

**POLICY GROUP 6 - SPECIAL EDUCATION
CONSENT AND PRIOR WRITTEN NOTICE**

Sec. 1. CONSENT

Consent means that:

1. 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 other mode of communication;
2. the parent understands and agrees in writing to the activity for which his or her consent is sought;
3. the consent describes that activity and lists the records (if any) that will be released and to whom; and
4. the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

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 Thus, it does not negate any action occurring after the consent was given, but before the consent was revoked.

34 CFR 300.9.

a) *Consent for Initial Evaluation*

Before International Leadership of Texas conducts an initial evaluation to determine whether a student is a student with a disability in need of special education or related services, it shall provide prior written notice, including a description of any evaluation International Leadership of Texas proposes to conduct, and obtain informed written consent for the evaluation from the parent of the student or adult student who is being proposed for an evaluation . *20 U.S.C. 1414(a)(1)(D), (E); 34 CFR 300.304(a).*

International Leadership of Texas does 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:

- International Leadership of Texas 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.

34 CFR 300.300(a)(2).

Parental consent for an initial evaluation does not constitute consent for services. *34 CFR 300.300(a)(1)(ii).*

If the parent of a child who is enrolled or seeking to be enrolled in International Leadership of Texas does not provide consent for an initial evaluation or fails to respond to a request to provide consent, International Leadership of Texas may, but is not required to, pursue the initial evaluation

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by utilizing the procedural safeguards, including the mediation or the due process hearing procedures, if appropriate. However, International Leadership of Texas does not violate its obligation under the child find duty if it declines to pursue the evaluation. *34 CFR 300.300(a)(3)(i), (ii).*

b) *Consent for Reevaluation*

International Leadership of Texas must make reasonable efforts to obtain informed parental consent before conducting any reevaluation of a child with a disability. Parental consent for a reevaluation need not be obtained if International Leadership of Texas can demonstrate that it has taken reasonable measures to obtain such consent and the parent has failed to respond. *20 U.S.C. 1414(c)(3).* When seeking written consent for a reevaluation, International Leadership of Texas must also provide prior written notice of the District's proposal to conduct a reevaluation. *See Prior Written Notice provisions below.*

If a parent refuses to consent to the reevaluation, International Leadership of Texas may, but is not required to, pursue the initial evaluation by utilizing the procedural safeguards, including the mediation or the due process hearing procedures, in order to obtain agreement or a ruling that the evaluation may be conducted. However, International Leadership of Texas does not violate its obligation under the child find duty if it declines to pursue the evaluation.

34 CFR 300.300(c)(1), (c)(2); 300.300(d)(5); 300.322(d)

c) *Psychological Examinations and Tests*

On request of a child's parent, before obtaining the parent's consent for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, International Leadership of Texas shall provide to the child's parent:

1. The name and type of the examination or test; and
2. An explanation of how the examination or test will be used to develop an appropriate Individualized Education Program ("IEP") for the child.

If International Leadership of Texas determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent, International Leadership of Texas shall provide the information above to the parent regarding the additional examination or test and shall obtain additional consent for the examination or test. If the parent does not give consent for the additional examination or test within 20 calendar days after the date International Leadership of Texas provided to the parent the required information about the additional examination or test and its use, the parent's consent is considered denied. *Education Code 29.0041(a), (b), (c).*

d) *Actions that do not require consent.*

Parental consent is not required before International Leadership of Texas:

1. screens a student to determine strategies for implementing the curriculum;

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2. reviews existing evaluation data (REED) as part of the student's evaluation or a reevaluation; or
3. gives the student a test or other evaluation that is given to all students unless, before that test or evaluation, consent is required from parents of all students.

34 CFR 300.300(d); 34 CFR 300.302

e) *Consent for Services*

Once a student has been identified as a student with a disability in need of special education services and the ARD Committee has developed the student's initial IEP, before initiating the provision of special education and related services, International Leadership of Texas must provide the parent or adult student prior written notice of the ARD Committee's decisions regarding the services and obtain informed consent from the parent or adult student before providing special education and related services to the student. *20 U.S.C. 1414(a)(1)(D); 34 CFR 300.300(b)(1).*

