



Consent

CONSENT FOR INITIAL EVALUATION

August 2023

Disclaimer: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.

©2021 by Texas Association of School Boards, Inc.

TASB grants members/subscribers of TASB Student Solutions™ the limited right to customize this publication for internal (non-revenue generating) purposes only.



CONTENTS

CONSENT FOR INITIAL EVALUATION 1

 What is Required 1

 Elements of Consent 1

 Information and Consent for Certain Psychological Examinations or Tests..... 1

 Children Who Are Wards of The State..... 2

 Overriding Lack of Consent 2

 Children Who Are Home Schooled or Private Schooled..... 2

 Actions That Do Not Require Consent..... 2

 Definitions..... 3

 Additional Procedures 3

 Refusal to Provide Consent or Withdraw of Consent..... 4

 Actions That Do and Do Not Require Consent 5

Evidence of Implementation..... 5

Resources..... 6

CITATIONS..... 6

CONSENT FOR INITIAL EVALUATION

What is Required

Before conducting an initial evaluation to determine whether a student is a student with a disability in need of special education or related services, District Assessment Personnel must obtain written informed consent from the parent of the student or the adult student who is being proposed for an evaluation. See [PARENT] and [ADULT STUDENT AND TRANSFER OF RIGHTS]. Such written consent may be obtained only after District Assessment Personnel provide to the parent or adult student Prior Written Notice of the evaluation. See [PRIOR WRITTEN NOTICE]. However, parental consent for an initial evaluation does not constitute consent for the provision of special education and related services. See [CONSENT FOR SERVICES].

Elements of Consent

To constitute informed consent for the initial evaluation, the following must occur:

- The parent has been fully informed of all information related to the initial evaluation in the parent's native language or other mode of communication;
- The parent understands and agrees in writing to the District conducting the initial evaluation;
- The consent describes the initial evaluation and lists any records that will be released and to whom; and
- The parent understands that the granting of consent is voluntary by the parent and may be revoked at any time.

If the parent revokes consent, the revocation is not retroactive. Thus, it does not negate any action occurring after the consent was given, but before the consent was revoked.

Information and Consent for Certain Psychological Examinations or Tests

Upon request by the parent, before obtaining the parent's consent to perform any psychological examination or test that is included as part of the evaluation of the student's need for special education, District Assessment Personnel must provide the parent the name and type of the examination or test that will be used, as well as an explanation of how the examination or test will be used to develop an appropriate IEP for the student.

If District Assessment Personnel determine that an additional psychological examination or test is necessary for the evaluation after parental consent has been obtained, District Assessment Personnel should provide the parent information relating to the additional examination or test and must obtain additional consent for the examination or test. The parent's consent is considered denied if the parent fails to provide consent for the

additional psychological examination or test within 20 calendar days after District Assessment Personnel provided the information regarding the additional evaluation to the parent. The time required for District Assessment Personnel to provide information and seek consent for the additional evaluation does not count towards the 45-school day timeline for the completion of an initial evaluation. See [EVALUATION PROCEDURES].

Children Who Are Wards of The State

District Assessment Personnel do not need to obtain informed consent from a parent if the student is a ward of the state and not residing with the parent and:

- District Assessment Personnel cannot locate the parent of the student despite reasonable efforts to do so;
- The parent's rights have been terminated in accordance with state law; or
- A judge has removed the rights of the parent to make educational decisions on behalf of the student in accordance with state law, and the individual appointed by the judge to represent the student has provided consent for the initial evaluation.

Overriding Lack of Consent

Where a parent of a student enrolled in or seeking to be enrolled in the District does not provide consent for an initial evaluation or fails to respond to a request to provide consent, the District may, but is not required to, continue pursuing the initial evaluation and attempt to override the parent's lack of consent by utilizing the mediation or due process hearing procedures. However, the District does not violate its child find duties and/or evaluation obligations if it chooses not to pursue the evaluation. See [CHILD FIND DUTY] and [EVALUATION PROCEDURES].

