

**Colorado Department of Education
IEP Questions and Answers**

Note: This is a policy interpretation document issued by the Colorado Department of Education and does not constitute legal advice. If you need legal advice, please contact your legal counsel.

1. Parental Consent for Evaluation

a. What date triggers the timelines for an initial evaluation?

The date of *receipt* of the parent’s written consent for evaluation triggers the timeline for the initial evaluation. The IDEA 2004 regulations explicitly state that the 60 calendar day time frame for conducting an initial evaluation begins when the public agency¹ receives the parental consent for evaluation. The corresponding ECEA rule requires that the initial evaluation be *completed* within 60 calendar days from the point of initial referral which is based on when the parent provides written consent. A field for “date consent received” was added to the state recommended “consent to evaluate” form for this reason.

***Federal Register, v.71 No 156, Preamble at p. 46636 (Monday Aug. 14, 2006)²
34 C.F.R. §300.301(c)(1)(i)³
1 C.C.R. 301-8 2220-R-4.02(3)(c)(ii)⁴***

The Federal Register with IDEA regulations and the ECEA Rules are available on the CDE website at <http://www.cde.state.co.us/cdesped/lawsregs.asp>

b. Which date of Consent for Evaluation should be used on the End of Year report?

Currently, the End of Year report prompt asks for the date of parental consent for evaluation. However, administrative units may use the date of receipt of consent for evaluation for their End of Year report. CDE is working on modifying this prompt for next year’s End of Year data collection.

2. Prior Written Notice

Is CDE going to combine the Prior Written Notice for Consent for Initial Provision of Special Education and Related Services with the Prior Written Notice for IEP development?

¹ For purposes of this document only, the IDEA term “public agency”, as applied to Colorado, refers to special education administrative units and state-operated programs. For ease of reference, the term “administrative unit” or “AU”, when used in this document, includes state-operated programs.

² Hereinafter, references to the Preamble of the IDEA 2004 regulations (contained in the August 14, 2006 Federal Register) will be referred to as the “Preamble” and by page number (e.g., Preamble at p. 46643)

³ Hereinafter, the IDEA 2004 regulations will be referred to by section number (e.g., IDEA §300.000)

⁴ Hereinafter, the Rules for the Administration of the Exceptional Children’s Educational Act will be referred to by rule number (e.g., ECEA Rule 1.11)

No. The purposes to be served by the prior written notice (PWN) for parental consent for the initial provision of services and the PWN for the proposed initial IEP are different as are the related implications/consequences.

- a) Prior written notice for consent for initial provision of special education and related services. The purpose of the PWN for consent for initial provision of special education and related services is to *fully inform* the parent of the public agency's proposal to initiate, *for the first time*, the provision of special education and related services to the student so that the parent's is able to provide "informed consent."

The definition of *consent* requires a parent to be fully informed of all information relevant to the activity for which consent is sought...Whenever *consent* is used in [the IDEA 2004] regulations, it means that the consent is both informed and in writing.

IDEA §300.9
Preamble at p. 46551, column 3

"Fully informed," in this context, means that a parent has been given an explanation of what special education and related services are and the types of services that might be found to be needed by their child, rather than the exact program of services that would be included in an IEP.

Preamble at p. 46634, column 3

At this juncture of the special education process, the parent has the right to refuse special education services for his/her student. Under current law, if a parent refuses to consent to the initial provision of special education services, the special education process ends and there is no recourse for the public agency. If, however, the parent refuses or otherwise fails to consent to the initial provision of special education services, then the public agency:

- Is not required to provide FAPE to the student;
- Is not required to develop the initial IEP for the student; and
- Is not deemed to have knowledge that the child is a child with a disability for purposes of affording to the student the IDEA disciplinary protections available to children with disabilities.

IDEA §§300.300(b)(3), 300.300(b)(4) and 300.534(c)(1)(ii)

- b) Prior written notice regarding the proposed initial IEP. The purpose of the PWN for the proposed initial IEP is to inform the parent of the *exact* program of services that are included in the initial IEP. The parent does not have the right to consent to the proposed initial IEP (or any future IEP). The parent does have the right to seek resolution of any disagreement with the proposed initial IEP by exercising his/her dispute resolution options – (mediation, state complaint and due process complaint). The elements of PWN have been integrated into the state recommended IEP form.

The public agency may decide to delay obtaining informed consent for initial provision of services until the initial IEP is developed. In such a case, the public agency must provide prior written notice to the parent that satisfies both the

requirements for obtaining informed consent for initial provision of services and informing parents of the proposed services that would be included in the initial IEP.⁵ One "document" may well be able to serve both functions. Administrative units have the flexibility to develop a form, the purpose of which is to provide prior written notice that addresses consent for initial provision of special education services and the proposed initial IEP. If one document is used for both circumstances, care should be taken to explain to parents the purposes and implications of PWN for consent for initial provision for special education services and PWN for the proposed initial IEP.

3. Parental Consent for Initial Provision of Special Education and Related Services

a. What is the status on the proposed rules regarding parents' ability to revoke Consent to the Provision of Special Education and Related Services?

On May 13, 2008, the U.S. Department of Education issued a notice of proposed rule making for amending some of the IDEA regulations. One of the proposed regulations would allow parents to unilaterally withdraw their children from further receipt of special education and related services by revoking consent for the continued provision of special education and related services to their children. The public comment period closed on July 28, 2008. When the final rules are published, CDE will notify administrative units of the changes.

