

## Procedural Safeguards - 5.3 Parental Consent for Evaluation

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### State Performance Plan (SPP):

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(See Overview in the Introduction for more information on the SPP.)

#### SPP 8:

Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities. (20.U.S.C. 1416 (a) (3) (A))

#### SPP 11:

Percent of children with parental consent to evaluate, who were evaluated within 60 days (or state established timeline). (20.U.S.C. 1416 (a) (3) (B))

### Intent:

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To ensure that the parents of a child who is eligible to receive or continue to receive special education are informed of their rights in regard to providing or refusing consent for the evaluation or reevaluation of their child.

### Timelines:

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#### Within 30 days of receipt of a request

A school district of residence will, **within 30 days of receipt of a request for an evaluation** from parents of a child or a public agency, either obtain parental consent for an initial evaluation or provide the parents prior written notice stating that the school district does not suspect a disability and will not be conducting an evaluation.

#### Within 60 days of receiving parental consent

The initial evaluation must be conducted **within sixty days of receiving parental consent for the evaluation**.

If the school district is using a response to intervention (Rtl) process, the district cannot use this process to reject a referral or delay the provision of a timely initial evaluation because a child has not participated in the Rtl process (OSEP letter to State Directors of Special Education, January 21, 2011).

If the school district has not implemented an Rtl process and it receives a request for an evaluation from parents, the school district cannot begin the Rtl process apart from the evaluation timeline. The district must complete the Rtl process and the evaluation within the 90 day timeline from the date of the referral (30 days from date of referral and 60 days from parental consent) unless the district does not suspect a disability. If the district does not suspect a disability, it provides the parents with a prior written notice within 30 days of the request.

#### ***Preschool Note***

School districts cannot require other agencies to use an Rtl process when identifying preschoolers with disabilities.

## REQUIREMENT

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3301-51-01

**(B) Definitions**

(12) "**Consent**" means that:

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, or other mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
  - (i) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
  - (ii) 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).

**3301-51-06**

**(B) Initial evaluations**

**(2) Request for initial evaluation**

Consistent with the consent requirements in rule 3301-51-05 of the Administrative Code, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(3) A school district of residence will, within thirty days of receipt of a request for an evaluation from either a parent of a child or a public agency, either obtain parental consent for an initial evaluation or provide to the parents prior written notice stating that the school district does not suspect a disability and will not be conducting an evaluation.

**3301-51-05**

**(C) Parental consent**

**(1) Parental Consent for initial evaluation**

- (a) The school district proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under the definition of "child with a disability" in rule 3301-51-01 of the Administrative Code must, after providing notice consistent with the requirements of this rule, obtain informed consent, consistent with the definition of "consent" in rule 3301-51-01 of the Administrative Code, from the parent of the child before conducting the evaluation.
- (b) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
- (c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

**3301-51-05**

**(C) Parental consent**

**(6) Other consent requirements**

(b) To meet the reasonable efforts requirement in paragraphs (C) (1) (c), (C) (1) (d) (i), (C) (2) (b), (C) (3) (b) (i) and (C) (4) (c) (i) of this rule, the school district must document its attempts to obtain parental consent using the procedures in rule 3301-51-07 of the Administrative Code.

**3301-51-07**

**(J) Parent participation**

**(4) Conducting an IEP team meeting without a parent in attendance** A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the school district must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and

- (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

## GUIDANCE

A list of actions requiring parental consent and when parental consent must be provided are included on the chart at the beginning of the Procedural Safeguards section. See "When to Provide Prior Written Notice, Informed Consent, and Procedural Safeguards Notice (*Whose IDEA Is This?*)".

### Request for Initial Evaluation

#### Parents' request

If parents request an initial evaluation to determine if their child has a disability, the school district, within 30 days of receipt of either an oral or written request:

- Contacts the parents and explains the referral process;
- Provides the parents with a copy of procedural safeguards, *Whose IDEA Is This?*;
- Provides the parents with the Prior Written Notice to Parents PR-01 form within 30 days, either agreeing or refusing to conduct an evaluation.
  - If the school district suspects the child has a disability and agrees to conduct an evaluation, it requests permission to evaluate the child and provides the parents with a Parent Consent for Evaluation PR-05 form.
  - If parents have joint custody of the child and both have educational decision-making authority, only one parent must consent before the initial evaluation may occur. (See below - "Parents with Joint Custody" - for additional guidance.)
  - If parents have joint custody of the child and the custody papers give one parent the authority to make educational decisions, the parent with that authority must provide the consent.
  - If the school district does not suspect a disability, it provides the parents with the Prior Written Notice to Parents PR-01 form stating it will not be conducting an evaluation and provides the information, including a description of each evaluation procedure, assessment, record or report, that was used to make that decision.

