

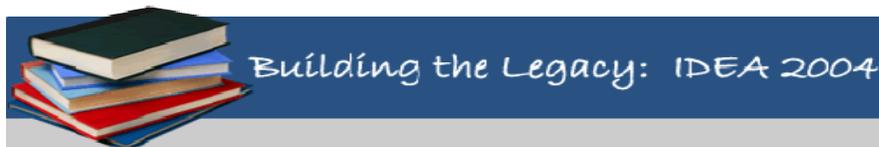
## SPECIAL EDUCATION IN NORTH DAKOTA

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# ***Procedural Safeguards: Prior Written Notice and Parental Consent Procedures***



*United States Department of Education, Office of Special Education Programs (OSEP)*

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“Unless otherwise specified, citations to “section” or “sec.” are citations to federal regulations implementing IDEA found in the Code of Federal Regulations at 34 CFR Part 300, which consists of 34 CFR secs. 300.1 through 300.818 and appendices A through E.”

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## **Introduction**

These guidelines, prepared by the Office of Special Education of the North Dakota Department of Public Instruction (NDDPI) will assist special educators and administrators in providing prior written notice and parental rights, and in obtaining parent consent. Procedural safeguards ensure that parents are adequately informed of actions proposed or refused by the school and know the options for themselves and their children, including refusal to consent to evaluation, placement, or services.

Parental involvement provides a more global view of the child's learning or behavioral needs in school, home, and community environments. This involvement results in a more comprehensive evaluation and development of an educational plan addressing the student's unique needs and characteristics. Section 300.322 (Appendix A) more fully describes parent involvement.

The Individuals with Disabilities Education Improvement Act, 2004, referred to as IDEA 2004, emphasizes improving results for children with disabilities. The IDEA 2004 also maintains the importance of the procedural safeguards that have been in place for children and their parents since 1975. This guidance document has been revised to reflect the most recent changes in the law.

The IDEA 2004 establishes the conditions under which parental prior written notice must be provided, what the notice must include, and when parental consent must be obtained. (See Appendix B for the full text of regulations covered in this document.) This document also contains instructions for preparing prior written notice and parental consent forms. Additionally, the table on page 4 "*Summary of Procedures Regarding Prior Notice, Procedural Safeguards, and Parent Consent*" indicates when school personnel must take each of the three actions.

The NDDPI has developed model forms and instructions for "Consent for Evaluation" and "Consent for Initial Placement in Special Education Services." The *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards* (June 2007) and recommended forms are attached at the end of this guideline.

### **School District responsibilities**

Each school district is required to have specific procedures in place to implement federal requirements. These requirements are found in the *Summary of Procedures* (p. 4) which describes procedures regarding prior written notice, procedural safeguards, and parental consent.

### **Procedural Safeguards**

Federal regulations require "a full explanation of all of the procedural safeguards available to the parents..." as part of the prior notice. The *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards* (June 2007), available through each special education unit contains a complete listing of these safeguards. This document should be given and carefully explained to parents:

- at the time of referral for an initial assessment;
- upon receipt of the first State complaint;
- after the receipt of the first due process complaint; and
- any time thereafter at a parent's request.

North Dakota's parent advocacy organizations have cited the "first contact" with parents as critical in helping families understand the process and their roles as active team members. The NDDPI has developed the *Parent Guide to Special Education* (June 2007) to more comprehensively explain parents' rights and the process for students to access special education services. The IEP team members should allow sufficient time and attention during the first meeting with parents for explanations. See Appendix B for the full Section 300.504, Procedural Safeguards.

**Sec. 300.504****Procedural Safeguards Notice.**

- (a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy also must be given to the parents--
  - (1) Upon initial referral or parent request for evaluation;
  - (2) Upon receipt of the first State complaint under 300.151 through 300.153 and upon receipt of the first due process complaint under 300.507 in a school year;
  - (3) In accordance with the discipline procedures in 300.530(h); and
  - (4) Upon request by parent.
- (b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its web site if a Web site exists.

