

9. Parent Consent

Federal Guidelines

Section 300.300, regarding parental consent, has been revised, as follows:

(1) Paragraph

(a) of §300.300, regarding consent for initial evaluation, has been changed to provide that the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability 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. A new paragraph (1) Has been added to require a public agency to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation.

(2) Section 300.300(a)(3), regarding a parent's failure to provide consent for initial evaluation, has been changed to clarify, in a new paragraph (a)(3)(ii), that the public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.

(3) Section 300.300(b), regarding parental consent for services, has been modified by a new paragraph (b)(2) that requires a public agency to make reasonable efforts to obtain informed consent from the parent for the initial provision of Exceptional Children and related services.

(4) Section 300.300(c)(1), regarding parental consent for reevaluations, has been modified to clarify that if a parent refuses to consent to a reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures in §300.300(a)(3), and the public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(5) A new §300.300(d)(4) has been added to provide that if a parent of a child who is home schooled or placed in a private school by the parent at the parent's expense, does not provide consent for an initial evaluation or a reevaluation, or the parent fails to respond to a request to provide consent, the public agency (A) may not use the consent override procedures (described elsewhere in §300.300), and (B) is not required to consider the child eligible for services under the requirements relating to parentally-placed private School children with disabilities (§§300.132 through 300.144).

(6) A new §300.300(d)(5) has been added to clarify that in order for a public agency to meet the reasonable efforts requirement to obtain informed parental consent for an initial evaluation, initial services, or a reevaluation, a public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

State Guidelines

NC 1503-1 Parental Consent

(a) Parental consent for initial evaluation.

(1) (i) The LEA proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under NC 1500-2.4 must, after providing notice consistent with NC 1504-1.4 and NC 1504-1.5, obtain informed consent, consistent with NC 1500-2.5, from the parent of the child before conducting the evaluation.

- (iii) Parental consent for initial evaluation must not be construed as consent for initial provision of Exceptional Children and related services.
- (iv) The LEA 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.

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the LEA is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if --

- (i) Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child; or
- (ii) The rights of the parent to make educational decisions have been removed by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards, (including the mediation procedures NC 1504-1.7 or due process procedures under NC 1504-1.8 through NC 1504-1.17), if appropriate.

(ii) The LEA does not violate its obligation under NC 1501-2.9 and NC 1503-2.1 through NC 1503-3.5 if it declines to pursue the evaluation.

(b) Parental consent for services.

(1) An LEA 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 Exceptional Children and related services to the child.

(2) The LEA must make reasonable efforts to obtain informed consent from the parent for the initial provision of Exceptional Children and related services to the child.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of Exceptional Children and related services, the public agency--

- (i) May not use the procedures in NC 1504 (Procedural Safeguards) of this document (including the mediation procedures under NC 1504-1.7 or the due process procedures under NC 1504-1.8 through NC

- I 504-1.17) in order to obtain agreement or a ruling that the services may be provided to the child;
- (ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the Exceptional Children and related services for which the parent refuses to or fails to provide consent; and
- (iii) Is not required to convene an IEP Team meeting or develop an IEP for the child under NC 1503-4.1 and NC 1503-5.1.

(4) If, at any time subsequent to the initial provision of Exceptional Children and related services, the parent of a child revokes consent in writing for the continued provision of Exceptional Children and related services, the public agency--

- (iv) May not continue to provide Exceptional Children and related services to the child, but must provide prior written notice in accordance with NC 1504-1.4 before ceasing the provision of Exceptional Children and related services;
- (v) May not use the procedures in NC 1504 (Procedural Safeguards) of this document (including the mediation procedures under NC 1504-1.7 or the due process procedures under NC 1504-1.8 through NC 1504-1.17) in order to obtain agreement or a ruling that the services may be provided to the child;
- (vi) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further Exceptional Children and related services; and
- (vii) Is not required to convene an IEP Team meeting or develop an IEP under NC 1503-4.1 and NC 1503-5.1 for the child for further provision of Exceptional Children and related services.

(c) Parental consent for reevaluations.

(1) Subject to paragraph (c)(2) of this section, each LEA –

- (viii) Must obtain informed parental consent, in accordance with NC 1503-2.1(a)(1), prior to conducting any reevaluation of a child with a disability.
- (ix) If the parent refuses to consent to reevaluation, the LEA may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a) (3) of this section.
- (x) The LEA does not violate its obligation under NC 1501-2.9 and NC 1503-2.1 through NC 1503-3.5 if it declines to pursue the evaluation or reevaluation.

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

- (i) It made reasonable measures to obtain such consent; and
- (ii) The child's parent has failed to respond.

(d) Other consent requirements.

(1) Parental consent is not required before-

- (i) Reviewing existing data as part of an evaluation or a reevaluation; or
- (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) An LEA may not use a parent's refusal to consent to one service or activity under paragraph (a) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(3) (i) If a parent of a child who is home schooled or placed in a private school by the parent at their own expense does not provide consent for initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

- (ii) The public agency is not required to consider the child as eligible for services under NC 1501-6.3 through NC 1501-6.15.

(4) 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 NC 1503-4.3(d). (Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c); 34 CFR 300.300)

NCVA Policy

NCVA is required to obtain informed written consent for any action requested. Parental consent is voluntary and may be revoked at any time. Consent is required for the following actions:

- to conduct an initial evaluation;
- to conduct a reevaluation;
- initial placement to receive Exceptional Children and related services on the IEP; and
- before disclosure of personally identifiable information that is subject to confidentiality.

Consent for the initial evaluation does not provide consent for initial placement. Consent for the initial evaluation may be given electronically. The eligibility decision must be made within 90 calendar days of receipt of the direct parent referral, MTSS referral, or (in the case of students transferring from out of state with current eligibilities) from the Referral Meeting. Evaluations must be conducted, eligibility determined, and for an eligible child, the IEP developed, and placement completed within 90 days of receipt of a written referral.

If during the reevaluation/redetermination process, a parent refuses consent for evaluation, the EC teacher will schedule an eligibility meeting to determine the student ineligible and note on the Prior Written Notice that the parent has revoked consent.

Exceptional Children Procedures NCVA

If the team decided to conduct evaluations and the parent did not attend or participated via phone conference, the EC teacher will email the Consent of Evaluations to the parent. If, after two weeks, the parent fails to respond to multiple varied attempts to contact him/her to obtain consent for evaluation, the EC teacher will schedule an eligibility meeting for the student.

10. Initial Evaluations

Federal Guidelines

§300.301 Initial evaluations.

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of Exceptional Children and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation—

(1)(i) Must be conducted within 90 days of receiving direct parent referral; or (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and (2) Must consist of procedures—

- (i) To determine if the child is a child with a disability under §300.8; and
- (ii) To determine the educational needs of the child. (d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(2) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(3) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8. (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (Authority: 20 U.S.C. 1414(a))

§300.304 Evaluation procedures.

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—