

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations. (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education services.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(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.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation when a parent refuses to provide consent under (e) of this subsection.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(e) If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

(i) Must provide prior written notice to the parent in accordance with WAC 392-172A-05010 before ceasing to provide special education and related services and may not continue to provide special education and related services after the effective date of the prior written notice;

(ii) May not use mediation or the due process procedures in order to obtain an agreement or a ruling that the services may be provided to the student;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the due process procedure to override the parent's refusal to provide consent or mediation to obtain an agreement from the parent to provide consent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation 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 students unless, before administration of that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the school district, except as required by this chapter.

(c) 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 and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document

its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

[Statutory Authority: RCW 28A.155.090. WSR 21-19-065, § 392-172A-03000, filed 9/14/21, effective 10/15/21. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-03000, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-03000, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03000, filed 6/29/07, effective 7/30/07.]