Federal Register, v.73, No. 93, pp. 27691-92 (Tuesday, May 13, 2008)

b. Are there any regulations or proposed rules that speak to a parent picking and choosing services/supports?

No current or proposed rules contemplate allowing a parent to select an individual special education or related service. However, there is additional guidance in the Preamble at p. 46634:

"We understand the commenters' concern that a parent of a child with a disability who refuses to consent to the provision of special education and related services may not fully understand the extent of the special education and related services their child would receive without the development of an IEP for their child. However, we do not view the consent provisions of the Act as creating the right of parents to consent to each specific special education and related service that their child receives. Instead, we believe that parents have the right to consent to the initial provision of special education and related services."

4. FAPE Limitations

a. Does a GED stop eligibility for special education?

No. The IDEA 2004 has new language in the regulations involving the limitations to the FAPE obligation. The obligation to make a FAPE available has always been limited by graduation with a regular high school diploma. In the 2004 IDEA reauthorization, the new regulations specifically provide:

⁵ See, *Questions and Answers on Individualize Education Programs (IEPs), Evaluations, and Reevaluations, Question D-3*, U.S. Department of Education, Office of Special Education Programs (January 2007)

“[T]he term regular high school diploma does not include an alternative degree that is not fully aligned with the state’s academic standards, such as a certificate or a general educational development credential (GED).”

IDEA §300.102(a)(3)(iv)

b. Is this due to Colorado definition of drop out?

No, it is an IDEA 2004 requirement.

c. Are districts obligated to provide special education and related services for students who have earned a GED and who have an identified disability?

Yes.

d. If so, is the student entitled to FAPE and general education services?

The student is a special education student and, like any other special education student, is entitled to a FAPE in the least restrictive environment, which includes access to the general education curriculum and often means placement in the general education setting.

e. Are districts eligible to collect PPOR?

The CDE’s Exceptional Student Leadership and School Finance Units are researching the funding options for students who obtain their GED and who also remain eligible for special education and related services. As information becomes available, we will notify the administrative units.

f. If this obligation exists, what are the implications for Child Find?

The Child Find obligation extends to children ages 3 – 21 who may be eligible to receive special education services.

IDEA §300.111

5. Preschool Child with a Disability

a. Is there any further direction re: section 14 – i.e. separate IEP for preschool 3-5 year olds – or specific questions to that age level, and in the meantime what is recommended?

We are unable to respond to this question without further clarification.

b. The "Preschool Child with a Disability" eligibility form states:

“A preschool child with a disability shall be three to five years of age and shall, by reason of one or more of the following conditions, be unable to receive reasonable educational benefit from general education: long-term physical impairment or illness, significant

limited intellectual capacity, significant identifiable emotional disorder, specific learning disability or speech language impairment.
Note: For a preschool child, who qualifies according to one of the categorical conditions listed in this definition above, complete the Determination of Eligibility form for the appropriate disability.

Does this mean two different eligibility forms should be completed?

The category of "Preschool Child with a Disability" is a category in itself and you do not have to also complete a determination of eligibility form for a separate disability area.

If a child is eligible for special education under one of the categorical conditions, only that form should be used.

The category of "Preschool Child with a Disability" is reserved for children who have multiple conditions where it is not clear if there is only one condition that causes the delay.

7. **On the Determination of Eligibility forms: Question #2 changes based on the disability (i.e. SLD) Question #2 states "that the student CAN receive reasonable educational benefit....." then on the Speech/Language disability Question #2 states "that the student CANNOT receive reasonable educational benefit from general education alone....." Question #2 is always answered with yes or no.**

Thank you for pointing out this inconsistency. This has been corrected and is now posted on the website at: <http://www.cde.state.co.us/cdesped/IEPmain.asp>

8. Evaluations

- a. **Is the date by which the entire evaluation has been completed a data reporting element?**

The *initial* evaluation must be completed within 60 calendar days from the point of the initiation of the special education referral. The date that the evaluation is completed is a data reporting element for State Performance Plan (SPP) Indicator 11 and is a part of the End of Year data collection. There is no data reporting requirements for reevaluations. However, reevaluations must occur at least once every 3 years unless the parent and the public agency agree that the reevaluation is unnecessary.

ECEA Rule 4.02(3)(c)

- b. **When is an evaluation complete?**

An evaluation is complete when there is nothing else to be done in the evaluation including recording of results and analysis of assessment data and completion of the evaluation report.

9. Transfer Students

- a. **When a student transfers into a school district, does the receiving school district need a new Initial Consent for Special Education and Related Services?**

Sometimes. When a student transfers into a public agency, the IDEA requires the public agency to take reasonable steps to promptly obtain the student's records from the previous public agency. If the public agency receives the child's records, but the records do not include documentation of the consent for initial provision of special education services, then the receiving public agency must obtain a new consent for initial provision of special education services.

IDEA §300.323(g)(1)

b. Is documentation of the Initial Consent for Special Education and Related Services a CIMP citation area or just a best practice?

Documentation of Consent for Initial Provision of Special Education Services is a related requirement for SPP Indicator 8 and is reviewed as part of the student record review in the CIMP process. Please see attached OSEP document entitled "Part B-SPP/APR Related Requirements" at page 16.

IDEA §300.300(b)(1)
ECEA Rule 4.01