

Special Education Informed Consent

Legal Requirements and Best Practices



TEA Texas Education Agency | **Texas SPED Support**

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Resources

Special Education Informed Consent Quick Guide

What is informed consent?

Informed consent is a process where the scope of evaluation or provision of services being proposed is fully explained to the parent or adult student. Informed means the individual providing consent has a clear and complete understanding of the activity before voluntarily agreeing in writing. It is the legal and ethical responsibility of the professional obtaining consent to ensure the parent or adult student has been provided all information relevant to the action proposed.

The term "parent(s)" will be used throughout this quick guide but is aligned to [34.CSR.1303.30](#).

What is required when seeking to obtain informed consent?

Before conducting an initial evaluation, initiating special education services, or conducting a reevaluation, the local education agency (LEA) must:

-  Provide **prior written notice (PWN)** describing all information relevant to the evaluation procedures or services. Giving prior written notice and the opportunity to provide written consent must occur at least five school days before the initiation of the evaluation or implementation of services, unless the parent or adult student agrees to a shorter timeframe.
-  Provide the parent or adult student with a copy of the **Notice of Procedural Safeguards**, which includes rights and resources for the parent or adult student. The Special Education Information Center ([SEIIC](#)) offers the Notice of Procedural Safeguards in many languages.
-  Provide the parent or adult student with the **Overview of Special Education due Process** developed by TEA, explaining the rights under IDEA that may be additional to those under Section 504.
-  Ensure the parent or adult student is provided all information relevant to the consent, including a clear description of the activity, in his or her native language or mode of communication.
-  Confirm the parent or adult student understands the information and obtain the agreement in writing to all elements of the consent.
-  Notify the parent or adult student that their consent is voluntary and may be revoked at any time. However, if consent is revoked, it does not negate the actions completed prior to the revocation.

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Important Resources



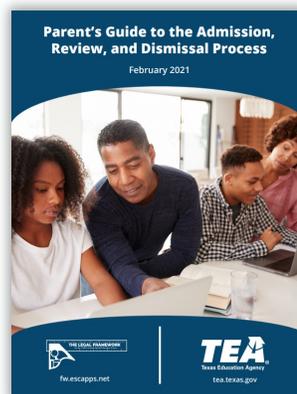
THE TEXAS LEGAL FRAMEWORK

for the Child-Centered Special Education Process

[CONSENT FOR INITIAL EVALUATION | Legal Framework \(escapps.net\)](#)

[CONSENT FOR SERVICES | Legal Framework \(escapps.net\)](#)

[CONSENT FOR REEVALUATION | Legal Framework \(escapps.net\)](#)



[Publications | Legal Framework \(escapps.net\)](#)



Important Resources

[Texas Standards Required for the Educational Diagnostician Certificate \(19 TAC §239.83\) \[Standard II\]](#)

[Texas State Board of Examiners of Psychologists Rules of Practice: Informed Consent \(22 TAC §465.11\)](#)

[Texas Department of Licensing and Regulation \(TDLR\) Speech-Language Pathologists and Audiologists Standards of Ethical Practice \(16 TAC §111.155\)](#)

[National Association of School Psychologists \(NASP\) Professional Ethics](#)

[American Speech-Language-Hearing Association \(ASHA\) Code of Ethics](#)

Learning Objectives

Participants will build knowledge and gain an understanding of the following:

- required elements of informed consent.
- the legal requirements for obtaining informed consent for special education evaluation and services.
- the benefits of having a clear, dedicated informed consent process.
- best practices and key points to remember when obtaining informed consent.

Activities Requiring Informed Consent

[Sec. 300.30 Parent - Individuals with Disabilities Education Act](#)
[Sec. 300.519 Surrogate parents - Individuals with Disabilities Education Act](#)



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When is Informed Consent Required?

Informed Consent		
Initial Evaluation	Initiation of Services	Reevaluation



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Special Situations: Initial Evaluation

Children in Foster
Care

Home Schooled

Attending Private
School

Special Situations: Initiation of Services

If despite the LEA's
reasonable efforts, the
parent or adult student
refuses to respond,

Then the LEA may NOT use
dispute resolution
procedures to seek
agreement.

