

Procedural Safeguards - 5.4 Parental Consent for Services and Change of Placement

State Performance Plan (SPP):

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

SPP 8:

Percent of parents with a child receiving special education services 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))

Intent:

To provide procedures school districts (LEAs) will follow to assure that parents understand their right to provide or refuse consent for the provision of special education services or for a change of placement.

Timelines:

Consent for the provision of services is obtained once an initial IEP has been developed. The initial IEP must be developed within whichever of the following time periods is the shortest:

Within 30 calendar days - within 30 calendar days of completing the evaluation and determining that the child needs special education and related services;

Within 90 calendar days - within 90 calendar days of receiving parental consent for an evaluation; or

Within 120 calendar days - within 120 calendar days of receiving a request for an evaluation from a parent or school district.

REQUIREMENT

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retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

3301-51-05

(C) Parental consent

(1) Parental consent for initial evaluation

(b) Parental consent for initial evaluation must not be construed as consent for the initial provision of special education and related services.

(2) Parental consent for services

(a) A school district of residence that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(b) The school district of residence must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(c) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district of residence:

(i) Shall not use the procedures in Subpart E of Part B of the IDEA, including the mediation procedures or the due process procedures described in this rule, in order to obtain agreement or a ruling that services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the child with the special education and related services for which the school district of residence requests consent; and

(iii) Is not required to convene an individualized education program (IEP) team meeting or develop an IEP under rule 3301-51-07 of the Administrative Code for the child for the special education and related services for which the school district of residence requests such 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 participation

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 it must be provided is 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.

Parental consent for services

The school district makes "reasonable efforts" to contact parents to obtain consent for the initial provision of special education and related services.

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

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

School district personnel document their attempts to contact the parents by keeping detailed records that include dates, times and results of their efforts. This documentation is filed with the child's IEP.

Procedures and Guidance for Ohio Educational Agencies serving Children with Disabilities

(October, 2011)

The school district encourages parents to attend IEP meetings by pointing out the importance of the IEP for each child with a disability and by stressing the vital role that parents play in developing the IEP.

The school district obtains signed parental consent for the initial provision of special education and related services on the IEP PR-07 form at the IEP meeting conducted in accordance with procedures provided in [IEP - 7.4 Development of IEP](#).

If parents have joint custody of the child, only one parent must consent before the initial provision of special education and related services 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.

The school district ensures that the IEP is developed and that parental consent is obtained for the initial provision of special education and related services by whichever of the following time periods is the shortest.

- Within 30 calendar days of completing the evaluation and determining that the child needs special education and related services;

This is in addition to the timelines for obtaining consent and completing the initial evaluation. The rules require that parental consent be obtained within 30 days of receiving a request for an evaluation and that the evaluation be conducted within 60 days from receiving the parental consent.

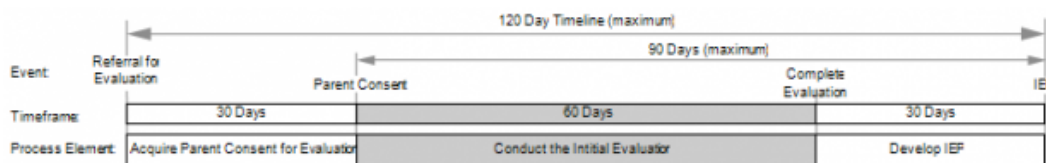
- Within 90 calendar days of receiving parental consent for an evaluation;

This timeline incorporates the requirements for conducting the initial evaluation (within 60 days of receiving parental consent) and developing the IEP (within 30 days of completing the evaluation).

- Within 120 calendar days of receiving a request for an evaluation from the parents or school district.

This timeline includes the requirements for obtaining consent, conducting the initial evaluation and developing the IEP.