**Summary of Procedures Regarding Prior Written Notice, Procedural Safeguards, and Parental Consent**

Procedure	Prior Written Notice	Procedural Safeguards	Parent Consent*
<b>Mass screening:</b> procedures used with all enrolled students to identify possible areas of difficulties that could interfere with learning. Examples include screening for vision or hearing, or review of records of all students to identify students at-risk academically.	Not required, but suggested parents be informed	Not required	Not required
<b>Selective screening:</b> procedures used with selected children who are referred due to identified risk factors. It is done to determine the significance of the risk factors to the child’s growth and development or academic performance. The result determines whether there is need for referral to BLST or for evaluation.	Required	Not required	Required
<b>BLST:</b> a general education intervention to assist teachers to plan interventions for students who are having difficulty in the general education environment. Classroom components are modified (e.g., mode of presentation, teaching strategies, curriculum, positive behavior interventions, etc.).	Not required	Not required	Not required but involvement urged
<b>Response to Intervention:</b> RTI provides high-quality instruction and interventions matched to the student’s need in general education.	Not required	Not required	Not Required
<b>Initial assessment:</b> the first multidisciplinary evaluation of a student who is referred when BLST intervention fails to adequately address the student’s difficulties. If a student has received special education services, has been dismissed, and then is referred a second time, the procedures associated with initial assessment must be followed.	Required	Required	Required
<b>Reevaluation:</b> periodic reassessment (conducted every three years as required, or more frequently as requested) of students receiving special education services.	Required	Not required	Required
<b>Initial Individualized Education Program (IEP) development:</b> preparation of an individual education program by a team of participants as required by regulations following an initial assessment.	Required	Required	Not required
<b>Initial placement:</b> the first time a multidisciplinary team uses assessment data, analyzes and plans for a student’s unique educational needs, and concludes that specially designed instruction is required to meet those needs. Typically, the placement decision is made as part of the IEP meeting. If a student has received special education services and has been dismissed, the initial placement procedures must be followed if the student is subsequently assessed and determined to be in need of special education services again.	Required	Required	Required
<b>Annual IEP review:</b> review of current IEP and preparation of a new or revised IEP at least every 12 months by a team of participants as required by regulations. Review of placement as well as plans for programming and services are included.	Required	Required	Not required
<b>Dismissal from program:</b> termination of special education services because the student no longer needs them, or the parent or student requests termination of services.	Required	Required	Not required
<b>Registration of a due process complaint:</b> If a parent disagrees with the identification, evaluation, educational placement or other aspects relating to their child’s free appropriate public education they may file a written complaint or request a due process hearing.	Required (see page 6)	Required	Not required
<b>Filing of a state complaint:</b> If a parent believes that the school has violated a requirement of IDEA 2004 they may file a complaint with the state.	Not required	Required	Not required
<b>Other agency invitation to Secondary Transition Meeting:</b> If another agency is participating in the Secondary Transition Services needed by a student, parent consent must be given to invite them to the meeting.	Not required	Not required	Required

\*Parent consent is required when information is collected on an individual child that is not being obtained for all individuals in the same school, grade, or class (Hatch Act, 1974, amended to General Education Provisions Act, 1984, 34 CFR 98).

**Parental Consent  
for Evaluation and  
Special Education  
Services**

The IDEA 2004 amended the requirement regarding parental consent. Previously, parent consent was required for initial evaluation and initial placement, but not for reevaluation. The IDEA 2004, however, requires parental consent for reevaluation. Consent must be obtained separately for each of these instances. For example, consent for initial evaluation may not be construed as consent for initial provision of special education services or for reevaluation (Appendix C: 300.300 Parent Consent).

Parental consent is required for the initial placement of a student in special education. Parents do not have to give consent every year unless the local special education unit or school district has established policy and procedures that require annual written consent for placement in special education.

Some special education units use the IEP as an annual placement document. If the parent disagrees with certain portions of the IEP and refuses to give consent, services to the student may be in question. Confusion can result regarding implementation of certain components of the IEP or if services are to be terminated altogether. Conflict may result from this confusion.

The Consent for Initial Placement form (see Appendix D) will be completed at the conclusion of the initial IEP meeting if the team, including parents, determines that the student needs special education and related services to benefit from general education.

A student who has been dismissed from special education services and is later suspected to have a disability must have a new Consent for Evaluation form completed. A student who has been dismissed from special education services and later is found to need those services must have a new Consent for Initial Placement form completed.

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**Parental Revocation  
of Consent  
for Special  
Education &  
Related Services**

**Exception!**

Supplemental regulations to IDEA 2004 took effect on December 31, 2008. Section 300.300 (b) (4) was revised to require that parental revocation of consent for the continued provision of special education and related services must be in writing and that upon revocation of consent a public agency must provide the parent with prior written notice in accordance with §300.503 before ceasing the provision of special education and related services.

Q. If a parent chooses to stop special education and related services for their child but refuses to sign a Revocation of Consent, what process should be followed by the local education agency to assure all procedural safeguards are in place for the parent and child?

Two Scenarios:

1. **Child continues to attend school and parents will not sign the Revocation of Consent.** – The school district must continue providing services to the child. The district should give notice stating that they will continue to provide services until the parent indicates in writing that they revoke services. The district will not be held in violation thereafter if notice had been given.
2. **Parent removes the child from school resulting in the child not being available for services.** – The district must give notice to the parent that they will not be providing services to the child because the parent is not making the child available to receive services. The District cannot be held liable at some later point in time if the district has provided notice that services would not continue because the parent did not make the child available. 34 CFR § 300.300(b)(4).