If despite the LEA's
reasonable efforts, the
parent or adult student
refuses to provide consent,

Then the LEA will NOT
violate obligation to provide
a free appropriate public
education (FAPE).

Special Situations: Reevaluation

<p>If despite the LEA's reasonable efforts, the parent or adult student fails to respond to a request for consent for a reevaluation</p>	<p>then the LEA may proceed with the reevaluation</p>
<p>If the parent of a child who is home schooled or placed in a private school does not provide consent or fails to respond,</p>	<p>then the LEA is not required to consider the child as eligible for services</p>

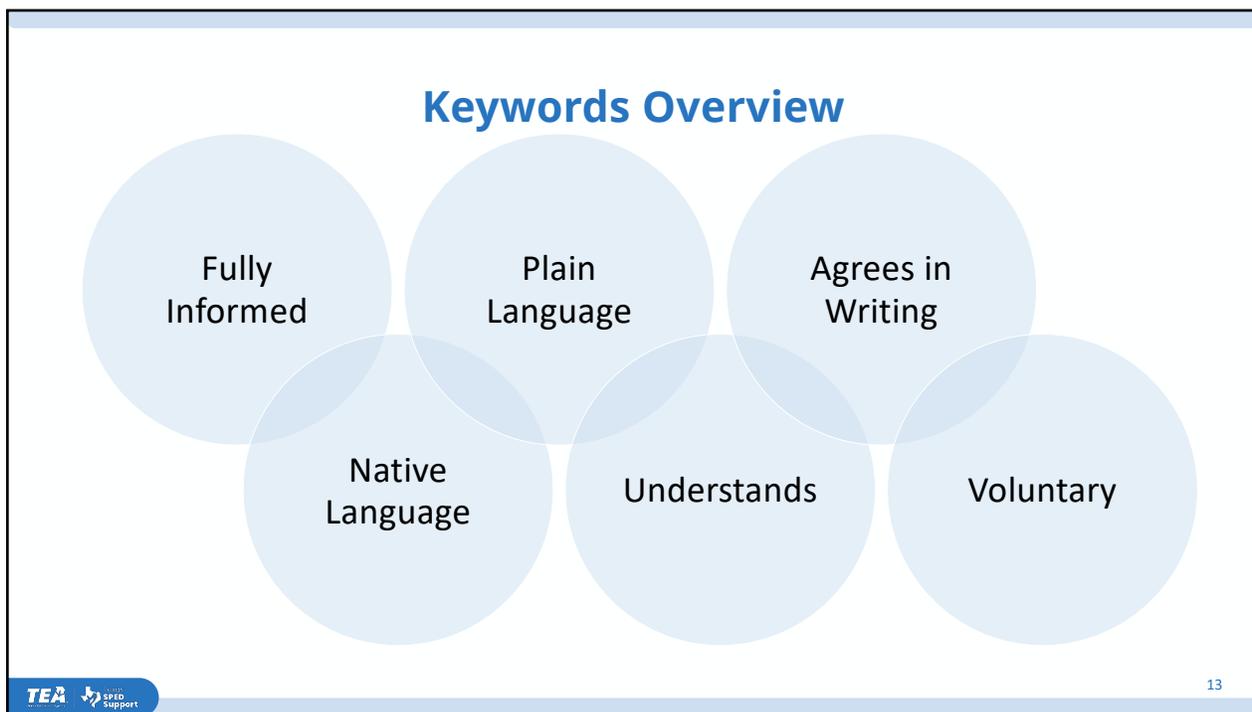
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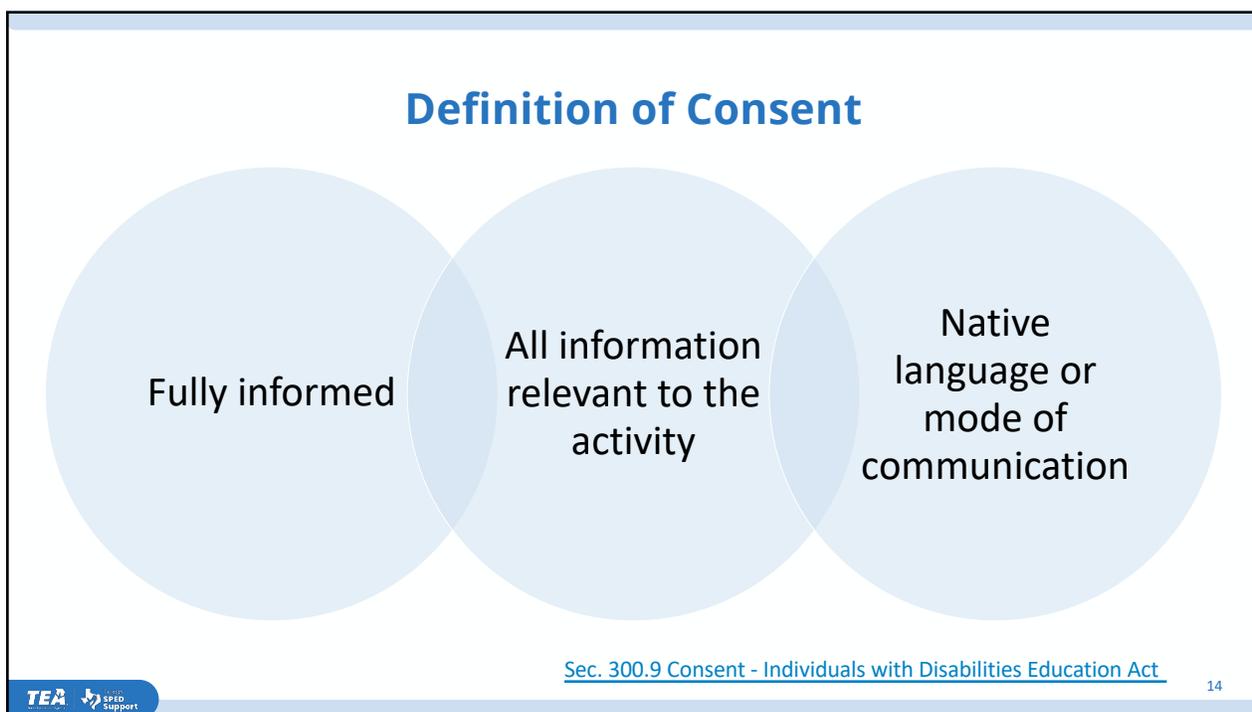
Definition and Requirements of Informed Consent