Fig XX IEP Timeline



The school district should obtain signed parental consent through other methods if parents did not attend the IEP meeting or they participated through alternative means such as conference calls or video conferencing. Other methods could include:

- Mailing the IEP to the parents for giving consent;
- Making a home visit to obtain the parents' consent; and
- Visiting the parents' workplaces to obtain their consent.

Once signed parental consent is received, the school district implements the agreed upon services as specified in the IEP.

The school district provides the initial special education and related services for which the parents have given consent as documented on the IEP.

If the parents do not agree to all the services identified in the initial IEP, and so indicate on the IEP form, the school district provides the parents a Prior Written Notice to Parents PR-01 form documenting areas of disagreement and agreement. The district then provides the services that both the school district and the parents agree upon.

In situations where the parents agree with the majority of services in their child's initial IEP, but disagree with the provision of a particular service or services, such as physical therapy or occupational therapy, the district should work with the parents informally to achieve agreement. While the parents and the district are attempting to resolve their differences, the district should provide the service or services that are not in dispute.

In situations where the parents disagree with the provision of a particular special education or related service, and the parents and district later agree that the child would be provided with FAPE if the child did not receive that service, the district could decide not to provide the service with which the parents disagree.

If, however, the parents and the district disagree about whether the child would be provided with FAPE if the child did not receive a particular special education or related service with which the parents disagree, and the parents and the district cannot resolve their differences informally, the parents may follow conflict resolution procedures to pursue the issue of whether the service is not appropriate for the child.

The parents may not revoke consent for part of an IEP. They must revoke consent for the entire IEP. See [Revocation of Consent](#) at the end of this section. (*Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, OSEP, June 2010, Excerpt from Response).

Once the initial parental consent for special education and related services is given, the school district must obtain consent only for a change in placement, as defined in the requirements at the beginning of this section.

The IEP team conducts an annual review of the IEP and revises it, as appropriate. The IEP team then proceeds to implement the IEP for the following year. The school is not required to obtain consent for additional IEPs as long as there is no change of placement.

REQUIREMENT

3301-51-05

(C) Parental consent

(2) Parental consent for services (continued)

(c) If the parent of a child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district of residence:

- (i) Shall not use the procedures in Subpart E of Part B of the IDEA, including the mediation procedures or the due process procedures described in this rule, in order to obtain agreement or a ruling that services may be provided to the child.
- (ii) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the school district of residence requests consent; and
- (iii) Is not required to convene an individualized education program (IEP) team meeting or develop an IEP under rule 3301-51-07 of the Administrative Code for the child for the special education and related services for which the school district of residence requests such consent.

3301-51-05

(C) Parental consent for services

(6) Other Consent Requirements

- (a) A school district may not use a parent's refusal to consent to one service or activity under paragraphs (C) (1) or (C) (4) (b) of this rule to deny the parent or child any other service, benefit, or activity of the school district, except as required by this rule.

GUIDANCE

Parental consent for services (continued)

If the parents failed to respond

If the parents **failed to respond** to the school district's request to provide consent for the initial provision of special education and related services, the school district should maintain a record of its attempts to contact the parents.

- **"Failed to respond,"** in this context, is generally understood to mean that, in spite of the school district's efforts to obtain consent, the parents have not indicated whether they consent to or refuse consent for special education and related services.

If the parents explicitly **refuse consent** for the initial provision of special education and related services, as evidenced by their signatures on the IEP indicating that consent is not given, the school district maintains a copy of the signed IEP in the child's education record that shows the district offered a free appropriate public education (FAPE) and the parents refused.

If the parents fail to respond or refuse consent for initial special education and related services, the school district **may not** use the mediation procedures set forth in the *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities* or request a due process hearing to obtain agreement or a ruling that the services may be provided to the child.

The school district provides the parents with prior written notice and continues to provide the child with appropriate interventions in the regular education environment. The school district provides this notice within 30 days of its attempts to obtain written consent have been unsuccessful.

