 3, 2007 Medicaid Memorandum, the Department continues to review 34 CFR §300.154(d)(2)(iv)(A). Like you, I recognize this is an important issue in the field. I have heard from individuals and groups about the challenges in obtaining parental consent and I share your interest in reducing burden while

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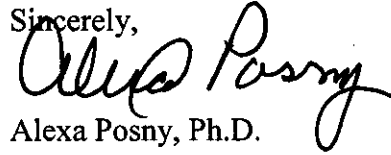
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ensuring that children receive necessary services. During the review of this regulation, I am committed to considering carefully all possible options available.

Thank you for your interest in this important issue and your commitment to children with disabilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is fluid and cursive, with the first name "Alexa" written in a larger, more prominent script than the last name "Posny".

Alexa Posny, Ph.D.