International Leadership of Texas must make reasonable efforts to obtain informed consent for the initial provision of services. *34 CFR 300.300(b)(2), 300.300(d)(5), 300.322(d).* However, if the parent refuses to respond or refuses to consent to the initial provision of special education and related services, International Leadership of Texas may not use mediation, due process procedures or any other procedural safeguards under the IDEA, in order to obtain agreement or a ruling that services may be provided to the child. International Leadership of Texas will not be liable for failure to provide a free appropriate public education (FAPE) to the student where the student refuses to provide consent or fails to respond and is not required to convene an ARD Committee meeting to develop an IEP for the student. *34 CFR 300.300(b)(3).*

International Leadership of Texas must grant the parent's request to revoke consent for the continued provision of special education and related services, so long as the parent has revoked consent in writing. If the parent revokes consent for the continued provision of special education and related services at any time after the initial provision of services, International Leadership of Texas must stop providing special education and related services to the student. However, International Leadership of Texas must provide Prior Written Notice to the parent before discontinuing the provision of special education and related services. *See Prior Written Notice procedures below.* The Prior Written Notice must explain the change in the educational program that will result from the parent's revocation of services and give the parent the information and time to consider fully the ramifications of the revocation of consent. *34 CFR 300.300(b)(4).* If the parent revokes consent in writing for his or her child's receipt of services after the child is initially provided special education and related services, International Leadership of Texas is not required to amend the child's education records to remove any references to the child's receipt of services because of the revocation of consent. *34 CFR 300.9(c)(3).* Revocation of consent is not retroactive and does not negate any action occurring after the consent was given but before the consent was revoked. *34 CFR 300.9(c)(2).*

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Once International Leadership of Texas has properly discontinued the provision of special education and related services upon a parent's revocation of services, the child becomes a general education student. As a result, International Leadership of Texas may place the student in accordance with the placement procedures of general education students. However, the fact that a parent revoked consent does not impact a parent's right to request subsequent evaluations for eligibility. Such a request will be treated as a request for an initial evaluation.

f) *Consent to Excuse Member from Attending ARD Committee Meeting*

The IDEA dictates who must attend an ARD Committee meeting. With written agreement from the parent and International Leadership of Texas, a member of the ARD Committee may not be required to attend a specific meeting if the member's area of curriculum or related services is not being modified or discussed in the meeting. Even where an ARD Committee member's area of curriculum or related services is being modified or discussed, the member may be excused from attending the meeting, in whole or in part, if the parent and International Leadership of Texas consent to the excusal in writing and the member submits input into the development of the IEP in writing to the parent and the ARD Committee prior to the meeting. However, International Leadership of Texas must obtain informed consent from the parent before excusing a required member from attending an ARD Committee meeting, in whole or in part. *34 CFR 300.321(e)(2)(i); 19 TAC 89.1050(c)(4)*.

These excusal and consent requirements do not apply to the following ARD Committee members: the parent, the student with a disability, an adult student following a transfer of rights, and/or a discretionary member (i.e. an individual not required by the IDEA to attend the ARD Committee meeting, but who has been invited at the discretion of the parent or the District as a person with relevant knowledge or special expertise regarding the student).

g) *Parental Consent to Access Public Benefits and Private Insurance*

With the written consent of the parent/adult student, International Leadership of Texas may use Medicaid or other public benefits or insurance programs in which the student participates to provide or pay for services required under the IDEA, as allowed under the public benefits or insurance program. However, prior to accessing the child's or the parent's public benefits or insurance for the first time, and annually thereafter, International Leadership of Texas must provide written notice to the parent regarding International Leadership of Texas's access to the public benefits and the requirements of consent. International Leadership of Texas may not refuse to provide special education services to an eligible student with a need simply because the parent refuses to consent to access the student's or parent's public insurance or benefits. *34 CFR 300.154(d)(2)*.

International Leadership of Texas may access the parent's private insurance proceeds to pay for special education and related services required to provide the student FAPE so long as International Leadership of Texas obtains informed consent from the parent each time International Leadership of Texas proposes to access the parent's private insurance proceeds. *34 CFR 300.154(e)*

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h) *Parental Consent for Transfer of Assistive Technology Devices*

When the child or adult student with a disability using an assistive technology device (“ATD”) that International Leadership of Texas has purchased for the student enrolls in another campus within International Leadership of Texas or leaves International Leadership of Texas altogether, International Leadership of Texas may transfer the ATD to the school or LEA in which the student enrolls, a state agency that provides services to the student following graduation from high school, or to the student’s parents or the adult student.

