



DEPARTMENT OF EDUCATION

34 CFR Part 300

[Docket ID ED-2022-OSERS-0052]

RIN 1820-AB82

Assistance to States for the Education of Children with Disabilities; Withdrawal

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Secretary is withdrawing a notice of proposed rulemaking, which proposed to amend regulations under Part B of the Individuals with Disabilities Education Act (Part B of IDEA or the Act) that govern the Assistance to States for the Education of Children with Disabilities program, including the Preschool Grants program. Specifically, the Secretary proposed to amend the IDEA Part B regulations to remove the requirement for public agencies to obtain parental consent prior to accessing for the first time a child's or parent's public benefits or insurance to provide or pay for required IDEA Part B services.

DATES: The notice of proposed rulemaking published in the *Federal Register* at 88 FR 31659 on May 18, 2023, is withdrawn as of December 23, 2024.

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SUPPLEMENTARY INFORMATION:

Background:

On May 18, 2023, the Department published in the *Federal Register* a notice of proposed rulemaking (NPRM) proposing to amend the IDEA regulations at 34 CFR 300.154(d)(2)(iv), which requires a Local Educational Agency to obtain informed written parental consent before it accesses the child's or parent's public benefits or insurance (e.g., Medicaid, Children's Health Insurance Program) for the first time for the provision of Medicaid-reimbursable services identified on a child's individualized education program (IEP). 88 FR 31659. This consent provision was initially added to the 2006 final Part B regulations implementing the 2004 reauthorization of IDEA and was further revised in 2013. A correction to the docket ID for the May 18, 2023, NPRM was published on May 26, 2023. 88 FR 34100.

The comment period closed on August 1, 2023. The Department received over 9,700 public comments in response to the NPRM. There were two large write-in campaigns, including one from a national parents' rights organization,

totaling more than 8,000 comments opposing the proposed change. Of the remaining 1,700 comments, in general, half (including major national membership organizations representing educators and service providers) were in support, and the other half (including major disability rights organizations and parent organizations) were in opposition.

Withdrawal of the Notice of Proposed Rulemaking

After publication of the NPRM, the Department carefully considered the comments received. A number of commenters raised concerns about instances where students with disabilities were denied reimbursement for and access to Medicaid services provided outside of school as a result of the student's school accessing the student's public benefits for services provided in school. In light of these comments, the Department decided to focus our time and attention on providing technical assistance and working with Federal agencies, States and other partners to improve implementation of school-based Medicaid rather than engage in further rulemaking.

As part of our technical assistance efforts, the Department engaged with stakeholders to better understand the existing implementation challenges for school-based Medicaid, and we also worked closely with the Centers for Medicare and Medicaid Services within the U.S. Department of Health and Human Services to address the barriers

related to accessing Medicaid for services outside of school. However, at this time, and with the limited time and resources remaining during this administration, the Department has not been able to fully analyze and develop responsive ways to address the State and local policies and practices that may be contributing to barriers in accessing Medicaid reimbursement for services provided outside of school.

For the above-stated independent reasons, the Department is withdrawing the NPRM published in the *Federal Register* at 88 FR 31659 on May 18, 2023. Withdrawal of this NPRM does not preclude the Department from issuing rulemaking on this subject in the future or commit the Department to any future course of action.

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Miguel Cardona,
Secretary of Education.

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