



## NASET Q & A Corner

### Issue #46

## Parental Consent

### What is the definition of “consent”

When the term *consent* is used in IDEA, or the term *parental consent*, it has the same meaning as the term *informed written consent*. It means that the parent has been fully informed regarding the action of the school system for which parental consent is being requested. Here is IDEA’s verbatim definition of consent:

#### § 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.
- (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

### How does the school make sure that parents have all the information they need to give (or not give) informed consent?

By way of [prior written notice](#), that’s how. Informing the parents fully is one of the purposes of prior written notice, which is why the notice must include a comprehensive description of the action proposed by the school system.

## When will the school ask for a parent's consent?

There are certain times when the school system must ask for (and receive) parent permission before it can take certain actions. These include:

- before conducting an initial evaluation of their child;
- before conducting a re-evaluation of their child;
- before providing special education and related services to their child for the first time (§300.300);
- before inviting representatives of other agencies to participate in IEP team meetings where the transition of the child to adult life will be discussed.

There may be other times when the school will ask for and require parent consent, but these will depend on the policies in their local school system or state.

## What happens if parents don't give consent?

There are two ways in which parents can refuse to give their informed written consent:

- when parents don't respond to the school's request for consent;
- when parents explicitly refuse to give their written consent.

## So what happens, then?

What happens then will depend on the reason for which the school was seeking their consent as a parent in the first place.

### ***Consent for initial evaluation or re-evaluation***

If the school's request for parent permission was to conduct an initial evaluation or re-evaluation of their child, IDEA states that the school...

may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E ... (including the mediation procedures ...or the due process procedures... except to the extent inconsistent with State law relating to such parental consent. (§300.300)

The school system does not violate its obligations if it declines to pursue the evaluation.

Note: These provisions of IDEA *only* apply if the child is enrolled in (or seeks to be enrolled in) a public school. If the child is enrolled in a private school at parents' expense, or if the child is being home-schooled by the parents, the public school may *not* use the procedural safeguards of IDEA to override the parents' refusal to give consent.

### ***Consent for the provision of special education and related services for the first time***

If the school asks parents to give consent for the first time that special education and related services are provided to the child, and the parents do *not* give their consent, the school may *not* use IDEA's procedural safeguards (including mediation or due process) to obtain their agreement or to obtain an order that services may be provided to the child without their consent. As a result, the child will *not* receive special education and related services as part of his or her public education.

### ***Consent for the participation of representatives of other agencies***

For youth with disabilities, it's important to plan ahead and prepare for life after high school. Each time that the IEP team intends to talk about transition services for the youth with disabilities, the student must be invited to attend the IEP meeting and his or her preferences and interests for the future must be taken into consideration.

Employees of outside agencies may also be invited to the IEP meeting where transition planning will occur. This is especially important if an outside agency may be responsible for providing or paying for transition services the student needs. However, before these representatives may be invited to the IEP meeting, the school must ask for and receive the parents' consent—or the consent of the youth, if he or she has reached the [age of majority](#). You may wonder why consent of either the parent or the youth is necessary at this point. The answer is: In order to protect the confidentiality and privacy of the youth. During the meeting, representatives of other agencies will have access to the adolescent's educational records and information that permits his or her personal identification. This information may not be disclosed without the consent of the parents (or the consent of a youth who has reached the age of majority).

## **What is the difference between “consent” and “agreement”**

It's important to recognize that there is a difference between parent *consent* and *agreement* as a parent. In the school life of their child, there are many occasions when parents and the school system can agree to take certain actions for the benefit of their child. Usually, this is done orally, and that's sufficient. But an oral agreement is *not* sufficient when parental consent is required. *Consent must be in writing.*