

Procedural Safeguards Manual for Parents

(Parental Rights in Special Education)

November 2018



State of Iowa
Department of Education
Grimes State Office Building
400 E. 14th Street
Des Moines, IA 50319-0146

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Senate File 475 Statement: This document is required by federal law. 34 C.F.R. § 300.500.

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Appendix C: IDEA Part B Written Notification Regarding Use of Public Benefits or Insurance

You are receiving this written notification to give you information about your rights and protections under Part B of the Individuals with Disabilities Education Act (IDEA), so you can make an informed decision about whether you should give your written consent to allow your school district or AEA to use your or your child's public benefits or insurance to pay for special education and related services that your school district or AEA is required to provide at no cost to you and your child under IDEA. The IDEA requires that you be informed of your rights and protections when your school district or AEA seeks to use your or your child's public benefits or insurance to pay for special education and related services.

Note: Although not all families are eligible for Medicaid, the Iowa Department of Education is including this required notice in this Procedural Safeguards Manual to ensure that all parents who are supposed to receive it do so.

Notification Requirements

The following sections explain when you must receive this notification and what information must be included in the notification.

- You must receive this notification: before your school district or AEA seeks to use your or your child's public benefits or insurance for the first time and before it obtains your consent to use those benefits or insurance for the first time (the consent requirement is described below); and
- annually after that.

This notification must be:

- written;
- in language understandable to the general public; and
- in your native language or in another mode of communication you use, unless it is clearly not feasible to do so.

This notification will explain:

- the consent that your school district or AEA must obtain from you before it can use your or your child's public benefits or insurance for the first time;
- IDEA's "no cost" provisions that apply to your school district or AEA if it seeks to use your or your child's public benefits or insurance;
- your right to withdraw your consent to the disclosure of your child's personally identifiable information to your State's public benefits or insurance program agency at any time; and
- your school district's continuing responsibility to ensure that your child is provided all required special education and related services at no charge to you or your child, even if you withdraw your consent or refuse to provide consent.

Consent Requirements

If your school district or AEA has not accessed your public benefits or insurance in the past to pay for services that it was required to provide your child under IDEA at no charge to you or your child, all of the parental consent requirements described below apply.

Before your school district or AEA can use your or your child's public benefits or insurance for the first time to pay for special education and related services under IDEA, it must obtain your signed and dated written consent. Generally, your school district or AEA will provide you with a consent form for you to sign and date. Note that your school district or AEA is only required to obtain your consent one time. This consent requirement has two parts.

1. Consent for Disclosure of Your Child's Personally Identifiable Information to the State agency responsible for administering your State's Public Benefits or Insurance Program
Under Federal law—the Family Educational Rights and Privacy Act (FERPA) and the confidentiality of information provisions in IDEA—your school district or AEA is required to obtain your written consent before disclosing personally identifiable information (such as your child's name, address, social security number, student number, IEP, or evaluation results) from your child's education records to a party other than your school district or AEA, with some exceptions. In this situation, your school district or AEA is required to obtain your consent before disclosing personally identifiable information for billing purposes to the Department of Human Services, the state agency that administers the public benefits or insurance program. Your consent must specify the personally identifiable information that your school district or AEA may disclose (for example, records or information about the services that may be provided to your child), the purpose of the disclosure (for example, billing for special education and related services), and the agency to which your school district or AEA may disclose the information (for example, Medicaid or other agency in your State that administers the public benefits or insurance program).

If you choose to provide consent and your child's personally identifiable information is disclosed to the Department of Human Services, you may request and receive from your school district or AEA a copy of the records it disclosed to that agency.

2. Statement to Access Public Benefits or Insurance

Your consent must include a statement specifying that you understand and agree that your school district or AEA may use your or your child's public benefits or insurance to pay for services under 34 CFR part 300, which are special education and related services under IDEA.

Both parts of this consent requirement apply to the school district or AEA that is responsible for serving your child under IDEA. For example, if your child moves to a new school within the same school district, you would not be required to provide a new consent because the same school district is still responsible for serving your child under IDEA. But if you enroll your child in a new school in a new school district, the new school district that is responsible for serving your child under IDEA must obtain a new consent from you before it can bill your child's public benefits or insurance program for the first time. The consent you would provide to your child's new school district must include both parts of the consent as described above. The same analysis would apply to services provided by your AEA. If you move to a different district within the same AEA, you would not need to provide a new consent for AEA services.

Previous Consent

If you gave your consent in the past for your school district or AEA to access your or your child's public benefits or insurance to pay for special education and related services under IDEA, your school district or AEA is not required to obtain a new consent from you if the following two conditions are present:

1. There is no change in any of the following: the type of services to be provided to your child (for example, physical therapy or speech therapy); the amount of services to be provided to your child (for example, hours per week lasting for the school year); or the cost of the services (that is, the amount charged to the public benefits or insurance program); and
2. Your school district or AEA has on file the consent you previously provided. This previous consent must meet the requirements that were in effect under the prior IDEA regulations, and your school district or AEA will know what requirements applied under those prior regulations. An example of a previous consent your school district or AEA may have on file is a parental consent form you gave directly to another agency, such as Iowa's Medicaid agency.

