

# XIII. Consent (Evaluation and Placement)

| IDEA Regulations: Parent Consent   | Nebraska Rule 51: Parent Consent   |
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| <p><b>Section 300.9 Consent.</b></p> <p>Consent means that—</p> <p><b>(a)</b> 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;</p> <p><b>(b)</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</p> <p><b>(c)</b></p> <ol style="list-style-type: none"><li>1. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.</li><li>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retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).</li><li>3. If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.</li></ol> | <p><b>92 NAC 51-003.09</b></p> <p>Consent means that 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; that the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; that the consent includes a description of the proposed activity and a list of records (if any) which will be released and to whom they will be released; and the parent understands that the granting of consent is voluntary and may be revoked at any time. 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retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the school district or approved cooperative is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.</p> <p><b>Parental Consent</b><br/><b>92 NAC 51-009.08</b></p> <p><b>009.08A.</b> Parental Consent for Initial Evaluations</p> <p><b>009.08A1.</b> The school district or approved cooperative proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 92 NAC 51-003.08 must obtain informed consent, consistent with 92 NAC 51-003.09, from the parent of the child before conducting the evaluation.</p> |

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### Section 300.300 Parental consent

#### (a) Parental consent for initial evaluation.

1.
  - i. The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 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.
  - ii. Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
  - iii. The public agency 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 public agency 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 public agency cannot discover the whereabouts of the parent of the child;
  - ii. The rights of the parents of the child have been terminated in accordance with State law; or

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**009.08A2.** Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

**009.08A3.** The school district or approved cooperative 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.

**009.08A4.** For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the school district or approved cooperative 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:

**009.08A4a.** Despite reasonable efforts to do so, the school district or approved cooperative cannot discover the whereabouts of the parent of the child;

**009.08A4b.** The rights of the parents of the child have been terminated in accordance with the State law; or

**009.08A4c.** The rights of the parent to make educational decisions have been subrogated 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.

**009.08A5.** 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 92 NAC 51-009.08A1 or the parent fails to respond to a request to provide consent, the school district or approved cooperative may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in 92 NAC

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- iii. The rights of the parent to make educational decisions have been subrogated 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 public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.
  - ii. The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.
- (b) Parental consent for services.**
- 1. A public agency 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 special education and related services to the child.
  - 2. The public agency must make reasonable efforts to obtain informed consent from the

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51-009 (including the mediation procedures or the due process procedures), if appropriate.

**009.08A5a.** The school district or approved cooperative does not violate its obligation under 92 NAC 51-006 to locate and identify the child as a child with a disability if it declines to pursue the evaluation.

### **009.08B. Consent for Services**

**009.08B1.** A school district or approved cooperative 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 special education and related services to the child.

**009.08B1a.** Participation in or attendance at programs by children with verified disabilities from date of diagnosis to age five shall be voluntary as specified by the parent.

**009.08B2.** The school district or approved cooperative must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

**009.08B3.** If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services the school district or approved cooperative:

**009.08B3a.** May not use the procedures in 92 NAC 51-009 (including the mediation procedures or the due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child.

**009.08B3b.** Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide

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parent for the initial provision of special education 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 special education and related services, the public agency—
  - i. May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) 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 special education 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 under §§300.320 and 300.324 for the child.
4. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—
  - i. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;

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the child with the special education and related services for which the parent refuses to or fails to provide consent; and

**009.08B3c.** Is not required to convene an IEP team meeting or develop an IEP under 92 NAC 51-007 for the child.

**009.08B4.** If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school district or approved cooperative:

**009.08B4a.** May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 92 NAC 51-009.05 before ceasing the provision of special education and related services.

**009.08B4b.** May not use the procedures in 92 NAC 51-009 (including the mediation procedures and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child.

**009.08B4c.** Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide the child with further special education and related services; and

**009.08B4d.** Is not required to convene an IEP team meeting or develop an IEP under 92 NAC 51-007 for the child for further provision of special education and related services.

### **009.08C.** Consent for Reevaluations

**009.08C1.** Subject to 92 NAC 51-009.08C2, each school district or approved cooperative must obtain informed parental consent, in

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- ii. May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
- iii. 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 special education and related services; and
- iv. Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for further provision of special education and related services.