See Child Find - 3.2 Responsibilities in Locating Children with Disabilities for clarification on date of referral.

#### School district referral

If the school district suspects the child has a disability and proposes to conduct an initial evaluation, the school district:

- Contacts the parents and explains the referral process;
- Develops an evaluation plan with the parents' input;
- Provides the parents with a copy of procedural safeguards, *Whose IDEA Is This?*;
- Provides the parents with the Prior Written Notice to Parents PR-01 form stating that the school district is proposing to conduct an initial evaluation;
- Requests permission to evaluate the child and provides the parents with a Parent Consent for Evaluation PR-05 form.

The Parent Consent for Evaluation PR-05 and Prior Written Notice PR-01 forms can be provided at the same time as a copy of *Whose IDEA Is This?* (*Federal Register*, August 14, 2006, pg. 46691)

The district should provide the parents with the name, school address, phone number and e-mail address of a contact person who is available to respond to any questions the parents may have regarding the proposed evaluation.

The school district should attempt to contact parents who are not responding through various means such as:

- Written correspondence sent via certified mail;
- Phone calls;

- Electronic communications, including but not limited to e-mail and password-protected parent pages; and
- Visits to the home or parents' places of business.

School district personnel should document their attempts to contact the parents by keeping detailed records that include dates, times and results of their efforts and by placing the documentation with the child's referral form.

The school district proceeds with the evaluation once parental consent has been received; the evaluation team, which includes the parents, has developed an evaluation plan; and the parents have been provided prior written notice. The school district completes the initial evaluation within 60 days of receiving the parental consent.

## REQUIREMENT

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### 3301-51-05

#### **(C) Parental consent**

##### **(1) Parental consent for initial evaluation (continued)**

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(d) For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

- (i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;
- (ii) The rights of the parents of the child have been terminated in accordance with state law; or
- (iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by a judge to represent the child.

## GUIDANCE

### Parental consent for initial evaluation (continued)

#### Date of Consent

The 60-day timeline for the evaluation begins when the school district **receives** written parental consent. The date of consent is the date the district receives written parental consent to conduct the evaluation. If the date of receipt is different than the date the parents signed the Parent Consent for Evaluation PR-05 form, the district should document the date of receipt.

#### Wards of the state

The term "ward of the state" includes all foster children in Ohio as well as all children in the temporary or permanent custody of a public child-welfare agency.

- If the child resides in a foster home, the foster parent is not considered to be the parent under Ohio law; however, the foster parent may serve as the surrogate parent if the foster parent meets the criteria for surrogate parents, including successfully completing the prescribed training, and is appointed by the superintendent of the child's district of residence.

The school district reviews the definition of "parent" as outlined in *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities*, rule 3301-51-01(BB) (see Glossary), attempts to contact individuals who are qualified to act as the parent, and keeps detailed records of their attempts. If more than one party is qualified to act as the parent, those parties are contacted in the order found in the definition of "parent," unless there is a judicial decree or order identifying a specific person or persons to act as the child's parent or to make educational decisions on behalf of the child.

If the school district identifies a person who can act as the parent for the child who is a ward of the state, that person must give consent prior to the initial evaluation.

If the school district cannot locate a person who can act as the parent, the school district proceeds to appoint a surrogate parent following the guidance in Procedural Safeguards - 5.6 Surrogate Parents.

IDEA and Ohio's rules (see above requirements in Rule 3301-51-05(C) (1) (d)) create an exception to the parental consent requirements for the initial evaluation when a child is a ward of the state and is not residing with his or her parent. This exception permits the school district to proceed with the child's initial evaluation without first obtaining the usual parental consent and before appointing the surrogate, when one or more of the circumstances described above are met. **Only in these circumstances listed in the above requirement may the school district proceed with the child's initial evaluation without first obtaining parental consent.**

- Therefore, when one or more of the circumstances in Rule 3301-51-05(C) (1) (d) (quoted above) is met and a surrogate has not yet been appointed, the public agency need not postpone the child's evaluation to await the appointment of a surrogate. This is appropriate because in most situations involving requests for initial evaluations a surrogate parent has not yet been appointed, and delaying an initial evaluation until after a surrogate is appointed and has given consent may not be in the best interests of the child. (Federal Register, August 14, 2006, pg. 46630).

