

Technical Assistance Paper

308559

Consent or Notice

STATEMENT OF THE ISSUE

Many questions have been asked about when parental consent is required and when prior written notice is sufficient to ensure compliance with procedural safeguards. This Technical Assistance Paper (TAP) will answer those questions, consistent with requirements of the Individuals with Disabilities Education Act, Part B, for children with disabilities, ages 3-21, (IDEA) and corresponding state law; Section 504 of the Rehabilitation Act of 1973 (Section 504); evaluations for educational planning (EEP); and the provision of student support services.

BACKGROUND INFORMATION

IDEA

Pursuant to the IDEA, parental consent is required prior to conducting a pre-placement evaluation of a student suspected of having a disability and prior to the initial placement of a student with a disability in a program providing special education and related services. Consent means

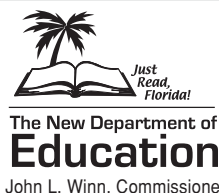
- the parent has been fully informed of all information relevant to the activity for which consent is sought (in his or her native language, or other mode of communication);
- understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes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

Written notice informs the parent of the district's intentions a reasonable time before a proposal or refusal to initiate or change the identification, evaluation, placement, and provision of a free appropriate public education for the child is made. The notice must contain all the elements required by 34 CFR 300.505 and Rule 6A-6.03311(2), FAC which included

- a full explanation of all procedural safeguards;
- a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why these options were rejected;
- a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and
- a description of any other factors that are relevant to the agency's proposal or refusal.

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TECHNICAL ASSISTANCE PAPERS (TAPs) are produced periodically by the Bureau of Exceptional Education and Student Services to present discussion of current topics. The TAPs may be used for inservice sessions, technical assistance visits, parent organization meetings, or interdisciplinary discussion groups. Topics are identified by state steering committees, district personnel, and individuals, or from program compliance monitoring.

BUREAU OF EXCEPTIONAL EDUCATION AND STUDENT SERVICES

EEP

Evaluations for educational planning are guided by both the professional ethics and standards of practice of the National Association of School Psychologists (NASP) and the Florida Association of School Psychologists (FASP). The Principles for Professional Ethics (NASP, 1992) (FASP, 1991) state, in part, "...parents and students are to be fully **informed** [emphasis added] about all relevant aspects of school psychological services in advance." The Standards for the Provision of School Psychological Services (NASP, 1992) (FASP, 1991) provide a description of quality services that professionals should strive to achieve. This document states, in part, "...Informed written consent of parent(s) and/or student (if the student has reached the age of maturity) is obtained before assessment and special program implementation." Services provided by other student services personnel (e.g., counselors, social workers, etc.) are guided by the standards of their professional organizations as well as by district policy and would not require consent as defined above.

QUESTIONS AND ANSWERS

Because Section 504 and EEP have no specific consent requirements, actions taken by districts to inform parents or to receive written parent consent should be guided by professional ethics and standards or practice. Responses to the following questions are pursuant to the IDEA and should be considered non-applicable to Section 504 and EEP unless specifically noted.

Pre-placement Evaluations

- 1. Once a parent has given written consent for an evaluation, is the district obligated to perform that evaluation?**

Yes. If the evaluation was the result of a referral to determine if the child needed special education and related services. However, if it is determined that an evaluation is no longer necessary, written notice with all the required components of the district's refusal to evaluate must be given. Notice requirements can be found at 34 CFR 300.504-300.505 and Rule 6A-6.03311, FAC.

- 2. What are the recommended procedures for documenting the withdrawal of parental consent for the initial pre-placement evaluation once it has been obtained?**

Withdrawal of consent should be in writing, signed, and dated by the parent. However, well documented verbal requests could be accepted. Documentation should include, at a minimum, the following information: who participated in the conversation, the date and time of the conversation, any reasons the parent gave, and a brief summary of the school district employee's statements.

- 3. How long is the parental consent for evaluation in effect?**

Parental consent for evaluation is in effect until the pre-placement evaluation is completed. With this premise, there is no longer the need to assign a specified period of time during which a consent is valid. If there is delay due to extenuating circumstances in completing the evaluation and district personnel believe the parent needs to be reminded about the testing, the district may want to contact the parents by phone or provide the parents with a letter stating that the evaluation is still "in process" and enclose a copy of the signed consent form and a procedural safeguards notice.

- 4. If a child moves from a district *before* an initial pre-placement evaluation is completed, must the receiving school district repeat the pre-referral and parent consent procedures before proceeding with an evaluation?**

No. Consent is valid in any Florida school district. The receiving school district should verify that consent has been given as well as review the pre-referral data to ensure its completeness before proceeding with the evaluation.