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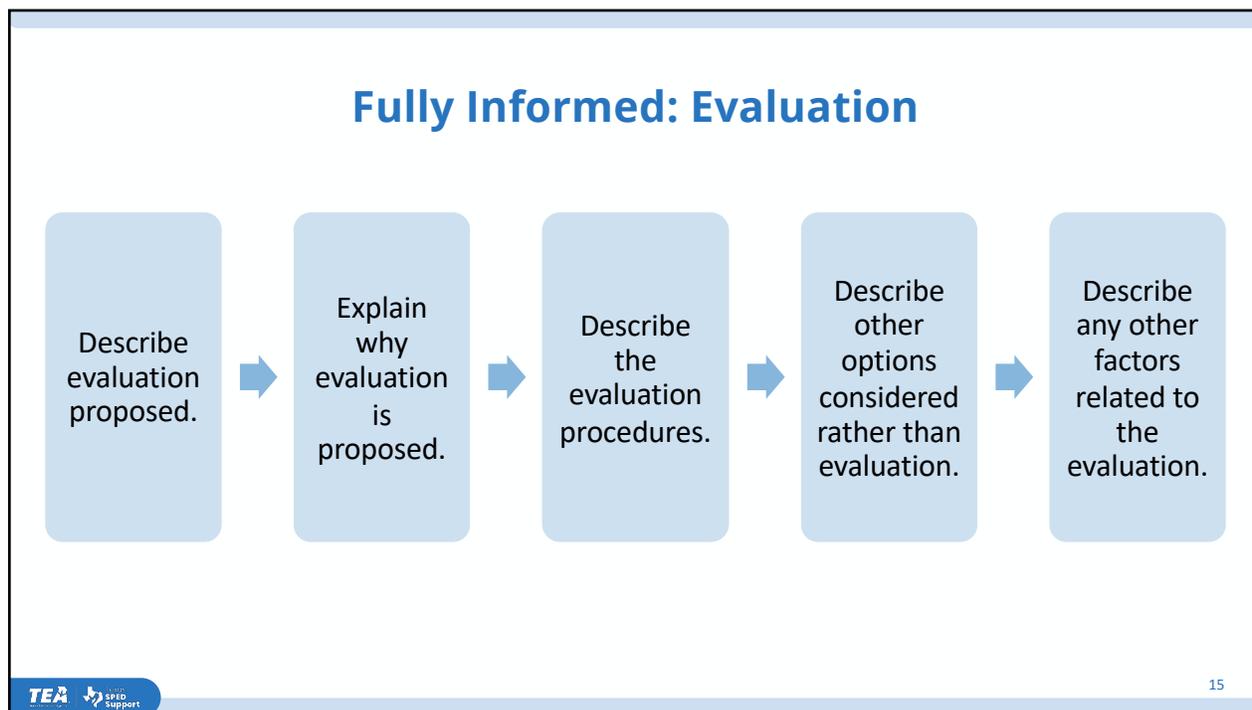
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