Note: This exception to parental consent for wards of the state does not apply to a reevaluation.

If one or more of these circumstances described above are met and the school district proceeds with the child's initial evaluation without first obtaining the usual parental consent, the school district still is obligated to ensure that the rights of a child who is a ward of the state are protected and to appoint a surrogate parent to act on behalf of the child.

### Divorced parents with joint custody

If parents have joint custody of the child and both have educational decision-making authority, only one parent must consent before the initial evaluation may occur. If the parents disagree and are threatening legal action or revocation of consent, ODE/ OEC recommends that the district:

- Contact the judge that wrote the divorce decree;
- Explain that the joint custody for educational decision making is interfering with the provision of services for the child; and
- Seek the judge's assistance in resolving the parents' disagreement.

ODE/ OEC recommends these steps be taken when legal action or revocation of consent is being proposed, since disagreements between the parents could result in one parent providing informed consent to evaluate or serve the child and the other parent revoking consent. If a parent revokes consent, the district cannot take the parent to a due process hearing to obtain a ruling that services may be provided.

## REQUIREMENT

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### **3301-51-05**

#### **(C) Parental consent**

##### **(1) Parental consent for initial evaluation (continued)**

(e) If the parent of a child enrolled in a school district or seeking to be enrolled in a school district does not provide consent for initial evaluation under this rule, or the parent fails to respond to a request to provide consent, the school district of residence may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in Subpart E of Part B of the Individuals with Disabilities Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) (including the mediation procedures or the due process procedures under this rule).

The school district does not violate its obligation under rule 3301-51-03 of the Administrative Code for child find and under rule 3301-51-06 of the Administrative Code for evaluations if it declines to pursue the evaluation.

## GUIDANCE

## Parental consent for initial evaluation (continued)

### If unable to obtain parental consent

If the school district is unable to obtain the parents' consent for an initial evaluation because the parents either explicitly refused to provide consent or failed to respond to a request, the school district may choose:

- Not to pursue the initial evaluation of the child; or
- To pursue the initial evaluation by requesting a due process hearing and by engaging in conflict resolution (e.g., resolution meeting and/ or mediation) to convince the parents to provide their consent.
  - The district is not required to request a due process hearing or to engage in other forms of conflict resolution and does not violate its obligation for child find or evaluation if it declines to pursue the evaluation.
  - Refer to the following document for information on mediation:
    - *Statewide Special Education Mediation Procedures*, September 2009.

This document is available on the Ohio Department of Education Web site at [http:// education.ohio.gov](http://education.ohio.gov), keyword search: *mediation*.

If the school district decides to pursue the initial evaluation by requesting a due process hearing and by engaging in conflict resolution, it completes the Due Process Complaint and Request for a Due Process Hearing form posted on the ODE Web site at [http:// education.ohio.gov](http://education.ohio.gov), keyword search: *due process* and follows the guidance provided under Procedural Safeguards - 5.13 Due Process Complaints.

If the school district decides not to pursue the initial evaluation, it informs the parents of this decision by completing and sending the Prior Written Notice to Parents PR-01 form.

If the parents of a child who is home schooled or whom they have placed in a private school at their own expense do not provide consent for the initial evaluation, or if the parents fail to respond to a request to provide consent, the district cannot request a due process hearing or request the parents to engage in a resolution session and/ or mediation in order to obtain the parents' consent. (34 C.F.R. §300.300(d) (4))

## REQUIREMENT

### **3301-51-05**

#### **(C) Parental consent**

#### **(4) Parental consent for reevaluation**

(a) Subject to paragraph (C) (3) (b) of this rule, each school district:

- (i) Must obtain informed parental consent, in accordance with paragraph (C) (1) of this rule, prior to conducting any reevaluation of a child with a disability.
- (ii) If the parent refuses to consent to the reevaluation, the school district of residence may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (C) (1) (e) of this rule.
- (iii) The school district of residence does not violate its obligation under rule 3301-51-03 of the Administrative Code for child find and under rule 3301-51-06 of the Administrative Code for reevaluations if it declines to pursue the reevaluations.