**Consent for Initial  
Evaluation and  
Reevaluation**

The Consent for Evaluation form (see Appendix D) will be completed after the assessment team (including parents) have reviewed Student Profile information about the child and developed the Assessment Plan. The Plan clearly identifies the reason for the evaluation, the assessment questions, the procedures used to address those questions, and the individuals responsible for carrying out each procedure (See *Guidelines: Evaluation Process* (June 2007) for further information). With parents participating in planning the assessment, questions from parents will have been addressed and informed consent can be given.

If parents refuse consent for initial evaluation or reevaluation, the school may continue to pursue those assessments by using mediation or due process procedures. Contact your local school administrator or special education director for further guidance.

When a child's parent fails to respond and the school can demonstrate that it has taken reasonable measures to obtain consent, informed parental consent is not needed for reevaluation. To meet the reasonable measures requirement, the school must use procedures consistent with Regulations 300.322(d). Consult the procedural handbook of your special education unit for any additional requirements.

**Prior Written Notice**

Prior written notice is intended to inform parents of proposed or rejected evaluations, changes in their child's program, and upcoming meetings.

Parents are expected to participate in decisions where the school proposes actions that affect identification, evaluation, placement, and programming for their child. Therefore, you must inform parents of proposed actions and their rights prior to making these decisions (See Appendix E). Be sure to accompany the prior written notice with the *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards* (June 2007).

If a due process complaint is filed by the parent and the school has not already sent the parent a prior written notice regarding the subject matter contained in the complaint, the school must, within 10 days, send a response that includes:

- an explanation of why the school proposed or refused to take action on the issues raised in the due process hearing request;
- a description of other options the IEP team considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the school used as the basis for their decision; and
- a description of other factors relevant to the school's proposed or refused action.

If the school requests a due process hearing from the NDDPI and the parent receives a copy of the due process complaint notice, the parent or the parent's legal counsel would be required to send the school a response that addresses the issues raised in the due process complaint within 10 days of receiving the complaint notice.

#### **Exception!**

Prior written notice is not required when using procedures intended for all children as part of general education activities. Examples of exempted situations would include mass screenings which involve all students in a class or the Building Level Support Team (BLST) process where interactions are typically between a general classroom teacher and teams. BLST activities, which may still include a special education teacher, help the classroom teacher address learning or behavior difficulties.

### **Preparing the Prior Written Notice Form**

Directions for completing the Prior Written Notice form are given on the following pages.

When preparing and sending the Prior Written Notice form, complete all sections, leaving no sections blank. If "none" or "not applicable" is appropriate, enter those words.

Enter the date (month, day, year) the notice is being sent, the student's name, the parents' names, if the purpose of the meeting will be to develop post secondary goals and transition services, jointly address the prior written notice to parents and a student 16 years of age or younger if appropriate, or who will be 16 by the time of the proposed action.

Address the Prior Written Notice form to students 18 or older, or who will be 18 by the time of the proposed action. If the student grants written permission, you may send a copy to the parents. The IDEA 2004 and the Family Educational Rights and Privacy Act (FERPA) require this transfer of rights at 18 years of age.

**Exception!**

Continue to address Prior Written Notice forms to parents if they have obtained legal guardianship for their child who is 18 or older.

***Reason Notice is Given (Page one of the Form)***

From the listing below, you would check all applicable reasons Prior Written Notice is being given. For example, a meeting to discuss results of an initial evaluation and determine eligibility for special education services might reasonably be expanded into a meeting to develop the individualized education program (IEP). If so, you would check both items 2 and 6.

**1. Initial evaluation**

If the interventions tried by the parent(s) and school or agency personnel do not assist the student in addressing the difficulty experienced, the process of collecting additional information should be initiated, in a timely manner, through a referral for a comprehensive evaluation.

**2. Additional evaluation to determine student needs/programming**

The student is currently receiving special education services and further assessment is needed to determine his or her unique needs for appropriate services. For example, school personnel or parents may desire additional assessment information if new medical conditions appear after the child began receiving special education services.

Another example occurs when a teacher is working with a child and may suspect that additional conditions are influencing educational performance and need to be assessed.

**3. Three year reevaluation of your child's continued need for special education services**

Reevaluation is required every three years, more frequently if conditions warrant it, or if the child's parent or teacher requests it. As part of the student profile, the parent and public agency should discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's educational program. After the completion of a student profile the parent and school district can agree that a reevaluation is not necessary.

**4. Discussion of evaluation results, development of the Integrated Written Assessment Report, and determination whether your child has a disability under IDEA**

Reevaluation information needs review with the full team. This includes review of evaluation information when dismissal from special education services is being considered. Complete the Proposed Meeting Arrangements section at the end of the form when scheduling an IEP meeting.