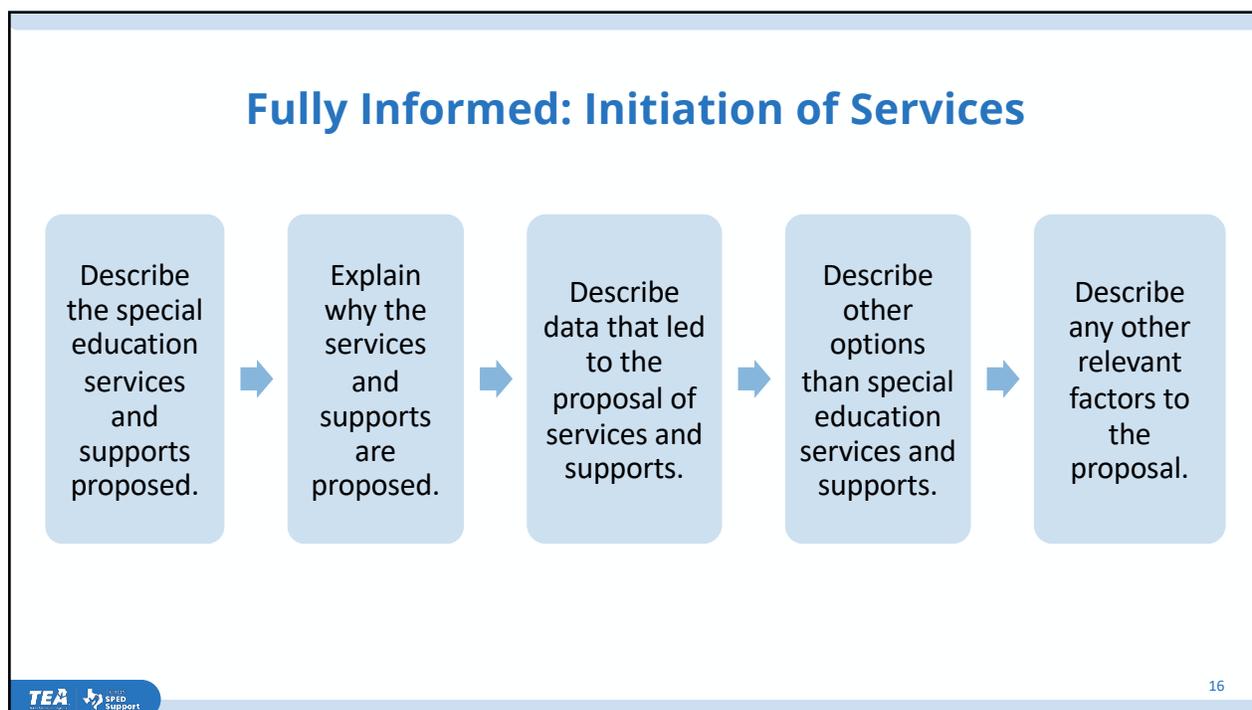
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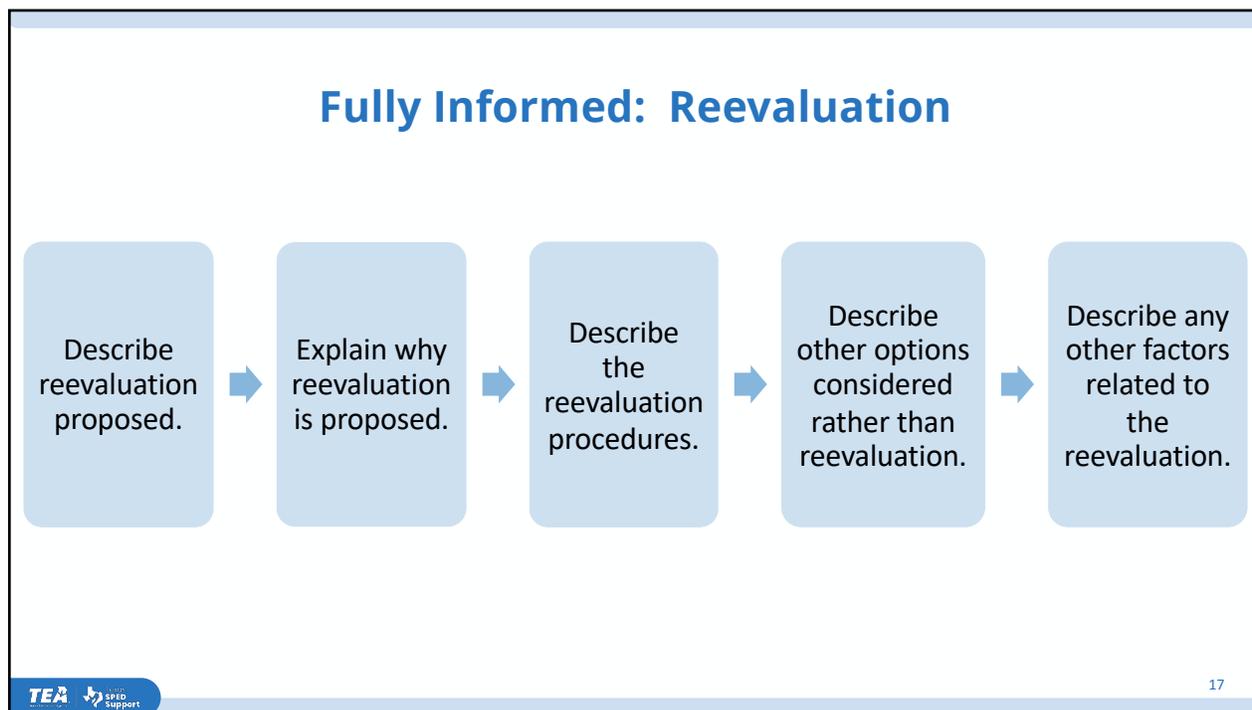