Children Who Are Home Schooled or Private Schooled

District Assessment Personnel must also obtain informed consent before evaluating a student who is home schooled or who attends a private school. However, if the parent of a student who is home schooled or placed in a private school at parental expense does not provide consent for the initial evaluation or fails to respond to the District's request for consent, District Assessment Personnel may not pursue the initial evaluation by utilizing the procedural safeguards but need not consider the student as eligible for special education services provided by the District. See [PROPORTIONATE SHARE FUNDING FOR CHILDREN WITH DISABILITIES PARENTALLY-PLACED IN PRIVATE SCHOOLS] and [CHILDREN IN PRIVATE SCHOOLS].

Actions That Do Not Require Consent

District Assessment Personnel are not required to obtain parental consent before

conducting a Review of Existing Evaluation Data (“REED”) as part of an initial evaluation or reevaluation. Likewise, District Assessment Personnel do not need to obtain parental consent before administering a test or other evaluation that is administered to all students. In addition, the screening of the student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not an evaluation for eligibility for special education and related services; thus, consent is not required for such screenings.

Definitions

An “evaluation” is the collection of information to determine whether a student is a student with a disability and to determine the educational needs of the student. The team who collects or reviews evaluation data, referred to as the multidisciplinary team, must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. An evaluation may include giving individual tests, observing the student, looking at educational records, and talking with the student, teachers, and parents.

A “psychological examination or test” is a test or examination that assesses emotional or behavioral disturbance for educational purposes using psychological techniques and procedures in accordance with the practice of psychology.

Additional Procedures

District Assessment Personnel will document all attempts to obtain informed consent from the parent through a Communication Log. In the Communication Log, District Assessment Personnel will record the method of communication utilized (i.e. phone call, email, letter, or home visit), who made the attempt, and when the attempt was made. Further, the District Assessment Personnel will document the results of the attempt (i.e. whether contact was made and consent was obtained) in the Communication Log.

If the parent makes a written request for an initial evaluation to any District employee, District Assessment Personnel will respond to the request within 15 school days by seeking consent for the evaluation or by providing the parent Prior Written Notice of the District’s refusal to evaluate the student, along with a copy of the *Notice of Procedural Safeguards*. See [REFERRAL FOR SPECIAL EDUCATION SERVICES] and [PRIOR WRITTEN NOTICE] and [EVALUATION PROCEDURES].

If the District is requesting the evaluation, District Assessment Personnel will invite the parent of the student to any referral meeting where the recommendation for an evaluation will be made to ensure full parental participation. If the parent has not confirmed the time for the referral meeting at least 5 days before the scheduled meeting, District Assessment Personnel will, at a minimum, attempt to contact the parent at different times of the day at least three times before the meeting. Additionally, District Assessment Personnel will

follow up with a written letter to the parent sent through certified mail and sent home with the student. District Assessment Personnel will also consider visiting the parent at the parent's home or place of employment. All attempts to contact the parent related to the referral meeting should be documented in the Communication Log.

District Assessment Personnel may seek to obtain consent immediately after the recommendation at the referral meeting. If the parent is not in attendance at the referral meeting, District Assessment Personnel will contact the parent as soon as possible after the meeting to obtain consent. When possible, consent should be obtained in-person. The parent will be provided a copy of the *Notice of Procedural Safeguards*, as well as the *Parent's Guide to the Admission, Review, and Dismissal (ARD) Process*. District Assessment Personnel should have the parent sign a Receipt for Explanation of Procedural Safeguards form, acknowledging receipt of both these documents. After providing the parent Prior Written Notice regarding the request to evaluate the student, District Assessment Personnel should have the parent sign a Notice and Consent for Full and Individual Evaluation form, indicating receipt of the notice and consent for the FIE. The consent form must include an acknowledgement by the parent regarding all of the above elements of consent. In addition, parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services. See [CONSENT FOR SERVICES].

When obtaining consent, District Assessment Personnel will document in writing that the parent fully understands the information. If the parent's native language is a language other than English, District Assessment Personnel will document on the consent form all efforts to provide an interpreter in the parent's native language and note whether the parent is declining the use of an interpreter in their native language.

When obtaining consent, District Assessment Personnel will explain that the initial evaluation will assess in all areas of suspected disabilities. The parent may not sign consent for a partial assessment or limit the scope of the evaluation by only providing consent for certain areas. Furthermore, District Assessment Personnel are only required to obtain consent to the evaluation itself—not to any specific evaluation methodology.