- 5. Development of an initial Individualized Education Program (IEP) for your child. You may invite individuals with knowledge or special expertise about your child. This will include a transition plan if your child will turn 16 years of age within the coming year or if your child is 16 or older.**

An IEP meeting is called to develop the student's initial IEP. After completing the IEP, the team will determine whether the student requires special education and related services. When applicable, address secondary transition services at the IEP meeting. Indicate this purpose in the Prior Written Notice form.

- 6. Review or revision of your child's Individualized Education Program (IEP). This will include a transition plan in the year your child turns 16 and thereafter.**

An IEP meeting is called to review or revise an already developed IEP, or a significant change is needed in a student's program. Significant changes may include addition or deletion of goals; an increase or decrease in the amount of services; or a proposed or refused change in the type of service delivery; for example, moving from direct instruction to consultation to support reading instruction in the general education classroom. This meeting may also require discussion of secondary transition services when applicable.

Reviews are typically done within 12 calendar months of the previous IEP meeting. An IEP can never extend beyond 12 calendar months but it can be reviewed sooner or written for shorter periods (e.g., one month, one semester).

- 7. Graduation or dismissal/exit from special education services.**  
Special education services are no longer necessary when the parent or student requests termination of services, the student graduates, or exceeds the age of eligibility.
- 8. Transfer of educational rights to student at age of majority**  
Notice must be given to parents when the educational rights accorded to parents under IDEA have transferred to their child at age 18.
- 9. Other considerations**  
Describe situations (e.g., discipline, extended school year) where prior written notice to parents is appropriate due to the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the child.

#### **Action to Take Effect (Page one of the Form)**

Enter the date the action will be effective. Allow sufficient time for parents to consider the proposed action. All sections of the Prior Written Notice form must be completed. If a section is not applicable, indicate so by entering *NA* rather than leaving the section blank.

- 1. Proposal/Rejection of action**

Give specific reasons for the team's decisions to propose or reject the action checked above. For example, a proposed action may be the initiation of an

IEP goal that the team discussed and agreed to delay until another goal could first be accomplished. In this case, the reason for action (initiating the new goal) would be that “a previous goal has been completed and the student is ready to work on the new goal agreed upon by the IEP team.” An example for rejection may be a parent’s request for an amendment to the child’s record because of perceived inaccuracies. The school believes the records to be accurate. In this situation the reason for rejection might be stated as “review of records and interviews with persons creating the records verified the accuracy.”

**2. Actions considered prior to proposal**

List all options considered before the proposed action was selected. For example, prior to a referral for evaluations, options might have included consultation with the BLST and several trial interventions such as different seating, school-home journal regarding assignments, or tracking behaviors. If the action proposed is a meeting only, the entry may be “not applicable.”

**3. Rejection of options state in Item 2**

Describe why the options stated in the space above were not appropriate for the student at this time.

**4. Actions stated in Item 1**

The action stated in item 1 is based on the following assessment procedures, tests, records, or reports. List the documentation used to assist in making this decision.

**5. Other relevant factors**

List and describe those factors considered in proposing the action(s) applied to this notice but which may not be specific to evaluation or reports. Examples include changes in schedules, personnel changes, medical issues, and other factors.

**Checked Items to be Noted (Page two of Form)**

Check the appropriate action(s) to be taken by the parent. If a meeting is being arranged, as indicated by item 3 on the second page of the form, complete the Proposed Meeting Arrangements portion of the Prior Written Notice form. If the situation requires that parents be informed of their rights, check item 4 and if required, enclose the *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards* (June 2007). Attach any additional materials, such as the *Consent for Evaluation* (June 2007) form or the *Consent for Initial Placement* (June 2007) in Special Education Services form, as appropriate.

**Contact information**

Enter the name and contact information for the person responsible for coordinating meeting plans and answering parents' questions. This is usually the same individual.

**Proposed meeting arrangements**

Complete this section when a meeting is proposed. Meetings with parents are required for certain procedures (e.g., development or revision of the IEP).

Because parents are part of the team process, they must be included and informed of school actions and findings. If parents object to a proposed action and request a meeting, the school cannot carry out the proposed action until the meeting is held and a decision is made.

**Date, time, location, and meeting participants**

Record specific meeting arrangements. Enter the name and position/title of each person expected to participate in the meeting. Federal regulations do not require including the individual's position or title. However, to ensure that parents are fully aware of other team members and their roles, this information is strongly recommended. For example, parents may not know the school counselor, school psychologist, administrators, or others simply by their names.

As indicated earlier, any IEP meeting must include consideration of transition services for a student 16 years of age or older at the time of the proposed action, or for a younger student, if determined appropriate. The school must invite this student.

The school must take steps to encourage the student to attend the IEP meeting. If the student cannot be persuaded to attend, the school must ensure that the student's preferences and interests are considered and documented in the planning process (See discussion of this requirement in *Guidelines: Individualized Education Program Planning Process* (June 2007)).

