

## OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Education and Cultural Affairs  
From: Hillary Risler, Esq., Legislative Analyst  
Date: April 5, 2021  
Subj: **LD 552, “An Act To Strengthen the Individualized Education Program” (Millett)**

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### SUMMARY

#### Original Bill:

This bill requires that changes to the individualized education program (IEP) for a child with a disability be made by consensus of the IEP team and requires that the IEP team allow a person who provides special education services to a child with a disability through regular and direct contact to participate in a team meeting concerning that child upon the request of the individual or the request of a member of the team. And, the bill requires the Commissioner of Education to submit proposed changes to the rules governing special education to the Legislature by January 1, 2022 to amend the rules to conform with the provisions of the bill.

#### Proposed Amendment

At the public hearing, the sponsor proposed an amendment to the bill, which would require that a school administrative unit obtain informed written consent from the parent of a child with a disability prior to changing the nature or extent of the special education placement or special education and related services rather than requiring consensus. If a parent refuses consent for a proposed IEP or placement, the child’s most recent agreed upon IEP or placement must remain in effect unless and until the SAU and parent agree otherwise, the matters are resolved, or a party files for due process, in which case the IEP or placement would be governed by 34 CFR 300.518.

The proposed amendment also added that the request for an individual who provides special education services to a child with a disability through regular and direct contact to participate in a team meeting regarding that child must be made within 2 school days from the issuance of the IEP meeting notice, or as soon as practicable upon notice of an emergency meeting.

### Revised Proposed Amendment

A revised version of the amendment, which you received on Friday from the sponsor, provides that a parent who refuses consent to all or part of any change must indicate that refusal in writing in 14 days, or within a mutually agreed upon extended timeframe, and if a parent fails to respond, the SAU may implement its proposed changes so long as reasonable measures were taken to obtain informed written consent. The amendment includes reasonable measures, such as documentation of phone calls and copies of correspondence (including that correspondence must be sent by certified mail, return receipt requested).

The revised version also provides that rather than an individual who provides services being able to request to be part of the IEP meeting, that a parent may make that request, and a SAU may not unreasonably deny that individual's participation.

### **TESTIMONY**

- **Proponents**

- The main purpose of the bill is to codify best practices for the development and implementation of IEPs for students
- The current process for changing services for students with IEPs places the burden on families, which can act as a disincentive to finding consensus with the parents

- The amended version of the bill mirrors similar language in New Hampshire regarding the consent of parents and IEP team members
- Ed Techs are often the individuals who provide the most direct assistance to students receiving an IEP through the entirety of the school day and are crucial to implementing and providing feedback to the IEP team and should be present at the IEP meeting
- **Opponents**
  - Ultimately it is the school's responsibility to make a decision about the appropriate course of action for a child and without that the child could be left in limbo when it comes to services or the student could continue receiving services that are no longer appropriate
  - Many parents are engaged in the IEP process but some are not, and this could create situations where schools are chasing parents for signatures, or parents might disagree
  - Including Ed Techs in meetings could pull the Ed Techs from other duties and leave another part of the school without appropriate supervision – most schools have a process for gathering information from other educators but may not have enough substitutes to cover classes
- **Neither For Nor Against**
  - The proposed amendment exceeds the requirements of IDEA and MUSER and shifts the onus of due process proceedings from families to SAUS, which will have a fiscal impact on communities and likely result in increased due process activity within the state
  - IDEA and MUSER build in safeguards for families when consensus cannot be reached, and SAUs have the ultimate responsibility in the provision of FAPE
  - Current regulations allow a parent or school to invite additional individuals to an IEP team meeting; the proposed amendment could create a situation where someone at the IEP team meeting is present that neither the parent nor school wants to be there because that individual requested to attend

## **ISSUES FOR CONSIDERATION:**

- New Hampshire Rule Ed 1120.04, 1120.05, and 1120.06<sup>1</sup>
- The bill requires major substantive rulemaking, which means rules to implement this Act would come back to the committee before they could be finally adopted
- 34 CFR 300.518 Child's status during proceedings (attached)

## **PRELIMINARY FISCAL IMPACT STATEMENT**

- Not yet determined

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<sup>1</sup> [http://www.gencourt.state.nh.us/rules/state\\_agencies/ed1100.html](http://www.gencourt.state.nh.us/rules/state_agencies/ed1100.html)

Ed 1120.04 Parental Consent.

(a) An LEA shall obtain informed, written consent from the parent of a child with a disability prior to:

- (1) Conducting an initial evaluation;
- (2) Initial provision of special education and related services to a child with a disability;
- (3) Annual renewal of the IEP and placement of a child with a disability;
- (4) Determining or changing the disability classification;
- (5) Changing the nature or extent of the special education or special education and related services;
- (6) Conducting a reevaluation;
- (7) Access to public insurance pursuant to 34 CFR 300.154(d); and
- (8) Each time the public agency proposes to access private insurance.

(b) If a parent fails to respond to a request for informed, written consent to any of the actions described in Ed 1120.04(a)(3), (4), (5), or (6), the LEA shall proceed in accordance with Ed 1120.06.

(c) Parents of children with disabilities shall have 14 days after the sending of written prior notice under Ed 1120.03 to sign documents included with the notice to indicate consent, or refusal of consent or partial consent as set forth below:

(d) A public agency shall not use a parent's refusal to consent to one service or activity or request of additional services, or activities to deny the child any other services or activities to which the parent has consented.

