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Parents Hold Unilateral Right to Revoke Consent to Special Education Services for their Children

The EDUCATION LAW GROUP at Lindabury has extensive experience in the area of school law. We serve as general counsel, special education counsel, and labor counsel for boards of education throughout the State.

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Parents may now revoke their consent to special education services for their children, and school districts are unable to disregard or challenge these instructions. Effective December 31, 2008, the United States Department of Education amended regulations to IDEA to grant parents the unilateral power to revoke their consent to special education services.

For revocation of consent to take effect, the parents must submit their revocation in writing. School districts must respond in kind with prior written notice that they will honor the revocation. This prior written notice must be provided within a "reasonable time." The prior written notice must be understandable to the general public. It must inform parents of the consequences of their revocation of consent and their procedural safeguards. The halt in special education services must occur within a reasonable time *after* the parents are provided the written notice. School districts may seek an explanation from parents who revoke their consent, but the parents are not obligated to respond. School districts may not turn to alternative dispute resolution or due process hearings to reinstate special education services. Instead, the school districts must accept and abide by the parents' requests.

If a student's rights transfer upon his attaining the age of majority, a student may remove himself from special education services. He must provide his revocation of consent in writing. However, both he and his parents must receive the prior written notice from the school district.

A parent's revocation of consent to special education services has important consequences. Upon the school's cessation of special education services, the child is considered a general education student. After the revocation, the school district can no longer be found in violation of IDEA for failure to provide special education services as part of the child's free and proper education. Furthermore, the school district does not need to convene an IEP team meeting or develop an IEP for the student. The school will then track the student's progress, like other general education students, through student records, report cards, progress reports, and state assessments. In addition, (*cont'd* ➔)

the school is not required to amend the child's education records to remove any references to the child's receipt of special education services. Moreover, the child does not receive any disciplinary protections under IDEA.

Although the student is considered a general education student after the parents revoke their consent, a state has the option to include the child in the students with disabilities subgroup, for purposes of calculating adequate yearly progress under the No Child Left Behind Act, for the following two years. The Education Department does not expect this rule to affect adequate yearly progress of either the school or district. Notably, the students who remain in this subgroup for No Child Left Behind purposes do not have an IEP, nor does the school need to provide the child any special accommodations during this time period. It remains to be seen how New

Jersey will revise its current regulations to adopt the newly adopted federal regulations.

Parents retain the right to request that the child study team conduct a new evaluation of the student for special education services. Therefore, a child may receive special education services subsequent to parental revocation of consent, but the evaluation process must essentially start from the beginning with the parent requesting an evaluation. This request must be treated as a request for an initial evaluation

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