With parental consent, the school must also invite a representative of any other agency responsible for providing or paying for transition services. See *Guidelines: Individualized Education Program Planning Process* (June 2007) for a sample of the permission form. Required participants for evaluation meetings are identified in *Guidelines: Evaluation Process* (June 2007). Other required IEP meeting participants are identified in *Guidelines: Individualized Education Program Planning Process* (June 2007).

Because the Prior Written Notice form provides details concerning proposed actions and meetings, the school may wish to use copies of the completed form to inform other persons. Supplementary notes, requests for information, or other materials could be attached to these copies of the Prior Written Notice form, as appropriate.

## Appendices

Appendix A: Section 300.322: Parent Participation

Appendix B: Section 300.504: Procedural Safeguards Notice

Appendix C: Section 300.300: Parental Consent

Appendix D: Applicable Forms

- Consent for Evaluation
- Prior Written Notice
- Consent for Initial Placement in Special Education Services

Appendix E: Section 300.503: Prior Notice by the Public Agency; Content of Notice.

Appendix F: Excusal of Required IEP Team Members Decision Tree form

Attachment: *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards (June 2007)*

## **Appendix A**

### **Section 300.322: Parent Participation**

**Sec. 300.322 Parent Participation.**

- (a) Public agency responsibility--general. Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including--
  - (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
  - (2) Scheduling the meeting at a mutually agreed on time and place.
- (b) Information provided to parents.
  - (1) The notice required under paragraph (a)(1) of this section must--
    - (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
    - (ii) Inform the parents of the provisions in Sec. 300.344(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child), and 300.321(f) (relating to the participation of the Part C service coordinator or other representations of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
  - (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--
    - (i) Indicate--
      - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with 300.320(b); and
      - (B) That the agency will invite the student; and
    - (ii) Identify any other agency that will be invited to send a representative.
- (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 300.328 (related to alternative means of meeting participation).
- (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as--
  - (1) Detailed records of telephone calls made or attempted and the results of those calls;
  - (2) Copies of correspondence sent to the parents and any responses received; and
  - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.

## **Appendix B**

### **Section 300.504: Procedural Safeguards Notice**

**Sec. 300.504 Procedural Safeguards Notice.**

- (a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy also must be given to the parents--
- (1) Upon initial referral or parent request for evaluation;
  - (2) Upon receipt of the first State complaint under 300.151 through 300.153 and upon receipt of the first due process complaint under 300.507 in a school year;
  - (3) In accordance with the discipline procedures in 300.530(h); and
  - (4) Upon request by parent.
- (b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its web site if a Web site exists.
- (c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under Secs. 300.148 , 300.501-through 300.153, 300.300, 300.502 through 300.503, 300.505-through 300.518, 300.520, 300.530 through 300.536 and 300.610 through 300.625 relating to--
- (1) Independent educational evaluation;
  - (2) Prior written notice;
  - (3) Parental consent;
  - (4) Access to educational records;
  - (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including --
    - (i) The time period in which to file a complaint;
    - (ii) The opportunity for the agency to resolve the complaint; and
    - (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing decisional timelines, and relevant procedures;
  - (6) The availability of mediation;
  - (7) The child's placement during pendency of due process proceedings;
  - (8) Procedures for students who are subject to placement in an interim alternative educational setting;
  - (9) Requirements for unilateral placement by parents of children in private schools at public expense;
  - (10) Hearings on due process hearings, including requirements for disclosure of evaluation results and recommendations;
  - (11) State-level appeals (if applicable in that State);
  - (12) Civil actions including the time period in which to file those actions; and
  - (13) Attorneys' fees.
- (d) Notice in understandable language. (1) The notice required under paragraph (a) of this section must meet the requirements of Sec. 300.503(c).

## **Appendix C**

### **Section 300.300: Parental Consent**

**Sec. 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 service.
  - (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
    - (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 parent for the initial provision of special education and related services to the child.
- (3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency 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.
- (4) If the parent of the child 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 public agency--
  - (i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and
  - (ii) Is not required to convene an IEP Team meeting or develop an IEP under 300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.

(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.
- (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 paragraph (a) 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) 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.
- (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).

# **Appendix D**

## **Applicable Forms**

**Consent for Evaluation**

Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Student \_\_\_\_\_

School \_\_\_\_\_

The multidisciplinary team proposes to conduct (an initial evaluation/reevaluation) of my child to determine eligibility under the Individuals with Disability Education Act. I understand that the proposed action is based on an Assessment Plan developed jointly by school personnel and myself as the parent. I also understand that the decision regarding eligibility will be determined jointly by school personnel and myself, and that I will receive the integrated written assessment report.