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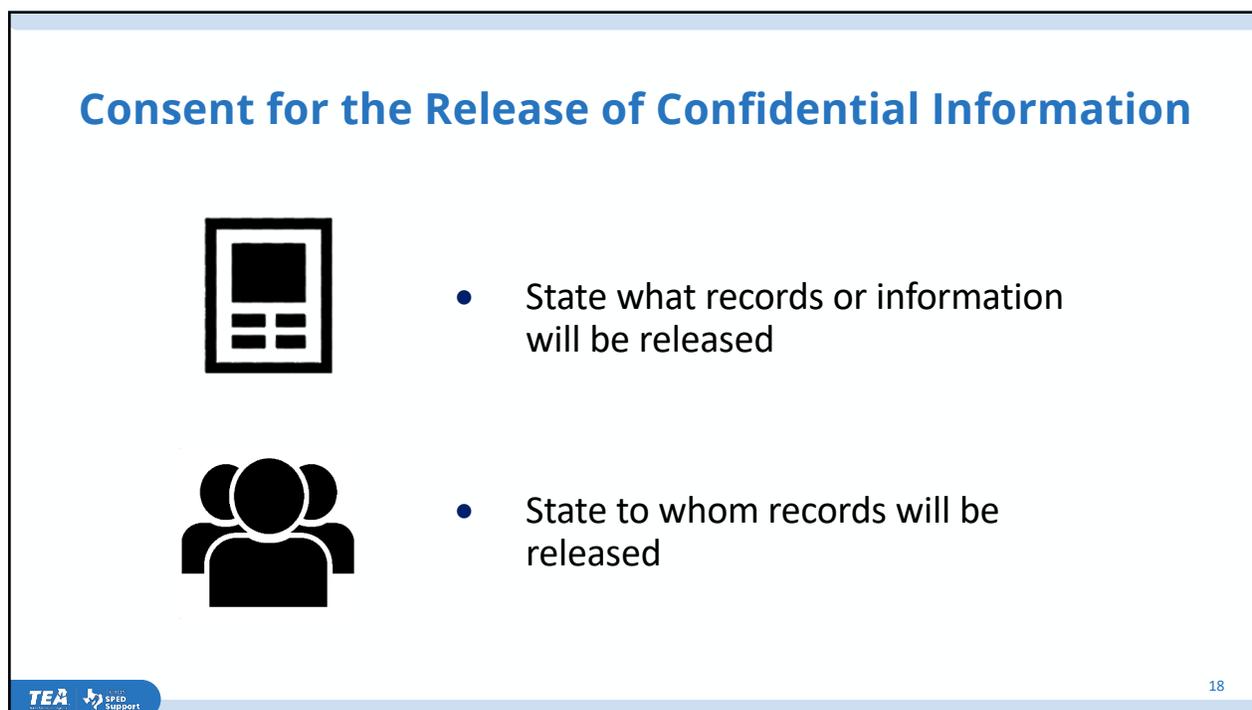
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Native Language

