

INFORMED CONSENT FOR EVALUATION

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 carry 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is revoked it is not retroactive and does not negate an action that has occurred after consent was given and before it was revoked.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 or parents expresses their intention to revoke consent, it is recommended that districts require the revocation be submitted in writing.

Legal Requirements

Initial Evaluation

The district proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability must obtain informed consent before conducting the evaluation. The district must make reasonable efforts to obtain consent for the initial evaluation. Accordingly, a district should follow-up with parents regarding unreturned assessment plans. Parent consent must not be construed as consent for the initial provision of special education and related service.

If the student is a ward of the state, the district shall make reasonable efforts to obtain informed consent of the parent. The district is not required to obtain informed consent if:

1. Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent.
2. The rights of the parent have been terminated in accordance with state law.
3. The rights of the parent to make educational decisions have been subrogated by the court and consent has been given by an individual appointed by the court to represent the student.

If the parent does not provide consent or fails to respond to the request to provide consent, the district may, but is not required to, pursue initial evaluation of the student by pursuing mediation or one of the due process procedures. The district does not violate its obligation if it declines to pursue the evaluation.

Reassessments (Including Triennials)

The district must make reasonable attempts to obtain consent prior to conducting any reevaluation of a student with a disability. Parent consent need not be obtained if the district can demonstrate that:

1. It made reasonable efforts to obtain consent; and
2. The student's parent(s) have failed to respond.

To meet the reasonable measure requirements of this subdivision, the district shall use procedures consistent with those set forth in § 300.322(d) of Title 34 of the Code of Federal Regulations, as described below in "Reasonable Attempts." If considering completing a triennial reevaluation without parental consent, it is recommended you contact your district for guidance prior to proceeding.

If the parent refuses consent, the district may, but is not required to, pursue the reevaluation by using the procedures described above. The district may be required to file for due process in the event triennial reevaluation is necessary to provide free appropriate public education (FAPE) and/or determine continued eligibility to the student.

Reasonable Attempts

In order to meet the requirements for reasonable attempts, 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 correspondence sent to parents and responses received.
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Other Times When Informed Consent Is Not Required

If a test or assessment is being administered to all student, parental consent is not required unless state or federal law otherwise requires parental consent to administer the test or assessment. Additionally, consent is not required to review existing data.

Private School Students

If a parent of a student who is placed in a private school by the parents at their own expense does not provide consent to the initial or reevaluation, or the parent fails to respond to a request to provide consent, the district may not file for due process to obtain permission to assess, as described above, and the district is not required to consider the student as eligible for services.

For more information regarding the definition of parent and who is authorized to give consent for special education purposes, see the section of this manual pertaining to 'IEP team members' or 'Parent.'

Legal References

EC 56021.1; EC56321; EC 56321.1; 34 CFR 300.9; 300:300; 300:322

Timelines

The parent has at least 15 calendar days after receipt of the assessment plan to arrive at a decision whether to sign consent for an evaluation and before which the district can file for due process to assess without parental consent. The assessment may begin immediately upon the district receipt of written consent.

Local Procedures

It is the responsibility of the case carrier to send the assessment plan to the parent(s). In cases where the parent does not respond to the request for permission to assess, the case carrier should make at least three attempts to obtain consent and keep a record of each attempt and each time a copy of the evaluation was given to the parent(s). Records may include:

1. Detailed records of telephone calls.
2. Copies of correspondence sent to the parents. Notices should be sent via certified mail for proof of delivery.
3. Detailed records of visits made to the home or place of employment.

Once written consent is received, it is the responsibility of the case carrier to immediately provide a copy of the signed consent form to each assessor.

Local Forms

Use the SELPA Assessment Plan to obtain parent consent. APPENDIX C

FAQ's

Can I begin the evaluation if the parent gives verbal permission?

No, you must receive parent consent in writing.

What should the case carrier do with the assessment plan once written consent is received?

The assessment plan should be date stamped with the date of receipt, and copies should be uploaded in SEIS and given to each assessor as soon as practicable. Provision of copies of the assessment plan eliminates the possibility of miscommunication and accidentally performing an assessment without having written consent, or of not performing an assessment because of lack of notice.

Does the district have to file for due process if the parent does not give consent for the assessment?

In the case of an initial evaluation or reevaluation, the district may, but is not required to, pursue mediation or one of the due process procedures. The district does not violate any of its obligations for identification/evaluation if it chooses not to. In the case of a reassessment, however, if the district determines that an assessment is necessary in order to provide the student an appropriate program, they should pursue an order permitting assessment via due process procedures.

In the case of students attending a private school paid for by their parents, the district may not pursue due process.

Is the parent the only one who can give informed consent?

The answer to this question depends on the legal definition of parent. See the section in this manual titled 'Parent.'

REMINDERS

- Informed consent is required prior to conducting an evaluation.
- Consent of the parent is not required for an initial evaluation if the district cannot locate the parent or if the parent's rights have been removed/restricted by the court. Consent from the educational rights holder and/or surrogate should be obtained in lieu of parent consent.
- The district does not have to file due process if the parent refuses consent for the initial evaluation.
- Consent is not required for a reassessment if the parent fails to respond to the request.
- The parent has at least 15 calendar days following receipt of the assessment plan to decide whether to sign the assessment plan.
- Consent is not required to review the student's file.