



## Parent Consent in Special Education

*For families and personal reference*

July 2022 | *Additional eLearning Hub Resource*

from the Center for Parent Information and Resources

Available online at: <https://www.parentcenterhub.org/consent/>

One of parents' most important rights is the **right to give (or not give) their consent** for certain actions of the school system with respect to their child with a disability.

### **The Definition of "Consent"**

When the term *consent* is used in IDEA, or the term *parental consent*, it has the same meaning as the term *informed written consent*. It means that the parent has been fully informed regarding the action of the school system for which parental consent is being requested. Here is IDEA's verbatim definition of consent:

#### **§ 300.9 Consent.**

*Consent* means that—

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

### **How does the school make sure that parents have all the information they need to give (or not give) informed consent?**

By way of prior written notice, that's how. Informing the parents fully is one of the purposes of prior written notice, which is why the notice must include a comprehensive description of the action proposed by the school system.

### **When will the school ask for a parent's consent?**

There are certain times when the school system must ask for (and receive) your permission as a parent before it can take certain actions. These include:

- ✚ before conducting an initial evaluation of your child;
- ✚ before conducting a re-evaluation of your child;

- ✚ before providing special education and related services to your child for the first time (§300.300);
- ✚ before inviting representatives of other agencies to participate in IEP team meetings where the transition of the child to adult life will be discussed.

There may be other times when the school will ask for and require your consent, but these will depend on the policies in your local school system or state.



### **What happens if I don't give my consent as a parent?**

There are two ways in which you can refuse to give your informed written consent:

- when you don't respond to the school's request for your consent;
- when you *explicitly* refuse to give your written consent.

What happens next will depend on the reason for which the school was seeking your consent as a parent in the first place.

#### ***Consent for initial evaluation or re-evaluation***

If the school's request for your permission was to conduct an initial evaluation or re-evaluation of your child, IDEA states that the school...

...may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E ... (including the mediation procedures ...or the due process procedures... except to the extent inconsistent with State law relating to such parental consent. (§300.300)

The school system does not violate its obligations if it declines to pursue the evaluation.

*Note:* These provisions of IDEA only apply if the child is enrolled in (or seeks to be enrolled in) a public school. If the child is enrolled in a private school at parents' expense, or if the child is being home-schooled by the parents, the public school may **not** use the procedural safeguards of IDEA to override the parents' refusal to give consent.

#### ***Consent for the provision of special education and related services for the first time***

If the school asks parents to give consent for the first time that special education and related services are provided to the child, and the parents do not give their consent, the school may **not** use IDEA's procedural safeguards (including mediation or due process) to obtain their agreement or to obtain an order that services may be provided to the child without their consent. As a result, the child will not receive special education and related services as part of his or her public education.

#### ***Consent for the participation of representatives of other agencies***

For youth with disabilities, it's important to plan ahead and prepare for life after high school. Each time that the IEP team intends to talk about transition services for the youth with disabilities, the student must be invited to attend the IEP meeting and his or her preferences and interests for the future must be taken into consideration.

Employees of outside agencies may also be invited to the IEP meeting where transition planning will occur. This is especially important if an outside agency may be responsible for providing or paying for transition services the student needs. However, before these representatives may be invited to the IEP meeting, the school must ask for and receive the parents' consent—or the consent of the youth, if he or she has reached the age of majority.

You may wonder why consent of either the parent or the youth is necessary at this point. The answer is: In order to protect the confidentiality and privacy of the youth. During the meeting, representatives of other agencies will have access to the adolescent's educational records and information that permits his or her personal identification. This information may not be disclosed without the consent of the parents (or the consent of a youth who has reached the age of majority).

### **The Difference Between “Consent” and “Agreement”**

It's important to recognize that there is a difference between your *consent* as a parent and your *agreement* as a parent. In the school life of your child, there are many occasions when you and the school system can agree to take certain actions for the benefit of your child. Usually, this is done orally, and that's sufficient. But an oral agreement is *not* sufficient when parental consent is required. ***Consent must be in writing.***



---

***Highly Rated Resource!*** This resource was reviewed by 3-member panels of Parent Center staff working independently from one another to rate the quality, relevance, and usefulness of CPIR resources. This resource was found to be of “High Quality, High Relevance, High Usefulness” to Parent Centers.

---



The CPIR is made possible through Cooperative Agreement Number H328R180005 between OSEP and the Statewide Parent Advocacy Network (SPAN). The contents of this document do not necessarily reflect the views or policies of the Department of Education, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.