I have received a full explanation and understand the procedural safeguards available to me as stated in the “*Parental Rights for Public School Students Receiving Special Education Services – Notice of Procedural Safeguards.*” booklet.

Yes     No    Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

As the parent of (child) \_\_\_\_\_,

I agree with the multidisciplinary team’s proposed evaluation.

Yes     No    Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Parent Signature(s) \_\_\_\_\_

\_\_\_\_\_

*One copy of this form will be retained in the school records and one copy will be given to the parent(s).*

**Prior Written Notice**

Date \_\_\_\_\_  
 (Month, Day, Year)

To \_\_\_\_\_

From \_\_\_\_\_  
 (Name, Title, Location, School)

Re \_\_\_\_\_  
 (Student)

The following action(s) as checked below, are being considered.

- 1. Initial evaluation
- 2. Three year reevaluation of your child’s continued need for special education services
- 3. Additional evaluation to determine student needs/programming
- 4. Discussion of evaluation results, development of the Integrated Written Assessment Report, and determination whether your child has a disability under IDEA
- 5. Development of an initial Individualized Education Program (IEP) for your child. You may invite individuals with knowledge or special expertise about your child. This will include a transition plan if your child will turn 16 years of age within the coming year or if your child is 16 or older.
- 6. Review or revision of your child’s Individualized Education Program (IEP). This will include a transition plan in the year your child turns 16 and thereafter.
- 7. Graduation or dismissal/exit from special education services.
- 8. Transfer of educational rights to student at age of majority.
- 9. Other considerations \_\_\_\_\_

THE ACTION WILL TAKE EFFECT \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

The following actions apply to this notice and a description is given below:

1. This action is being proposed/rejected because \_\_\_\_\_  
 \_\_\_\_\_
2. Prior to this proposal the following actions were considered \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
3. The options stated in item 2 were rejected because \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
4. The action stated in item 1 is based on the following evaluation procedures, tests, records or reports \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
5. Other factors relevant to the action proposed above are \_\_\_\_\_  
 \_\_\_\_\_

Prior Written Notice, continued

Please note the following checked items:

- 1. Sign and return the CONSENT FOR EVALUATION form. (Tests to be used are noted on the attached form.)
- 2. Complete the enclosed \_\_\_\_\_ and return it to us.
- 3. Arrange to meet with the team as described below, to discuss the proposed actions.
- 4. A copy of the “*Parental Rights for Public School Students Receiving Special Education Services – Notice of Procedural Safeguards.*” is enclosed.

A copy of the “*Parental Rights for Public School Students Receiving Special Education Services – Notice of Procedural Safeguards.*” must be given to you at least one time per year. You may also obtain a copy of this booklet at any time from your local special education office.

If you have questions about the information provided, or want help in understanding these procedural safeguards, please contact me.

Please call \_\_\_\_\_ at \_\_\_\_\_

Between the hours of \_\_\_\_\_ and \_\_\_\_\_

***Proposed Meeting Arrangements***

Date \_\_\_\_\_ Time \_\_\_\_\_ Location \_\_\_\_\_

At the present time we anticipate the following required IEP Team Members will be meeting with us. These members of the IEP Team require agreement or consent in writing to be excused from the IEP meeting:

- Regular educator (Not less than one) \_\_\_\_\_
- Special Educator \_\_\_\_\_
- Individual to interpret Instructional implications of Evaluation results \_\_\_\_\_
- Authorized Representative of the LEA \_\_\_\_\_

At the present time we anticipate the following IEP Team Members will be meeting with us. The following members of the IEP Team do **NOT** require agreement or consent in writing to be excused from the IEP meeting:

\_\_\_\_\_  
\_\_\_\_\_

If the development of an IEP will include transition planning your child will be invited to attend. Please encourage this participation.

Please let me know if this is a convenient time for you so we can finalize plans for the meeting. If you wish to have someone else attend with you, you may do so.

**Consent for Initial Placement in Special Education Services**

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Student: \_\_\_\_\_

School: \_\_\_\_\_

The multidisciplinary team proposes the following services for my child:

\_\_\_\_\_

\_\_\_\_\_

The suggested placement is based on my child’s need for specially designed instruction as written in the individualized education program and is due to my child’s disability. I understand that the need for this placement will be reconsidered in terms of my child’s progress at least annually.

I have received a full explanation and understand the procedural safeguards available to me as stated in the “*Parental Rights for Public School Students Receiving Special Education Services – Notice of Procedural Safeguards.*” (Applies to Public School Setting)

\_\_\_\_ Yes      \_\_\_\_ No      Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

As the parent of (child) \_\_\_\_\_, I agree with the multidisciplinary team’s proposed placement.

\_\_\_\_ Yes      \_\_\_\_ No      Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Parent Signature(s) \_\_\_\_\_

\_\_\_\_\_

One copy of this form will be retained in the school records and one copy will be given to the parent(s).