REQUIREMENT

3301-51-05

(C) Parental consent

(5) Parental consent for change in placement

- (a) A "change of placement" means a change from one option on the continuum of alternative placements to another.
- (b) Informed parental consent must be obtained before making a change of placement of a child with a disability.

3301-51-09

(C) Continuum of alternative placements

- (1) Each school district must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- (2) The continuum required in paragraph (C) (1) of this rule must:

- (a) Include the alternative placements listed in the definition of special education under rule 3301-51-01 of the Administrative Code (instruction in regular classes, special schools, home instruction, and instruction in hospitals and institutions); and
- (b) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

3301-51-11 Preschool special education requirements

(F) Center- based and itinerant teacher services

A continuum of service delivery options that includes the options of center- based or itinerant teacher services shall be considered when determining the least restrictive environment.

(5) A "change of placement" is defined as a change in the service delivery (center- based or itinerant teacher).

GUIDANCE

Change of Placement

A "change of placement" means a change from one option on the continuum of alternative placements to another. (3301-51-05 (C) (5). A change in location, while usually not a change of placement, may constitute a change of placement if the change in location substantially alters the child's educational program.

Questions to ask when determining whether or not a change of placement is occurring:

- Can the child's current IEP be implemented exactly as it is written?
- Is the child being educated with nondisabled peers to the same extent as in the current placement?
- Will the child have the same opportunities to participate in extracurricular and nonacademic services?
- Is the new location the same option on the continuum of alternative placements?
- Is the same methodology being used in the classroom?
- Are there the same number of aides available in the classroom and any one- on- one aides as required by the child's IEP?
- Is access to technology and equipment the same?

If the answer to these questions is "yes," you most likely do not have a change in placement. If the child's IEP is being revised concurrently with a change of location, this may be a change in placement.

(OSEP letters to Joseph Fisher, April 18, 1994 and Charlene Green, August 15, 1995)

Note: Some of these questions will not apply to preschool.

Parental consent for change in placement

If the school district is proposing a change in placement for a child for reasons other than discipline, the school district:

- Obtains written parental consent on the IEP form at the IEP meeting that is conducted in accordance with procedures provided in IEP - 7.4 Development of IEP.
 - If parents have joint custody of the child, only one parent must consent before a change in placement may occur. If the custody papers give one parent the authority to make educational decisions, the parent with that authority must provide the consent.
 - A "change in placement," as defined in the requirements above, means a change from one option on the continuum of alternative placements to another.
 - The following situations do not constitute a change in placement, and therefore, do not require parental consent:
 - Moving a child from one building to another; or
 - Changing the percentage of time a child spends in a particular setting (e.g., increasing the time spent in a resource room from 60 to 120 minutes).
 - Changes in related services (i.e., where provided and time spent in related services).

The school district obtains signed parental consent through other methods if parents did not attend the IEP meeting or if they participated through alternative means such as conference calls or video conferencing. Other methods may include:

- Mailing the IEP to the parents for their signed consent;
- Making a home visit to obtain the parents' consent; or
- Visiting the parents' workplaces to obtain the their consent.

Once signed parental consent is received by the school district for the change in placement, the school district implements the agreed-upon services as specified in the IEP. The district may not change the child's placement until the parents consent to the proposed change in placement.

REQUIREMENT

3301-51-05

(C) Parental consent

(5) Parental consent for a change in placement (continued)

(c) Informed parental consent need not be obtained before:

- (i) A change of placement if the school district of residence can demonstrate that it has made reasonable efforts, as described in rule 3301-51-07 of the Administrative Code, to obtain consent and the child's parent has failed to respond.
- (ii) A change of placement of a child with a disability that is the result of a disciplinary action taken in accordance with paragraph (K) (20) of this rule.

