

INDIVIDUALIZED EDUCATION PROGRAM (IEP) – INFORMED CONSENT

Definition

Consent means that:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language, or other mode of communication.
2. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought and the consent describes the activity(s) and lists records (if any) that will be released and to whom.
3. The parent understands that granting consent is voluntary and may be revoked at any time. If consent is revoked it is not retroactive and does not negate an action that has occurred after consent was given and before it was revoked.

Note: Although it is not specified in statute, when a parent expresses their intention to revoke consent, it is recommended that districts require the revocation be submitted in writing. district should get as much information about what is being revoked, including up to consent for the student to receive any special education.

Legal Requirements

Districts shall seek to obtain parent consent before providing special education and related services to the student. The district shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to a student.

If the parent of the student fails to respond and/or refuses to consent to the initiation of services, the district shall not provide special education and related services to the student by utilizing due process procedures described in EC § 56506 in order to obtain agreement or a ruling that the services may be provided to the student.

If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide the consent, both of the following are applicable:

1. The district shall not be considered to be in violation of the requirement to make available a free appropriate public education (FAPE) to the student or the failure to provide the student with the special education and related services for which the district requests consent.
2. The district shall not be required to convene an IEP team meeting or develop an IEP under this part for the student for the special education and related services for which the district requests consent.

If the parent or guardian of a student with disabilities refuses any services in the IEP after having consented to those services in the past, the district shall file a request for due process pursuant to EC § 56500 if the services are necessary for provision of free appropriate public education (FAPE).

If the parent of the student consents in writing to the receipt of special education and related services for the student, but does not consent to all of the components of the IEP, those components of the program to which the parent has consented shall be implemented so as not to delay providing instruction and services to the student.

With the exception of the parent of a student who fails to respond to a request for consent or refuses to consent to the initial provision of services, if the district determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education (FAPE) to the student, a due process hearing shall be initiated in accordance with EC § 56500. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding upon the parties. While a resolution session, mediation conference, or due process hearing is pending, the student shall remain in his or her current placement, unless the parent and the district agree otherwise. This is known as “stay put.”

Legal References

EC 56346, 34 CFR 300.9; 300:300

Local Procedures

Initial Consent for Services

In the case of an initial referral and evaluation, the district shall make a reasonable effort to obtain parent consent for the initiation of services. In order to meet the requirements for reasonable efforts, the district must document its attempts to obtain consent such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of IEP meeting notices and other correspondence sent to parents and responses received; and
3. Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

If the parent does not respond or refuses to consent to the initiation of services, the district is not required to take any action. The district is not required to hold an IEP meeting and is not in violation of its obligation to provide a free appropriate public education (FAPE). Under no circumstances should the district file due process against the parent in order to obtain a judgment to be able to provide service.

If the parent consents in writing to their student's receipt of special education and related services, but does not consent to all of the components of the IEP, the district will implement that portion of the IEP that the parent approved. If, however, the district determines that the program component(s) of the IEP that the parent did not approve is/are necessary to provide a free appropriate public education (FAPE) to the student, the district must file for a due process hearing.

Consent for Services Provided in the Past

If the parent or guardian of a student with a disability refuses all services in the IEP after having consented to those services in the past, the district shall file a request for due process and continue implementing the last consented-to IEP, unless the parent is revoking all rights to special education services.

If the parent consents in writing to the receipt of special education and related services, but does not consent to all of the components of the IEP, the district will implement that portion of the IEP that the parent approved. If, however, the district determines that the program component(s) of the IEP that the parent did not approve is/are necessary to provide a free appropriate public education (FAPE) to the student, the district will file for due process.

A district may be obligated to continue implementing components of a prior IEP if the parent does not consent to the related component in the new IEP. For example, if a prior IEP includes direct speech services for 1 hour per week, and the current IEP offers consultation speech services for one hour per month, the district must continue implementing the direct speech services for one hour per week until the parent consents to the change to consult services.

Note: If the parent verbally consents to all or part of the IEP but refuses to sign the IEP, it should be treated the same as a refusal. In this case the prior IEP stays in effect (stay put). Nothing in the proposed IEP may be implemented without written parent consent.

FAQs

What should I do if the parent demands the proposed IEP be implemented but refuses to sign the IEP?

Make sure they understand that the proposed IEP cannot be implemented without signed consent. If the parent is opposed to something in particular, remind them that they can limit their approval to certain components of the IEP. If he/she still won't sign, you are recommended to file for due process. It is often useful to contact the SELPA when this situation arises and schedule a meeting with the parent and a SELPA representative.

What if the parent provides consent to only a portion of the IEP?

It is possible that this will require the district to file for due process. Districts are encouraged to consult with the SELPA and/or legal counsel in this situation, particularly with regard to an initial IEP.

What if an adult student signs the IEP but the parent does not?

Provided that the student is not conserved, an adult student is authorized to give consent to the IEP. Parent consent in this case is not required.

What if parents (typically separated or divorced) have shared legal custody and one signs the IEP but the other disagrees with the IEP and refuses to sign?

Either parent is able to provide consent to implement an IEP. However, the other parent can revoke the first parent's consent. In situations like this, it is important to determine whether the disagreeing parent is refusing to consent to the IEP or if he/she is simply in disagreement with the IEP but is okay with letting the other parent's consent stand. In order to be safe, however, the district should contact legal counsel if it is unsure whether or not it can implement an IEP where parents disagree on consent.

What if the parent refuses to sign the new IEP?

If the parent does not sign the IEP, the district must continue to implement the last consented-to IEP and, at the same time, attempt to resolve the parent's concerns regarding the proposed IEP. It is important that the district not implement the new IEP prior to receiving parent consent. If the parent does not sign the proposed IEP, it is the responsibility of the district to file due process against the parent. Prior to filing due process, the district should consult with the SELPA and have a SELPA representative review the status of the case and attempt to mediate the parent's concerns.

REMINDERS

- In the case of an initial referral, the district is not obligated to—and cannot—take any legal action if the parent refuses services.
- In the case of an IEP review (not initial), if the parent refuses all services, the district must file for due process.
- Parents can approve or revoke portions of IEPs.
- The district may have to file for due process if the parent approves part but not all of a proposed IEP.
- A proposed IEP may not be implemented without parent consent.
- A student’s services and placement cannot be changed without parent consent.
- An adult student who is not conserved can give consent to his/her IEP even if the parent disagrees.