## **Appendix E**

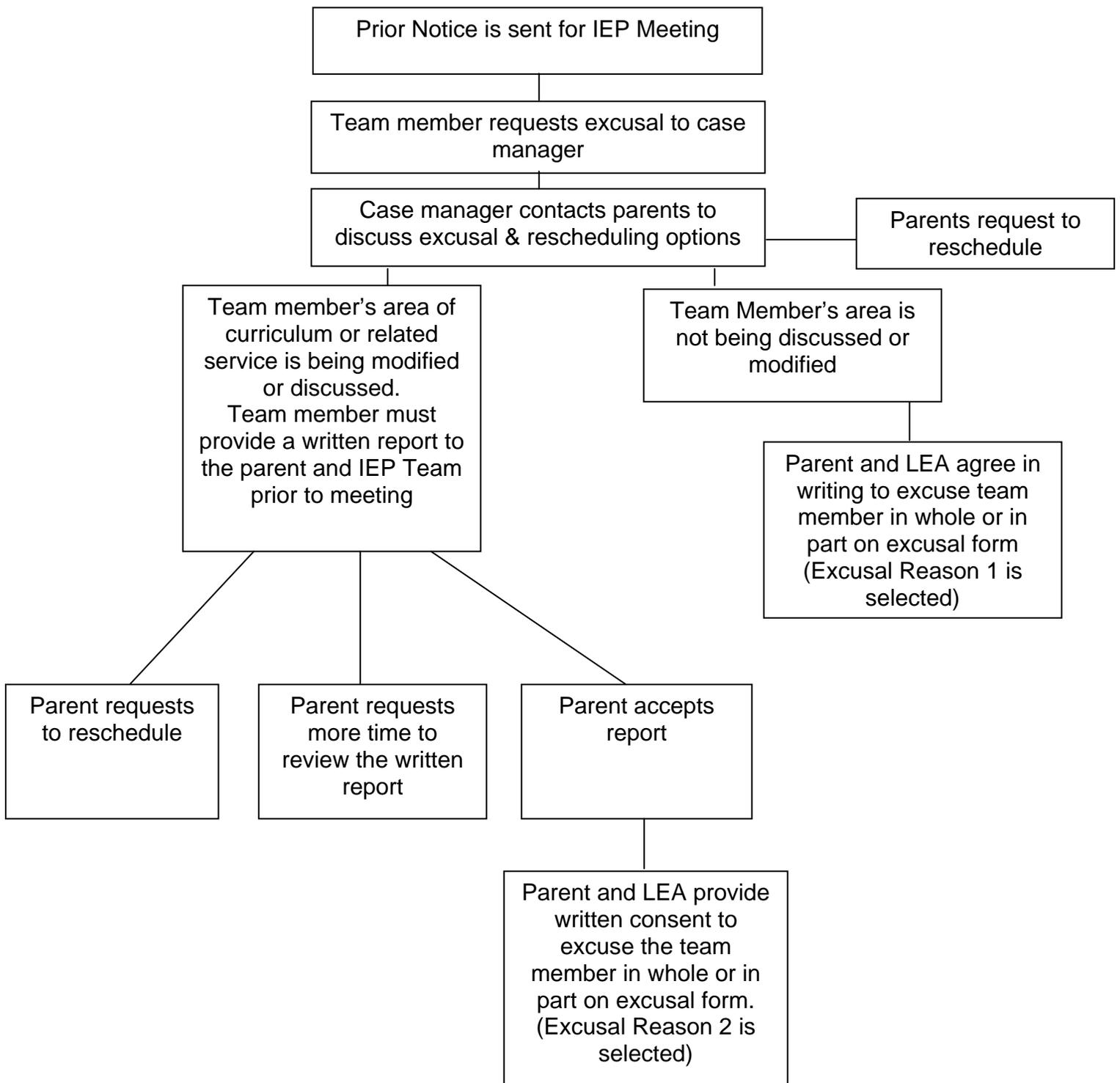
### **Section 300.503 Prior Notice by the Public Agency; Content of Notice**

**Sec. 300.503 Prior notice by the public agency; content of notice.**

- (a) Notice. (1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency-
- (i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
  - (ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) Content of notice. The notice required under paragraph (a) of this section must include--
- (1) A description of the action proposed or refused by the agency;
  - (2) An explanation of why the agency proposes or refuses to take the action;
  - (3) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;
  - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
  - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
  - (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
  - (7) A description of other factors that are relevant to the agency's proposal or refusal.
- (c) Notice in understandable language.
- (1) The notice required under paragraph (a) of this section must be –
    - (i) Written in language understandable to the general public; and
    - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
  - (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure –
    - (i) That the notice is translated orally or by other means to the parent in his or her native language to other mode of communication;
    - (ii) That the parent understands the content of the notice; and
    - (iii) That there is written evident that the requirements in paragraph (c)(2)(i) and (ii) of this section have been met.