(b) The informed parental consent described in paragraph (C) (3) (a) of this rule need not be obtained if the school district can demonstrate that:

- (i) It made reasonable efforts to obtain such consent; and
- (ii) The child's parent has failed to respond.

## GUIDANCE

## Parental consent for reevaluation

Reevaluations may not occur more than once a year, unless the parents and school district agree otherwise; and

Reevaluations must occur at least once every three years unless the parents and the school district agree that a reevaluation is unnecessary. See [Evaluation - 6.5 Reevaluation](#) for guidance on the reevaluation process.

- A reevaluation is not required if the child's eligibility is terminated due to graduation from high school with a regular diploma or due to exceeding the age eligibility for a free appropriate public education (FAPE). (3301-51-06(F) (5) (b))

The school district does not need to obtain consent for the review of existing data, which is part of the reevaluation process.

If additional assessments are determined to be necessary for the reevaluation of a child with a disability, the school district must obtain parental consent and:

- Develop an evaluation plan with the parents' input;
- Provide the parents with the Prior Written Notice to Parents PR-01 form;
- Request permission to reevaluate the child and to provide the parents with a Parent Consent for Evaluation PR-05 form.

The school district may provide these two forms to the parents at the same time it provides a copy of *Whose IDEA Is This?*

The school district provides the Prior Written Notice to Parents PR-01 form electronically if the parents elect to receive notices in this manner and the district makes this option available to parents.

The district should provide the parents with the name, phone number and e-mail address of a contact person who is available to respond to any questions the parents may have regarding the new assessments to be conducted.

Once the school district receives parental consent for the reevaluation, the district conducts the identified assessments.

## If parents refuse consent for reevaluation

If the parents explicitly refuse consent for a reevaluation of the child, the school district has four options:

- To agree with the parents that a reevaluation is unnecessary;
- To conduct a reevaluation by utilizing data and/ or documentation that the district already possesses; that is, no new assessments are administered;
- To pursue the reevaluation by requesting a due process hearing and by engaging in conflict resolution (e.g., resolution session and/ or mediation) to convince the parents to provide their consent; or
- The district can decide not to pursue having the child reevaluated.

If the school district and the parents agree that the reevaluation is unnecessary, the three- year reevaluation need not be conducted. However, the school district must continue to provide FAPE to the child.

## If the parents failed to respond

**"Failed to respond"** in this context is generally understood to mean that, in spite of a school district's efforts to obtain consent for an evaluation, the parents have not indicated whether they consent to or refuse consent for the evaluation. (*Federal Register*, August 14, 2006, pg. 46632)

The school district must make "reasonable efforts" to obtain consent from parents who are not responding through various means, such as:

- Written correspondence;
- Phone calls; and
- Electronic communications, including but not limited to e-mail and password- protected parent pages; and
- Visits to the home or parents' places of business.

School district personnel should document attempts to contact the parents by keeping detailed records that include dates, times and results of their efforts and place the documentation in the child's education records.

The school district proceeds with the reevaluation.

## REQUIREMENT

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### **3301-51-05**

#### **(C) Parental consent**

- (5) (c) Informed parental consent need not be obtained before:
  - (iii) Reviewing existing data as part of an evaluation or reevaluation; or
  - (iv) Administering a test or other evaluation that is given to all children unless, consent is required of parents of all children.

## GUIDANCE

### Parental consent not required

Refer to [Evaluation - 6.4 Planning and Conducting Evaluation](#) for requirements and guidance related to reviewing data and administering a test or other evaluation given to all children.

#### **LEGAL CITATIONS:**

##### **Federal Statutes:**

20 USC 1415(d) (2) (C)

##### **Code of Federal Regulations:**

34 CFR §300.300

##### **Ohio Revised Code: (Policies)**

3323.05

##### **Operating Standards: (Procedures)**

3301-51-01(B) (12)

3301-51-05(C) (1), (4) and (5) (c) (iii) and (iv)

3301-51-06(B) (2) and (3)

3301-51-07(J) (4)

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#### **FORMS** (\* = required)

- Referral for Evaluation PR-04\*
- Prior Written Notice to Parents PR-01\*
- Parent Consent for Evaluation PR-05\*
- Whose IDEA Is This?\*
- Due Process Complaint and Request for a Due Process Hearing