If the student is transferring from another state or agency, a determination of whether consent is required and pre-referral activities have been completed will depend on what information is provided by either the parent or the sending school/agency. (See also #1.)

5. If one parent gives written consent for a psychological evaluation and the other parent does not concur, how should the school proceed?

Unless one parent has been awarded “sole responsibility,” any disputes between the parents will need to be resolved by them. In the event no mutual agreement between the parents is reached, formal mediation or a due process hearing may be required to resolve the dispute.

6. The parental consent form describes the types of testing that may occur during the evaluation process. If other issues arise during evaluation that would lead to areas of testing that are not indicated on the parental consent form (such as adaptive behavior or personality testing that were not originally thought to be needed by the referral team), can the psychologist proceed with this additional testing?

Yes. Additional testing can be conducted since consent was obtained for a pre-placement evaluation in order to determine if a student requires special education and related services. If a district has a form which does not allow for that type of flexibility, a district representative may wish to contact Bureau staff for assistance in redesigning the form.

7. What types of information must be obtained prior to a consent for psychological? How is this requirement met when private evaluations are obtained at parent expense and presented to the ESE eligibility staffing committee for consideration?

The types of information required prior to a referral for a pre-placement evaluation are specified in State Board of Education Rules (Rules 6A-6.0311 through 6A-6.03025) based on the area(s) of suspected disability. When the parent presents the school with data from a private evaluation, that data along with the pre-referral information required by State Board of Education rule(s) will be presented to the eligibility staffing committee at the time of the eligibility/ineligibility staffing. Parental consent for evaluation is not required in this case since the district did not conduct any of the pre-placement evaluations.

8. If an evaluation is considered completed by the psychologist/diagnostician and another evaluation question arises before (or after) the case is brought to staffing, does another parental consent for additional evaluation need to be obtained before proceeding with addendum testing? Does it matter whether or not an evaluation report has been completed or not before the need for additional testing is raised?

No. Neither situation requires additional parental consent. The psychologist’s test results and subsequent report are sources of data to be considered by the eligibility staffing committee when making eligibility determinations. If the staffing committee determines that more information is needed, the psychologist may be asked to conduct additional testing, the results of which would be made a part of the psychological report consistent with district guidelines for amending reports. If additional testing was determined necessary after the staffing committee had determined eligibility for a special program, the parent would receive prior notice, with all the required components, of re-evaluation.

9. Must a district obtain consent for an evaluation subsequent to ineligibility determination for the same or different program?

Yes. Consent would be required because this situation is another pre-placement evaluation (the child was previously determined not to need special education and related services).

Evaluations Not Related to ESE

10. In providing assessment for intervention, including counseling, that was not the result of an Exceptional Student Education (ESE) referral, is parental consent required and should due process procedures be followed?

No. As stated in Technical Assistance Note FY 1991-3, *Screening, Evaluation, and Parental Consent*, in response to a similar question, “Since the evaluations to be conducted in the situation you described are not pre-placement evaluations, neither an explanation of the procedural safeguards available to the parent nor the other components described in Rule 6A-6.03311(2), FAC, are required.” However, we would encourage districts to adopt procedures that are consistent with ethical guidelines and standards of practice applicable to assessment and counseling services. This would include a detailed discussion of the reasons for the assessment and intervention services. It would be essential that the instruments selected for administration are designed to provide information consistent with the purpose of the evaluation and not for the identification of a disabling condition.

11. If a social history is taken or a psychological assessment (with or without a test of intelligence) is given for educational information only and not for ESE consideration, must parental consent be obtained and due process rights presented even though it is not an “ESE referral?”

No. Parental consent and an explanation of procedural safeguards is not required for a social history or psychological assessment for educational planning; but again districts should be guided by professional standards of practice and ethical considerations (see the response to #5). Each district does, however, have the option of developing procedures and documentation that support parent involvement in assessment activities and remedial planning.

12. Could this information (Question 6) then be used at a later date for ESE consideration?

Yes. The results from an evaluation for educational planning “may be used [as stated in Technical Assistance Note FY 1991-3, *Screening Evaluation and Parental Consent*], in determining a student’s eligibility for special programs for exceptional students. A description of the evaluations used to determine the student’s eligibility for an ESE program must appear on the district’s form used to obtain parental consent for placement as required by Rule 6A-6.03311(2)(c)3, FAC (... a description of each evaluation procedure, test, record, or report used as a basis for the proposal to ...).”

13. Our district’s parent consent forms carry the IDEA procedural safeguards on the reverse side. Is this form appropriate to use when the evaluation is not for suspected disabilities pursuant to the IDEA but for consideration of Section 504 accommodations?

