



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING



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PUBLIC INSTRUCTION

October 6, 2006

MEMORANDUM

TO: Intermediate School District and Local Educational Agency Superintendents and Special Education Directors; Public School Academy Administrators; and Special Education Advisory Committee

FROM: Jacquelyn J. Thompson, Ph.D., Director  
Office of Special Education and Early Intervention Services

SUBJECT: Public Agency Obligations under the Individuals with Disabilities Education Act and the Implementing Regulations

The final regulations implementing the Individuals with Disabilities Education Act (IDEA) take effect on October 13, 2006. The Office of Special Education and Early Intervention Services will be making changes to existing policies, rules, and procedures as necessary to bring these into compliance with the requirements of the IDEA and the implementing regulations. The public will be given an opportunity to comment on changes before they are adopted by the Michigan Department of Education.

During this transition period, all public agencies responsible for the education of students with disabilities must operate consistent with all requirements of PL 108-445 (IDEA) and 34 CFR Parts 300 and 301.

Please remember that Michigan's Administrative Rule 340.1722a, which allows a public agency to request a due process hearing if a parent refuses consent for **initial** programs or services, was superseded by the IDEA 2004. The subrule will be revised during the upcoming rule change process. The regulation at §300.300(b)(2)(3)(4) implementing the IDEA states:

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the **initial** [emphasis added] provision of special education and related services to the child.

(3) If the parent of a child fails to respond or refuses to consent to services ... , the public agency may not use the ... due process procedures ... in order to obtain agreement or a ruling that the services may be provided to the child.

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608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909  
www.michigan.gov/mde • (517) 373-3324

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(4) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency – (i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and (ii) Is not required to convene an IEP Team meeting or develop an IEP ... for the child for the special education and related services for which the public agency requests such consent.

For further explanation or questions, please contact Ms. Ann Omans, Supervisor, Program Accountability, at (517) 373-0924, or via email at [omansa@michigan.gov](mailto:omansa@michigan.gov).