(e) When the parent refuses consent to one or more of the proposed services or activities, and/or requests changes to services or activities in the initial proposal, the parent shall specify, in writing, the items that they are refusing or requesting.

(f) Upon receipt of a parent's partial consent, the LEA:

- (1) May schedule a mutually agreeable time and date for an IEP team meeting;
- (2) Shall, if requested by the parent, pursuant to Ed 1109.06(b) convene the IEP team to discuss the requested changes and/or additions to the IEP, except as set forth in (3) below.
- (3) May refuse to convene the IEP team meeting if it determines that the requested changes and/or additions to the IEP have been addressed at a prior IEP team meeting. In such event, the LEA shall issue a Written Prior Notice pursuant to Ed 1109.06(b)(3), explaining why the LEA refuses to convene the meeting.

(g) If a parent refuses consent for a proposed IEP or placement, the child's most recent agreed upon IEP placement, or both shall remain in effect unless the LEA and parent agree otherwise, until the matters are resolved unless and until a party files for due process, in which case the IEP and placement shall be governed by 34 CFR 300.518.

(h) A parent or a public agency may file a due process complaint on any of the matters described in 34 CFR 300.503(a) (1) and (2) and Ed 1120.04(a), pursuant to 34CFR 300.507.

(i) The 14-day time limit shall be extended if the LEA and the parent mutually agree to an extension.

(j) LEAs shall advise the parent in writing of:

- (1) The necessity of signing documents which describe actions requiring the parent's consent for the purpose of ensuring the timely provision of appropriate services;
- (2) The parent's right to access all of the rights and procedures outlined in this section if the parent disagrees; and
- (3) The parent's right to an extension of the 14-day time limit, provided the parent and the LEA mutually agree to such extension.

(k) A copy of any document signed by a parent in which the parent gives consent in writing shall be provided to the parent, and a copy of such document shall also be placed in the child's education records.

Source. (see Revision Note at chapter heading for Ed 1100) #9197, eff 6-28-08; amd by #10590, eff 5-15-14; ss by #12141, eff 3-24-17

Ed 1120.05 Parental Refusal of Consent; Initiation of Due Process Hearing by LEA.

(a) A parent who refuses informed consent to all or part of any change proposed by the LEA shall indicate the refusal in writing within 14 days after the sending of written prior notice as provided in Ed 1120.03, or within the time frame allowed by a mutually agreed-upon extension as provided in Ed 1120.04(d).

(b) Alternative dispute resolution as provided in Ed 1122 may be requested by either party at any time.

(c) If a parent refuses consent to a proposal included in Ed 1120.04(a)(1) or (a)(6), the LEA shall have the authority to pursue the initial evaluation or re-evaluation by the initiation of a due process hearing under Ed 1123.

(d) If a parent refuses consent or fails to respond for the initial provision of special education services, the LEA shall not pursue the initial provision of special education services by initiating a due process hearing under Ed 1123.

(e) 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, pursuant to 34 C.F.R. §300.300(b)(4) the LEA:

- (1) Shall not continue to provide special education and related services to the child;
- (2) Shall provide a prior written notice in accordance with 34 C.F.R. §300.503 before ceasing the provision of special education and related service;
- (3) Shall not use the mediation or due process procedures to obtain an agreement or ruling that the services may be provided to the child;
- (4) Shall not be considered in violation of the requirement to make FAPE available to the child; and
- (5) Shall not be required to convene the IEP Team meeting or develop an IEP for the child.

(f) A public agency shall not use a parent's refusal to consent to one service or activity to deny the child services, benefits, or activities that the parent has agreed to.

Source. (see Revision Note at chapter heading for Ed 1100) #9197, eff 6-28-08; ss by #9482, eff 6-11-09; amd by #9812, eff 11-11-10; ss by #12141, eff 3-24-17

Ed 1120.06 Parental Failure to Respond; Implementation of Changes by LEA.

(a) If a parent fails to respond within 14 days after the sending of written prior notice pursuant to Ed 1120.04(b), the LEA shall implement its proposed changes if the LEA has taken reasonable measures to obtain informed written consent.

(b) Reasonable measures shall include:

- (1) Documentation of telephone calls to the parent, made or attempted, and the results of those calls; and
- (2) Copies of correspondence sent to the parent and any responses received. Correspondence shall be sent certified mail, return receipt requested.

(c) The processes provided for in Ed 1123 can be requested by either party at any time subject to the exceptions of Ed 1120.05(d) and (e).

Code of Federal Regulations  
Title 34. Education  
Subtitle B. Regulations of the Offices of the Department of Education  
Chapter III. Office of Special Education and Rehabilitative Services, Department of Education  
Part 300. Assistance to States for the Education of Children with Disabilities (Refs & Annos)  
Subpart E. Procedural Safeguards  
Due Process Procedures for Parents and Children

34 C.F.R. § 300.518

§ 300.518 Child's status during proceedings.

Effective: October 13, 2006

Currentness

(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))

SOURCE: 71 FR 46755, Aug. 14, 2006; 72 FR 17781, April 9, 2007; 80 FR 23666, April 28, 2015; 82 FR 29759, June 30, 2017; 82 FR 31912, July 11, 2017, unless otherwise noted.

AUTHORITY: 20 U.S.C. 1221e-3, 1406, 1411-1419, and 3474; Pub.L. 111-256, 124 Stat. 2643; unless otherwise noted.

Notes of Decisions (80)

Current through March 25, 2021; 86 FR 15799.

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