

# IDEA PART B PROCEDURAL SAFEGUARDS

## Parental Consent

### **Q1. May a public agency accept an electronic or digital signature to indicate that the parent consents to their child's initial evaluation, reevaluation, or the initial provision of special education and related services to their child?**

Yes, so long as the public agency ensures there are appropriate safeguards in place to protect the integrity of the process. IDEA requires public agencies to obtain informed consent from the parent of the child, consistent with 34 C.F.R. § 300.9, before conducting an initial evaluation and a reevaluation of a child, subject to certain exceptions, and before the initial provision of special education and related services to the child. 34 C.F.R. § 300.300. Under 34 C.F.R. § 300.9, consent, which must be voluntary on the part of the parent, means the parent has been fully informed of, and agrees in writing to the activity for which his or her consent has been requested. Because of social distancing and other restrictions during the pandemic, it may not be possible to obtain a parent's signed, written consent in-person.

In developing appropriate safeguards for using electronic or digital signatures during the pandemic, a public agency may determine that a "signed and dated written consent" may include a record and signature in electronic form that identifies and authenticates a particular person as the source of the consent and indicates such person's approval of the information contained in the electronic consent.

See 34 C.F.R. § 99.30(d) (consent for disclosure of personally identifiable information (PII) from education records).



Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part B procedural safeguards in the current COVID-19 environment

# IDEA PART B PROCEDURAL SAFEGUARDS

## Parental Consent

### **Q2. May a public agency accept a parent's electronic or digital signature as written parental consent to disclose PII, personal individual information, from the child's education records?**

Yes, electronic signatures for consent may be accepted to satisfy the IDEA Part B consent requirements for disclosure of PII from education records if there are appropriate safeguards, which could include the use of the safeguards for granting consent electronically to release PII from education records described in the response to Q1 above. 34 C.F.R. § 99.30(d). In addition, under 34 C.F.R. 300.9, consent, which must be voluntary on the part of the parent, means the parent has been fully informed of, and agrees in writing to the activity for which his or her consent has been requested. Parental consent must be obtained before PII is disclosed to parties other than officials of participating agencies or unless a specific exception applies under 34 C.F.R. § 300.622(b) of the IDEA Part B regulations or under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 C.F.R. Part 99.1 34 C.F.R. § 300.622.

IDEA Part B also requires that prior to accessing a child's or parent's public benefits or insurance for the first time and after providing the annual notification to parents consistent with 34 C.F.R. § 300.154(d)(2)(v), the public agency must obtain written consent from the parent that meets the requirements of 34 C.F.R. §§ 99.30 and 300.622, for disclosure of PII from education records to a State's public benefits or insurance program (e.g., Medicaid) in order for the public agency to bill that State's program for services provided under 34 C.F.R. Part 300. 34 C.F.R. § 300.154(d)(2)(iv).



Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part B procedural safeguards in the current COVID-19 environment

# IDEA PART B PROCEDURAL SAFEGUARDS

## Prior Written Notice

### **Q3. How can a public agency provide parents with prior written notice required under 34 C.F.R. § 300.503, while school buildings and other public agency facilities are closed due to the pandemic?**

A public agency must provide parents written notice a reasonable time before it proposes or refuses to initiate or change the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child. 34 C.F.R. § 300.503. **If the parent has previously agreed, or agrees during the pandemic, the prior written notice can be provided through electronic mail (email). 34 C.F.R. § 300.505.** The term, “reasonable time” is not defined in the regulation. The Department believes that it would be appropriate to consider factors such as the closure of public and school buildings and facilities, social distancing, and other health-related orders during the pandemic in determining what constitutes a reasonable time for this purpose. Nevertheless, public agencies should make every effort to ensure that written notice is provided as soon as possible prior to the proposed or refused action.

The determination of when prior written notice is required depends on the particular facts and circumstances, but OSEP encourages public agencies to ensure that parents are fully informed of how their child’s special education and related services needs are addressed during remote learning.



Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part B procedural safeguards in the current COVID-19 environment

# IDEA PART B PROCEDURAL SAFEGUARDS

## Procedural Safeguards Notice

**Q4. Given the challenges associated with school operations during the pandemic, how can a public agency ensure that a copy of the procedural safeguards available to parents under IDEA is provided in accordance with 34 C.F.R. § 300.504(a)?**

The public agency can provide a parent an electronic copy of the procedural safeguards notice (e.g., through email) instead of a paper copy, if the parent has previously agreed, or agrees to receive an electronic copy during the pandemic. See 34 C.F.R. § 300.505. The public agency must provide the parents a copy of the procedural safeguards available to the parents of a child with a disability only one time a school year, except that the notice also must be provided to parents in the circumstances specified in 34 C.F.R. § 300.504(a).

The public agency is not required to provide a parent an electronic or paper copy of the notice of procedural safeguards if the parent declines a copy upon being offered a copy. The public agency should document that it offered the parent a copy and that the parent declined.



Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part B procedural safeguards in the current COVID-19 environment

# IDEA PART B PROCEDURAL SAFEGUARDS

## Access to Education Records

**Q5. How can a public agency comply with a parent's request to inspect and review the child's education records<sup>2</sup> while school buildings and other public facilities are closed due to the pandemic?**

In light of the social distancing and physical contact restrictions of many jurisdictions during the pandemic, **parents and public agencies may identify a mutually agreeable timeframe and method to provide access to the child's education records.** If the parent asks to inspect and review specific documents from the child's education records while school buildings are closed during the pandemic, the school and parent should work together to identify mutually agreeable options for access to the education records.

**For example,** the school could provide the parent with the requested information from the child's records via email, a secure on-line portal or postal mail until school reopens. **Note though, the public agency must use reasonable methods when transmitting PII in education records through email or an online portal.** See FERPA and Virtual Learning During COVID-19.



Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part B procedural safeguards in the current COVID-19 environment