(K) Conflict resolution

(26) Change of placement because of disciplinary removals

(a) For purposes of removals of a child with a disability from the child's current educational placement under paragraphs (K) (20) to (K) (25) of this rule, a change of placement occurs if:

- (i) The removal is for more than ten consecutive school days; or
- (ii) The child has been subjected to a series of removals that constitute a pattern:
 - (a) Because the series of removals total more than ten school days in a school year;
 - (b) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (c) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b) The school district determines on a case- by- case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

GUIDANCE

Parental consent for a change in placement (continued)

The school district must obtain parental consent before making a change in placement. If parental consent cannot be obtained, the school district may file a due process complaint requesting a due process hearing or request mediation in order to obtain agreement or a ruling that the placement may be changed.

In the case of disciplinary actions, the school district cannot change the child's placement without parental consent if the child's behavior is determined to be a manifestation of the child's disability. (See [Discipline 8.3 Code of Conduct Violations: Removals of More than 10 Cumulative School Days - Change of Placement](#))

REQUIREMENT

3301-51-05

(C) Parental consent

(3) Revocation of parental consent. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school district:

- (a) Shall not continue to provide special education and related services to the child, but shall provide prior written notice in accordance with paragraph (H) of this rule before ceasing the provision of special education and related services;
- (b) Shall not use the procedures in Subpart E of Part B of the IDEA, including the mediation procedures or the due process procedures described in this rule, in order to obtain agreement or ruling that the services shall be provided to the child;
- (c) Shall not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the child with further special education and related services; and
- (d) Shall not be required to convene an individualized education program (IEP) team meeting or develop an IEP pursuant to rule 3301-51-07 of the Administrative Code for the child for further provision of special education and related services.

GUIDANCE

Revocation of consent

Note: Regulations governing IDEA that address "consent" and "revocation of consent" have been amended. The amended requirements are reflected in the following guidance.

The parents may revoke consent for and remove the child from all special education and related services. The revocation of consent for the continued provision of special education and related services must be in writing.

Actions the school district takes when consent is revoked:

- Continue to implement the child's IEP as written, until the district provides the parents with prior written notice.
- Send Prior Written Notice to Parents PR-01 form that includes the following:
 - A summary of the educational needs of the child;
 - A summary of all of the supports and services the child will no longer receive; and
 - A statement that none of the rights and protections provided to children with disabilities will be provided to the child once the child is exited from special education; and
- Once prior written notice is provided to the parents, the district will no longer implement the child's IEP and will treat that child as any child without a disability.

The school district does not need to provide *Whose IDEA Is This?* when a parent revokes consent.

Note: The parents may not revoke consent for only a part of an IEP. The parents must revoke consent for the entire IEP. If the parents disagree with any part of an IEP, they must follow conflict resolution procedures; i.e., administrative review, mediation, IEP facilitation, complaint or due process hearing.

Actions the school district will NOT take when consent is revoked:

- A three- year reevaluation;
- An annual IEP meeting; and
- Discipline procedures as outlined in IDEA.

Note: The school district will treat the child whose parents have revoked consent just as they would treat any child without a disability and will not be liable for providing the child a free appropriate public education (FAPE), per the new federal regulation.

The district will continue to conduct child find activities on a regular basis and will include all children whose parents have revoked consent for special education and related services. This means the district will continue to periodically ask the parents if they would

Procedures and Guidance for Ohio Educational Agencies serving Children with Disabilities

(October, 2011)

like the district to evaluate their child for a suspected disability. This would be considered an initial referral. If the parents agree to the evaluation and the child is found eligible for services, the district will create an IEP and serve the child.

The school district is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

LEGAL CITATIONS:

Federal Statutes:

20 U.S.C. 1415(d) (2) (C)

Code of Federal Regulations:

34 CFR §300.300

Ohio Revised Code: (Policies)

ORC 3323.05

Operating Standards: (Procedures)

3301-51-01(B) (12)

3301-51-05(C) (2), (5) and (6)

3301-51-05(K) (26)

3301-51-07(J) (4)

3301-51-09(C)

3301-51-11(F) (5)

FORMS (* = required)

- IEP PR-07*
- Prior Written Notice PR-01*