



PARENTAL CONSENT

September 2019

MYTH: The only time parental consent is required for an initial evaluation is when the initial evaluation includes assessment.

FACT: Parental consent is required for ALL initial evaluations, whether or not they require additional assessment.

Consent is described in the federal regulations for the Individuals with Disabilities Education Act (IDEA) as follows:

Consent means that 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 other mode of communication. 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. The parent understands that the granting of consent on his or her part is voluntary and may be revoked at any time. (34 CFR 300.9)

If a parent refuses to provide consent for an initial evaluation, the district cannot proceed with the evaluation. The 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; attempts should be documented. If the parent fails to respond or does not provide consent after the district has made reasonable efforts to gain parental consent, the district may, but is not required to, pursue the initial evaluation of the child by utilizing mediation procedures or due process procedures. (34 CFR 300.300)

MYTH: Special education services can be provided to a student prior to obtaining parental consent for initial services.

FACT: A public agency that is responsible for making FAPE available to a child with a disability must make reasonable efforts to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. If the parent refuses to consent or fails to respond to the request for consent, the public agency may not provide special education or related services to the student and may not use the mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child. If the parent refuses to provide consent or fails to respond to a request to provide consent, the public agency will not be found in violation of the requirement to make FAPE available to the child. (34 CFR 300.300)

MYTH: Reevaluations cannot be conducted if a parent fails to provide consent.

FACT: Reevaluations can be conducted if the parent FAILS to respond to request for consent after reasonable documented attempts by the district have been made to obtain consent. Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation. In other words, parental consent is required with conducting assessments for reevaluation. Procedures for making reasonable efforts would include multiple attempts to contact parents using various methods. Failing to respond to requests for consent is different than refusal to consent. If a parent refuses to give consent for a reevaluation, the public agency may, but is not required to pursue the reevaluation by using the consent override procedures (mediation or due process). (34 CFR 300.300)

MYTH: If parents revoke consent for evaluation, the LEA can go ahead and finish the rest of the evaluation.

FACT: Once a parent provides the school with a written request for revocation of evaluation, the evaluation process must stop at the point that the parents submitted the written revocation request. The parent understands the consent is voluntary on the part of the parent and may be revoked at any time and, if the 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). (State Plan V, p.68)

MYTH: Parents can revoke consent for specific special education or related services and not others within the IEP.

FACT: 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 public agency may not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services. Parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Therefore, once a public agency receives a parental revocation of consent in writing, for all special education and related services and provides prior written notice, the public agency must discontinue all special education and related services in their entirety to the child. (34 CFR 300.00)

However, in a situation where a parent disagrees with the provision of a particular special education or related service and the parent and public agency agree that the child would be provided with FAPE if the child did not receive that service, the public agency should remove the service from the child's IEP. The public agency would not have a basis for using mediation or due process procedures to require that the service be provided to the child. If, the parent and public agency disagree about whether the child would be provided with FAPE if the child did not receive a particular special education or related service, the parent may use the due process procedures to obtain a ruling that the service with which the parent disagrees is not appropriate.

MYTH: Even after a student reaches the age of majority, the student cannot remove himself or herself from special education and related services, only a parent can revoke consent for services.

FACT: When a student with a disability reaches the age of majority under state law (except for a student with a disability who has been determined to be incompetent under state law):

- The public agency must provide any notice required by this part to both the student and the parents; and
- All rights accorded to parents under Part B of the Act transfer to the student. (34 C.F.R. §300.520)

The transfer of rights includes the right for a student with a disability who has reached the age of majority and who has not been deemed incompetent under State law to revoke consent for their own special education and related services.

MYTH: Parental consent is not required for transition assessments or observations.

FACT: The consent requirements for transition assessment are not any different than the consent requirements for any special education assessment. LEAs are not required to obtain parental consent for assessments that are administered to all children in a class, grade or school. However, if the assessment is not given to all children in a classroom as part of a course, or to all children at a grade level or in a certain school building or district-wide, then parental consent is needed as this is considered an individual assessment and would be part of the reevaluation process.