Even if your school district or AEA is not required to obtain a new consent from you, your school district or AEA still must provide you with this notification before it may continue to bill your or your child's public benefits or insurance program to pay for special education and related services under IDEA.

If your school district or AEA already has on file your consent to use your or your child's public benefits or insurance to pay for special education and related services under IDEA, your school district or AEA must request that you provide a new consent when there is a change in any of the following: the type (for example, physical therapy or speech therapy), amount (for example, hours per week lasting for the school year), or cost of services (that is, the amount charged to the public benefits or insurance program).

An example of a change in the type of services would be that your child would receive speech therapy in addition to physical therapy and therefore, the services billed to your public benefits or insurance program would be different. An example of a change in the amount of services would be if your child was previously receiving three hours per week of physical therapy and will now be receiving two hours per week. An example of a change in the cost of your child's services would occur if the amount billed to the public benefits or insurance program for a particular service increases or decreases.

If any of these changes occur, your school district or AEA must obtain from you a one-time consent, specifying that you understand and agree that your school district or AEA may access your or your child's public benefits or insurance to pay for special education and related services under IDEA. Before you provide your school district or AEA the new, one-time consent, your school district or AEA must provide you with this notification. Once you provide this one-time consent, you will not be required to provide your school district or AEA with any additional consent in order for it to access your or your child's public benefits or insurance if your child's services change in the future. However, your school district or AEA must continue to provide you with this notification annually.

No Cost Provisions

The IDEA "no cost" protections regarding the use of public benefits or insurance are as follows:

1. Your school district or AEA may not require you to sign up for, or enroll in, a public benefits or insurance program in order for your child to receive FAPE. This means that your school district or AEA may not make your enrollment in a public benefits or insurance program a condition of providing your child the services it is required to provide your child under IDEA at no charge to you or your child.
2. Your school district or AEA may not require you to pay an out-of-pocket expense, such as the payment of a deductible or co-pay amount for filing a claim for services that your school district or AEA is otherwise required to provide your child without charge. For example, if your child's IEP includes speech therapy and your insurance requires a \$25 co-pay or deductible payment for a session, you could not be charged the \$25. Your school district or AEA would need to pay the cost of your co-pay or deductible in order to bill your or your child's public benefits or insurance program for the particular service.
3. Your school district or AEA may not use your or your child's public benefits or insurance if using those benefits or insurance would:
 - a. Decrease your available lifetime coverage or any other insured benefit, such as a decrease in your plan's allowable number of physical therapy sessions available to your child or a decrease in your plan's allowable number of sessions for mental health services;
 - b. Cause you to pay for services that would otherwise be covered by your public benefits or insurance program because your child also requires those services outside of the time your child is in school;
 - c. Increase your premium or lead to the cancelation of your public benefits or insurance; or
 - d. Cause you to risk the loss of your or your child's eligibility for home and community based waivers that are based on your total health-related expenditures.

Withdrawal of Consent

If you provided your consent for your school district or AEA to disclose your child's personally identifiable information to the Department of Human Services for purposes of accessing a public benefits or insurance program, you have the right under 34 CFR part 99 (FERPA regulations) and 34 CFR part 300 (IDEA regulations) to withdraw that consent at any time.

If you do not want your school district or AEA to continue to bill your or your child's public benefits or insurance program for special education and related services under IDEA, you would need to withdraw your consent to disclosure of your child's personally identifiable information by your school district or AEA to the Department of Human Services. The FERPA and IDEA regulations, however, do not contain procedures for withdrawal of consent to disclosure of your child's personally identifiable information. If you wish to withdraw your consent, you should ask your school district or AEA what procedures you would need to follow. For example, your school district or AEA may ask you to submit your withdrawal request in writing.

What Happens After You Refuse to Provide Your Consent or You Withdraw Your Consent?

Without your consent, your school district or AEA cannot bill your or your child's public benefits or insurance program to pay for special education and related services that it is required to provide your child under IDEA at no charge to you or your child. If you withdraw your consent or refuse to provide consent under the FERPA and IDEA regulations, your school district or AEA may not use your withdrawal of consent or refusal to provide consent to disclose personally identifiable information to a public benefits or insurance program to deny your child the special education and related services he or she is otherwise entitled to receive under IDEA. Therefore, if you refuse to provide consent or withdraw consent, your school district or AEA has a continuing responsibility to ensure that your child is provided all required services necessary to receive an appropriate education at no charge to you or your child.

We hope this information is helpful to you in making an informed decision regarding whether to allow your school district or AEA to use your or your child's public benefits or insurance to pay for special education and related services under IDEA.

For additional information and guidance on the requirements governing the use of public benefits or insurance to pay for special education and related services see:
<http://www2.ed.gov/policy/speced/reg/idea/part-b/part-b-parental-consent.html>. You can also contact the resources listed at the start of this Manual