Explain in the language the parent or adult student speaks and understands.

Use an interpreter, if necessary.

Provide the Notice of Procedural Safeguards in the native language or other mode of communication.

[Notice of Procedural Safeguards | SPEDTex](#)

Other Mode of Communication

Determine the mode of communication in which the parent or adult student can best understand all information relevant to the proposed activity.

Consider the level of understanding of parent or adult student and accessibility needs.

Definition of Consent

Understands and agrees in writing

Describes the activity and lists any records to be released

[Sec. 300.9 Consent - Individuals with Disabilities Education Act](#)

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Understands and Agrees in Writing

Explanation is given thoroughly in plain language.

Explanation given in-person is best practice.

Parent or adult student can ask questions.

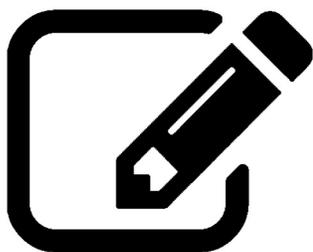
Staff with credentials related to activity obtains consent whenever possible.

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Understands and Agrees in Writing



- Requires parent or adult student's signature agreeing to all elements of informed consent.
- Check local policy and special education operating procedures regarding use of electronic signatures.

[QA Part B Procedural Safeguards. 06/30/2020 \(PDF\)](#)

Understands and Agrees in Writing

What if the parent or adult student cannot attend a meeting in person to provide written consent?

Establish initial contact.

Send home prior written notice proposing to initiate an evaluation.

Schedule a virtual or phone conference.

Send home consent for written signature or obtain electronic signature.

