



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES  
OFFICE OF SPECIAL EDUCATION PROGRAMS

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The Office of Special Education Programs (OSEP), within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issues this 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.

This Q & A document does not impose any additional requirements beyond those included in applicable law and regulations. It does not create or confer any rights for or on any person. The responses presented in this document generally constitute informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and are not legally binding and does not establish a policy or rule that would apply in all circumstances.

To review other Q & A documents that OSEP has provided related to COVID-19, please visit <https://sites.ed.gov/idea/topic-areas/#COVID-19>. Additional information specific to the COVID-19 pandemic may be found online at <https://www.ed.gov/coronavirus>.

## IDEA PART B PROCEDURAL SAFEGUARDS

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### 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).

These safeguards also should include a statement that indicates that the parent has been fully informed of the relevant activity and that the consent is voluntary on the part of the parent consistent with the IDEA definition of "consent" in [34 C.F.R. § 300.9](#). During the pandemic, the Department considers the use of these safeguards to be sufficient for public agencies to use in accepting electronic signatures for parental consent under IDEA for the activities described above.

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

Yes, so long as the safeguards described in Q1 above are applied and met. That is, 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](#).<sup>1</sup> [34 C.F.R. § 300.622](#). In addition, under Part B of IDEA, these safeguards should include a statement that indicates that the parent has been fully informed of the relevant activity and that the consent is voluntary on the part of the parent consistent with the IDEA definition of "consent" in [34 C.F.R. § 300.9](#).

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

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<sup>1</sup> For further information regarding consent for disclosure of PII, see [Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs Frequently Asked Questions](#) (October 2016).

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\(d\)\(2\)\(iv\)](#).

### **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.

### **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.

## 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.<sup>3</sup> See [FERPA and Virtual Learning During COVID-19](#).

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<sup>2</sup> The IDEA provisions related to access rights require that a participating agency comply with a parent's request to inspect and review their child's education records without unnecessary delay, before any meeting regarding an Individualized education program, or any due process hearing or a resolution session, and in no case more than 45 days after the request has been made. [34 C.F.R. § 300.613](#). Under FERPA and its implementing regulations, the educational agency or institution must comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request. [34 C.F.R. § 99.10](#).

<sup>3</sup> Also see, OSEP [Letter to Breton](#) (March 21, 2014)