IDEA Part B Final Regulations Related to Parental Consent to Access Public Benefits or Insurance (*e.g.*, Medicaid)

On February 14, 2013, the Department published in the Federal Register IDEA Part B final regulations that change the requirements in 34 CFR 300.154(d) related to parental consent to access public benefits or insurance (*e.g.*, Medicaid). Previously, public agencies were required to obtain parental consent each time access to public benefits or insurance was sought. These final regulations, which take effect on March 18, 2013, will make it easier for school districts to access public benefits while still protecting family rights. The new rules—

(1) ensure that parents of children with disabilities are informed of all of their legal protections when public agencies seek to access public benefits or insurance to pay for services; and

(2) address the concerns expressed by State educational agencies and local educational agencies that requiring parental consent each time access to public benefits or insurance is sought, in addition to the parental consent required by the Family Educational Rights and Privacy Act and section 617(c) of the IDEA, imposes unnecessary costs and administrative burdens.

Specifically, these final regulations require that public agencies—

- obtain a **one-time written consent** from the parent, after providing the written notification described below, *before* accessing the child's or the parent's public benefits or insurance for the first time. This consent must specify (a) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child); (b) the purpose of the disclosure (*e.g.*, billing for services); and (c) the agency to which the disclosure may be made (*e.g.*, Medicaid). The consent also must specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services.
- provide **written notification** to the child's parents *before* accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent and annually thereafter. The written notification must explain all of the protections available to parents under Part B, as described in 34 CFR §300.154(d)(2)(v) to ensure that parents are fully informed of their rights before a public agency can access their or their child's public benefits or insurance to pay for services under the IDEA. The notice must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

In Summary:

The regulations protect family rights by ensuring that (1) the **one-time parental consent** specifies that the parent understands and agrees that the public agency may access their or their child's public benefits or insurance to pay for services under the IDEA; and (2) the **written notification** provides parents with critical information that they may not have received in the past to enable parents to understand all of their rights and protections when a public agency seeks to access their or their child's public benefits or insurance.

At the same time, the regulations reduce burden in that public agencies are no longer required to obtain parental consent each time access to public benefits or insurance is sought. By no longer requiring public agencies to obtain parental consent each time access to public benefits or insurance is sought, public agencies will experience a reduction in paperwork and will be able to implement a simplified process to access a child's or parent's public benefits or insurance.