Describes the Activity

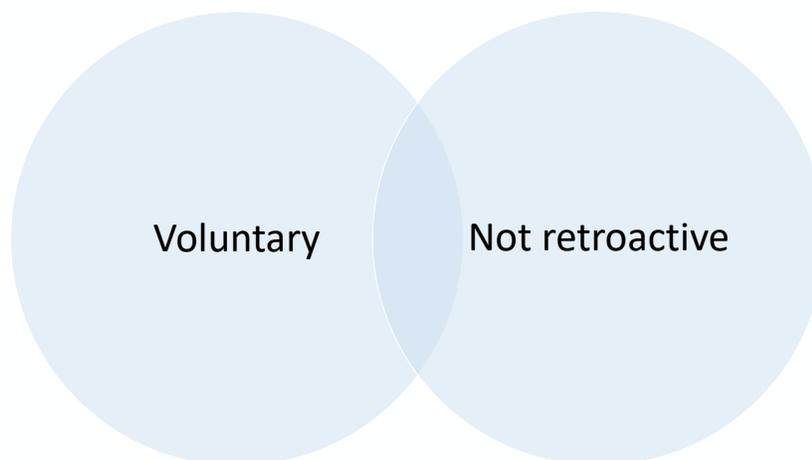
Evaluation

- All areas of suspected disability
- Multidisciplinary team
- Informal and formal measures
- Academic, developmental, and functional performance
- Native language or other mode of communication

Initiation of Services

- Special factors
- Annual goals
- Special education and related services
- Supplementary aids and services
- State and districtwide assessments
- Least restrictive environment

Definition of Consent



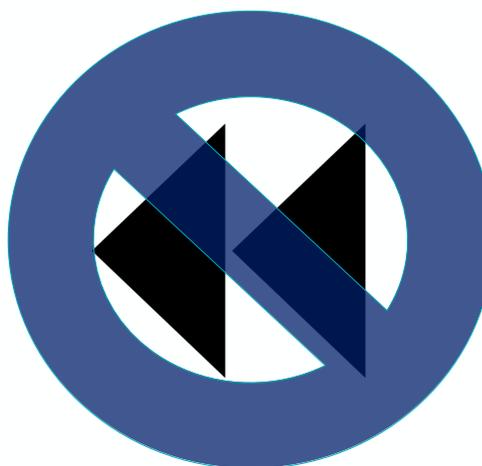
[Sec. 300.9 Consent - Individuals with Disabilities Education Act](#)

Voluntary and Revoked at Any Time

- The parent or adult student understands granting consent is their choice.
- They can revoke consent at any time.
- Revocation of consent must be in writing.
- LEAs should explain the implications of revocation for the student.

Revocation Is Not Retroactive

Revocation does not negate an action that occurred between the time the consent was granted and revoked.

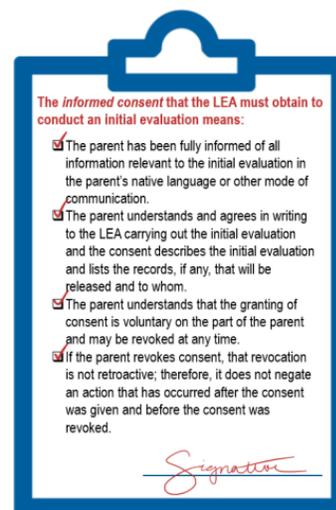


No Amendment of Education Record

If a parent or adult student revokes consent in writing after initial special education service(s) have been provided, the LEA is not required to amend the student's education records to remove any references to the student's receipt of special education and related services.

Tying It All Together

- Consent is more than obtaining a parent's or adult student's signature.
- Informed consent means he or she is fully informed.
- It is important to check for understanding during the process.



Benefits of an Informed Consent Process

- Meets legal requirements.
- Ensures parent or adult student is fully informed and understands process.
- Establishes rapport and trust with them.
- Opportunity to gain more information about the student.
- Time up-front saves time in long run, and there is less likely a chance of “surprise” concerns later in the process.

Additional Resources

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