No. A notice consistent with the procedural requirements of Section 504 should be used when evaluating to determine if a student is “qualified” handicapped under Section 504. Accommodations should be considered only after a student has been determined “qualified.”

ESE Placement

14. A student transfers (inter-state) into a district with a current IEP. When records are received, they do not include a parent consent for placement form. Is consent required?

No. Consent should not be obtained for an inter-state transfer since a current IEP would be evidence that the parent had given consent for the child to receive special education. Rule 6A-6.0334(5)(f), FAC, Temporary Assignment of Transferring Exceptional Students, states, in part, “...the district shall not be required to document ...notice and consent for previous evaluations or previous placements, if such data are not transferred from the sending school or district.” School districts are not held accountable during monitoring for what a previous district did or did not do.

15. Is consent required if a student becomes eligible for a special program other than the one(s) for which eligibility for special education and related services was first determined?

No, only prior notice with the required components is required.

Change of Placement

16. Is consent required for a student's change of placement (e.g., resource room to special school)?

No. A change of placement is completed through the IEP process and only subject to prior notice, with the required components, if the parent did not attend the IEP meeting.

Re-evaluation

17. When a three year re-evaluation is due, does the district have to provide prior notice for each special education program the student has been determined eligible? Must the programs be specified?

No. The district will provide a single notice of re-evaluation, not a separate notice for each program. The district would not need to specify the programs when providing the parent with notice of re-evaluation. The purpose of re-evaluation is to document the student's continued need for special education. A re-evaluation, which must be conducted "every three years or more frequently if conditions warrant," will look at the child's total needs.

18. A student had previously been determined eligible for a program that did not require a full psychological battery (e.g. speech and language) and the school had only requested permission for testing in that area. Now the school is looking at determining eligibility for another program that does require a psychological evaluation. Must the school obtain consent for testing?

No. Notice of re-evaluation with all the required components, including a copy of procedural safeguards, is what is required (see response to Question 8).

Re-admission

19. If a student has been dismissed from a program and two years later is referred for the same program, does the district have to obtain consent for readmitting the student to the same program or only provide prior written notice?

Parental consent is required for re-admission to an ESE program if the student has been dismissed from **all** special education programs. Any subsequent "initial" evaluations or placements will require consent, not notice.

Withdrawal of Consent

20. Can a parent give (or withdraw) partial consent?

No. Consent can be withdrawn only for the specific activity for which it was given, i.e., a pre-placement evaluation or the student's initial placement in a program providing special education and related services.

With regard to the revoking of parental consent (IDEA), the Bureau of Education for Exceptional Students (BEES) has adopted the U.S. Department of Education, Office of Special Education Programs (OSEP) position that "the right to revoke consent corresponds to the duration of the activity for which consent was obtained and is applicable when a parent initially gives consent and subsequently withdraws it" (April 3, 1989, response to Virginia's Office of the Governor).

OSEP went on to reply, “Consent to a pre-placement evaluation can be revoked at any time before the evaluation is completed; consent to an initial placement can be revoked at any time prior to the child’s receipt of special education for the first time. Thus, for parental consent required by EHA-B (now IDEA-B), the parent’s right to revoke consent ceases to be relevant once the pre-placement evaluation and initial placement have occurred.”

Screenings and Evaluation

21. Schools usually notify parents that health screenings (e.g. vision, hearing, scoliosis) will occur and ask the parent to sign and return the form if they do not want their child tested. Is it appropriate to include other screenings, such as for ADD, social skill deficits, or curriculum based measures for academic problems, on this form?

No. It would not be appropriate to add the type of screening mentioned to a form which is used to implement the district’s school health plan.

Job Training

22. Is written parental permission required before a student can participate in job training in a specified field?

No. Job training programs are incorporated into the IEPs of students with disabilities and therefore written parental consent would not be required. If board policy requires consent for this activity, then board policy should be followed even though there is no federal or state law as the basis for additional consent requirements.

Diploma Options

23. Is written parental consent required for diploma option selection?

No. Diploma options for students with disabilities are written on the IEP developed during the student’s eighth grade year, or the IEP developed during the year prior to the student’s 16th birthday, whichever occurs first. The advantage of each diploma option should be fully discussed with the student’s parents. The decision regarding the diploma option must be reviewed annually. In the event that a change in options is appropriate for a student with a disability after the initial selection, that change should be made through the IEP process.

Behavior Intervention

24. Is parental consent required before a restrictive behavior intervention may be implemented?

No. If there is a behavior plan which includes restrictive intervention and if the plan is a part of the IEP, parental consent is not required.