However, International Leadership of Texas shall obtain informed consent from the parent or the adult student if the adult student has the legal capacity to enter into a contract before transferring an assistive technology device through a transfer agreement that incorporates the standards of the state. International Leadership of Texas can transfer the ATDs without informed parental or adult student consent if International Leadership of Texas can demonstrate that it has taken reasonable measures to obtain the consent and the parent or adult student has failed to respond. *19 TAC 89.1056(b); Education Code 30.0015(b), 30.0015(c)(3).*

i) *Consent for Disclosure of Confidential Information*

A student’s personally identifiable information is protected from disclosure under the Family Education Rights and Privacy Act (“FERPA”). Generally, International Leadership of Texas must obtain informed consent from the parent before disclosing personally identifiable information to third parties, except in certain circumstances.

Circumstances when informed consent is required to disclose confidential information of a special education student include:

- When disclosure is to officials of agencies providing or paying for transition services;
- When International Leadership of Texas invites a representative of a participating agency to join the ARD Committee if the agency is likely to be responsible for providing or paying for transition services; and
- If the child is enrolled or is going to enroll in a private school, when disclosure is to the school district where the private school is located.

34 CFR 300.622(a), (b)

Sec. 2. PRIOR WRITTEN NOTICE

International Leadership of Texas must provide Prior Written Notice to a parent before it:

- Proposes or refuses to initiate or change the identification of the student;
- Proposes or refuses to initiate or change the evaluation of the student;
- Proposes or refuses to initiate or change the educational placement of the student;

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- Proposes or refuses to initiate or change the provision of a free appropriate public education (FAPE) to the student;
- Proposes to convene an ARD Committee meeting as part of the invitation to the admission review, and dismissal meeting;
- Implements an IEP with which the parent disagrees; or
- Ceases the provision of special education and related services due to the parent's revocation of consent for services.

19 TAC 89.1050(g); 34 CFR 300.503(a), 300.300(b)(4)(i)

a) *How and When the Prior Written Notice Must Be Provided*

International Leadership of Texas must provide the Prior Written Notice at least five school days before International Leadership of Texas proposes or refuses the action, unless the parent agrees to a shorter timeframe. *34 CFR 300.503(a); 19 TAC 89.1050(g)*

If the parent submits a written request to the International Leadership of Texas's Special Education Director or to an International Leadership of Texas administrative employee, such as a campus principal, for an initial evaluation of the parent's child for special education services, International Leadership of Texas must, not later than the 15th school day after the date of receipt of the request, either:

- Provide the parent with Prior Written Notice of its proposal to conduct an evaluation, a copy of the Notice of Procedural Safeguards, a copy of the Overview of Special Education for Parents form created by TEA, and an opportunity to given written consent for the initial evaluation.
- Provide the parent with Prior Written Notice of its refusal to conduct an evaluation, a copy of the Notice of Procedural Safeguards, and a copy of the Overview of Special Education for Parents form created by TEA.

19 TAC 89.1011(b); 34 CFR 300.503(a), 300.504(a)

b) *Content of the Prior Written Notice*

International Leadership of Texas must include the following in the Prior Written Notice:

- A description of the action proposed by International Leadership of Texas;
- An explanation of why International Leadership of Texas proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report International Leadership of Texas used as a basis for the proposed or refused action;
- A description of other options that the ARD Committee considered and the reasons why those options were rejected;

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- A description of any other factors that are relevant to International Leadership of Texas's proposal or refusal;
- A statement that the parent has protection under the procedural safeguards of the IDEA, and if the notice is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards can be obtained; and
- Sources for the parents to contact to obtain assistance in understanding the IDEA;

If International Leadership of Texas is proposing to conduct an evaluation, it must also include in the Prior Written Notice a description of any evaluation procedure it proposes to conduct.

34 CFR 300.503(b), 300.304(a).

c) *Language and Understandability of Prior Written Notice*

International Leadership of Texas must provide prior written notice in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. *34 CFR 300.503(c), 300.504(d)*. If the native language or other mode of communication of the parent is not a written language, International Leadership of Texas must take steps to ensure that the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication and that the parent understands the content of the notice. *34 CFR 300.503(c)(2)*. A parent of a child with a disability may elect to receive prior written notice by an electronic mail communication, if International Leadership of Texas makes that option available. *34 CFR 300.505*.