### (c) Parental consent for reevaluations.

1. Subject to paragraph (c)(2) of this section, each public agency—
  - i. Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.
  - ii. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.
  - iii. 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.

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accordance with 92 NAC 51-009.08A1, prior to conducting any reevaluation of a child with a disability.

**009.08C1a.** If the parent refuses to consent to the reevaluation, the school district or approved cooperative may, but is not required to, pursue the reevaluation by using the consent override procedures described in 92 NAC 51-009.08A5. The school district or approved cooperative does not violate its obligation to locate and identify the child as a child with a disability if it declines to pursue the evaluation or reevaluation.

**009.08C2.** The informed parental consent described in 92 NAC 51-009.08C1 need not be obtained if the school district or approved cooperative can demonstrate that:

**009.08C2a.** It made reasonable efforts to obtain such consent; and

**009.08C2b.** The child's parent has failed to respond.

### **009.08D.** Other Consent Requirements

**009.08D1.** Parental consent is not required before:

**009.08D1a.** Reviewing existing data as part of an evaluation or a reevaluation; or

**009.08D1b.** 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.

**009.08D2.** A school district or approved cooperative may not use a parent's refusal to consent to one service or activity under 92 NAC 51-009.08A, 92 NAC 51-009.08B or 92 NAC 51-009.08C to deny the parent or



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2. The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—
  - i. It made reasonable efforts 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. In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with FAPE.
  3. A public agency may not use a parent’s refusal to consent to one service or activity under paragraphs (a), (b), (c), or (d)(2) 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.

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child any other service, benefit, or activity of the school district or approved cooperative, except as required by this Chapter.

**009.08D3.** If a parent of a child who is home schooled or placed in a nonpublic school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district or approved cooperative may not use the consent override procedures (described in 92 NAC 51-009.08A5 and 009.08C1); and

**009.08D3a.** The school district or approved cooperative is not required to consider the child as eligible for services under 92 NAC 51-015.

**009.08D4.** To meet the reasonable efforts requirement in 92 NAC 51-009.08A3, 009.08A4a, 009.08B2, and 009.08C2a, the school district or approved cooperative must document its attempts to obtain parental consent using the procedures in 92 NAC 51-007.06.

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4.
  - i. If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the 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 §§300.132 through 300.144.
5. 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 §300.322(d).

# District Considerations for Policy and Procedure Development

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## Sample district policy statements

[Xyz school district] staff will provide the parent, guardian, or appointed surrogate (when applicable) with information regarding decisions to evaluate (what they are proposing or rejecting, reasons for decisions, all options considered, why other options were rejected, what information was used to make decisions, and any other relevant information). Staff will review evaluation assessment plans with parents and will seek written permission for evaluation on the district consent form which will provide state and Federal requirements consistent with 300.9 and 92 51-009.08. Informed consent for special education placement will be obtained on the IEP form before services are initiated. Revocation of consent for evaluation or services must be documented by the parent in writing. (Consider adding in a statement regarding “reasonable efforts” [see Federal and state rule above] and if you do so, define what the district will consider as “reasonable efforts” within the policy).

## Procedural considerations

- Who is responsible for explaining and providing the parent, guardian, or appointed surrogate with a copy of their procedural safeguards at the time of consent?
- What are the needed steps if the parent, guardian, or appointed surrogate is not native English speaker or his or her primary language is not English?
- What are the needed steps if the parent, guardian, or appointed surrogate does not come in person to meetings in order to obtain informed consent and maintain FERPA?
- What steps should teams follow if the parent, guardian, or appointed surrogate is nonresponsive?
- Are the procedures different for students who are in private school or home school?
- What is needed for a consent override situation? Who needs to be involved?
  - » For consent for evaluation?
  - » For consent for initial provision of special education and related services

## Guidance resources

- [Center for Parent Information and Resources: Parent Consent in Special Education](#)
- [OSEP Policy Documents Regarding the Education of Infants, Toddlers, Children and Youth with Disabilities: Evaluations, Parental Consent, and Reevaluations](#)