Refusal to Provide Consent or Withdraw of Consent

If the parent refuses to provide consent for the initial evaluation or revokes consent for the evaluation during the evaluation process, District Assessment Personnel must have the parent indicate, in writing, their refusal on the Notice and Consent for Full and Individual Evaluation form or the Revocation of Consent form. District Assessment Personnel must then notify the Special Education Director who will determine whether or not the District wishes to continue to pursue the evaluation through mediation or by filing a request for due process hearing to override the parent's lack of consent. A special education hearing officer in a due process hearing may issue an order or decision that authorizes the evaluation of the student. Such an order or decision authorizes the

evaluation of the student without parental consent.

If the parent revokes consent during the evaluation process, District Assessment Personnel will immediately cease the referral process and notify the parent of the right to re-initiate the referral at any time by once again going through the steps in the referral process and consenting to the initial evaluation. See [REFERRAL FOR POSSIBLE SPECIAL EDUCATION SERVICES]. Campus Personnel should consider whether there are other general education supports that may benefit the student at that time or whether the student should be referred to the Campus or District Personnel responsible for compliance with Section 504 to determine whether the student is eligible for accommodations or services as a student with a disability under Section 504. Further, the fact that a parent has revoked consent does not impact the parent's right under the IDEA to request a subsequent initial evaluation.

If the parent withdraws consent while the evaluation is ongoing, District Assessment Personnel will cease all assessment activities immediately. However, if the parent does not withdraw consent until after the evaluation is completed, District Assessment Personnel must complete the report and convene an ARD meeting to review the evaluation and determine if the student is a student with a disability and, if necessary, create an IEP. The Parent may then refuse to consent to special education services at the ARD meeting. See [CONSENT FOR SERVICES]

Actions That Do and Do Not Require Consent

Consent is required to do a functional behavior analysis ("FBA") conducted as part of the initial evaluation to determine the nature and extent of the special education and related services that the student needs, including the need for a behavior intervention plan ("BIP").

District Assessment Personnel are not required to obtain informed consent prior to collecting academic functional assessment data from all students in a general education setting at the primary level of an RTI framework, as the data collection would not be focused on the educational and behavioral needs of an individual student at that stage. However, if a teacher were to collect academic functional assessment data to determine whether an individual student has, or continues to have, a disability and to determine the nature and extent of the special education and related services that the student needs during the secondary or tertiary level of an RTI framework, informed consent by the parent would be required.

Evidence of Implementation

- Prior Written Notice
- Notice and Consent for Full and Individual Evaluation form
- *Notice of Procedural Safeguards*

- *Parent's Guide to the ARD Process*
- Receipt for Explanation of Procedural Safeguards form
- Receipt for *Parent's Guide to the ARD Process*
- Communication Log
- Revocation of Consent form
- Full and Individual Initial Evaluation

Resources

[The Legal Framework for the Child-Centered Special Education Process: Consent for Initial Evaluation - Region 18](#)

[OSEP Letter to Sarzynski \(Sept. 5, 2007\) - U.S. Department of Education](#)

[OSEP Letter to Gallo \(Apr. 2, 2013\) - U.S. Department of Education](#)

[OSERS Questions and Answers on Individualized Education Programs \(IEPs\), Evaluations, and Reevaluations \(Revised Sept. 2011\) - U.S. Department of Education](#)

[OSEP Letter to Copenhaver \(Oct. 19, 2007\) - U.S. Department of Education](#)

[Initial Evaluations - Texas Education Agency](#)

[Special Education Full and Individual Initial Evaluation \(FIIE\) Timeline - Texas Education Agency](#)

[Special Education Full and Individual Initial Evaluation \(FIIE\) Assessment Log - Texas Education Agency](#)

[Notice of Procedural Safeguards - Texas Education Agency](#)

[OSERS Questions and Answers on Discipline Procedures \(Revised June 2, 2009\) - U.S. Department of Education](#)

CITATIONS

Board Policy EHBA and EHBAE; 34 CFR 300.300, 300.2, 300.9; 73 Fed. Reg. 73,014 (2008); Texas Education Code 29.004(a), 29.0041(a)–(c)