



Guidance

Consent as Defined in IDEA

**Michigan Department of Education Office of Special Education
May 2020**

This document focuses on the requirements for consent under Individuals with Disabilities Education Act (IDEA). Refer to the federal regulations for the full description of initial evaluations, re-evaluations, initial services and Individualized Education Program (IEP) Teams.

- IDEA requires public schools to obtain parent consent (or that of a student who has reached the age of majority) before taking the following actions:
 - initial evaluation
 - re-evaluation
 - initial provision of special education services
 - secondary transition -inviting participating agencies to the IEP where transition is discussed.
- Consent must be in writing.
- Schools must clearly state the reason for which consent is being sought.
- Schools must inform parents that their consent is voluntary and may be revoked at any time.

§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**.

§300.300 Parental Consent

(a) Parental consent for initial evaluation

(1)

(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504, **obtain informed consent, consistent with §300.9**, from the parent of the child before conducting the evaluation.

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

(iii) The public agency **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.

(b) Parental consent for services.

(1) A public agency 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.

(2) The public agency **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) Parental consent for reevaluations.

(1) Subject to paragraph (c)(2) of this section, each public agency—

(i) Must obtain **informed parental consent**, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—

(i) It made reasonable efforts to obtain such consent; and

(ii) The child’s parent has failed to respond.

(d) **Other consent requirements.**

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency **must document its attempts to obtain parental consent** using the procedures in §300.322(d).

§300.321(b) IEP Team

(b) **Transition services participants.**

(3) To the extent appropriate, **with the consent of the parents or a child who has reached the age of majority**, in implementing the requirements of paragraph (b)(1) of this section, the public agency **must invite** a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

Acceptable forms of consent signatures (examples)

- A consent form is sent via the U.S. Postal Service to the parent or student who has reached the age of majority and the form is signed, dated and returned via the U.S. Postal Service.
- A consent form is sent via email to the parent or student who has reached the age of majority. The form is printed by the recipient, signed and dated, and scanned back to the school.
- PDF fillable form – if the PDF has the option for an electronic signature and is time stamped for date.
- Electronic signatures are acceptable but must include a time stamp (date).

- Examples:

- Student information systems that have the ability generate a consent form and with the capability of generating electronic signatures.
 - DocuSign, HelloSign, and Adobe sign are examples of an electronic signature program/service for a fee.
- Emails are not acceptable for consent but are acceptable for sending invitations.

Note: Districts must take care to avoid violating a student's Family Educational Rights and Privacy Act (FERPA) rights by disclosing personally identifiable information in email. Districts should consult their district FERPA coordinator with questions.