## **Appendix F**

# **Excusal of Required IEP Team Members Decision Tree and Form**



Excusal of Required IEP Team Member(s)

Student's Name \_\_\_\_\_

For the IEP meeting to be held on \_\_\_\_\_, the following required IEP team member(s) is/are excused from attendance.

Team Member Name	Role	Area(s) of curriculum or related service	Type of Excusal	Excused from the meeting in whole or in part
	Regular Educator		<input type="checkbox"/> 1. Member's area of the curriculum or related services is not being modified or discussed <input type="checkbox"/> 2. Member's area of the curriculum or related services is being modified or discussed and member submitted written report to the parent and IEP team prior to the IEP meeting date. Date report was provided _____	<input type="checkbox"/> excused in whole <input type="checkbox"/> excused in part
	Special Educator or Provider		<input type="checkbox"/> 1. Member's area of the curriculum or related services is not being modified or discussed <input type="checkbox"/> 2. Member's area of the curriculum or related services is being modified or discussed and member submitted written report to the parent and IEP team prior to the IEP meeting date. Date report was provided _____	<input type="checkbox"/> excused in whole <input type="checkbox"/> excused in part
	Individual to Interpret Instructional Implications of Evaluation Results		<input type="checkbox"/> 1. Member's area of the curriculum or related services is not being modified or discussed <input type="checkbox"/> 2. Member's area of the curriculum or related services is being modified or discussed and member submitted written report to the parent and IEP team prior to the IEP meeting date. Date report was provided _____	<input type="checkbox"/> excused in whole <input type="checkbox"/> excused in part
	Authorized Representative of the LEA		<input type="checkbox"/> 1. Member's area of the curriculum or related services is not being modified or discussed <input type="checkbox"/> 2. Member's area of the curriculum or related services is being modified or discussed and member submitted written report to the parent and IEP team prior to the IEP meeting date. Date report was provided _____	<input type="checkbox"/> excused in whole <input type="checkbox"/> excused in part

(NOTE: Agreement and consent must be prior to the meeting. Parent's agreement and consent must be in writing.)

I understand the requirements for IEP team members as stated in 300.321(a)(2) through (a)(5). I also understand the requirements for IEP Team attendance as listed in 300.321(e) and 300.321(f). I have received the necessary written report (if applicable) and give my informed consent for the team members noted above to be excused from the meeting in whole or in part.

\*CFR Section 300.321 IEP Team is provided on the following page.

\_\_\_\_\_  
Parent signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
LEA Representative

\_\_\_\_\_  
Date

Sec. 300.321 IEP Team.

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes--

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who--
  - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (ii) Is knowledgeable about the general education curriculum; and
  - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

(b) Transition services participants. (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under Sec. 300.320(b).

(2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) IEP Team attendance. (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

- (i) The parent, in writing, and the public agency consent to the excusal; and
- (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

## **Appendix G**

### **Revocation of Consent and Prior Written Notice for Revocation of Consent for Special Education and Related Services Forms**

<b>School District/Public Agency</b>	<b>Revocation of Consent for Special Education &amp; Related Services</b> 34 C.F.R. §§300.9(c)(3) & 300.300(b)(4)

<b>Name of Student</b>	<b>Date</b>

This form enables the parent/legal guardian or adult student age 18 or older to revoke consent in writing. If you revoke consent in writing the school district or public agency:

1. Is not required to convene an IEP team meeting or develop an IEP.
2. 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 further special education and related services.
3. May not seek to use consent override procedures such as mediation or due process procedures to obtain an agreement or a ruling that services may be provided to the child.
4. May not continue to provide special education and related services to the child, but must provide **Prior Written Notice** before ceasing the provision of special education and related services.
5. 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.

- I REVOKE my consent for my child to continue to receive all special education and related services.**
- I am an adult student age 18 or older and I REVOKE my consent for all special education and related services.**

**SIGN AND DATE**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

- Parent       Legal Guardian       Adult Student

Please keep a copy of this form for your records and send the signed original to the school district/public agency.

***Special Education and Related Services will be discontinued ONLY after the school district's or public agency's receipt of your signature to revoke consent for all Special Education and Related Services and the provision of Prior Written Notice.***

**FOR SCHOOL DISTRICT OR PUBLIC AGENCY USE**

<b>Date received</b>	<b>Signature of School District or Public Agency Official</b>	
	<b>Date Prior Written Notice provided:</b>	<b>Date</b>
	<b>Date special education and related services terminated:</b>	<b>Date</b>

Page 1 of 2

**PRIOR WRITTEN NOTICE - REVOCATION OF CONSENT**

**PURPOSE:** *If a parent/guardian or adult student revokes consent, in writing, for the continued provision of special education and related services, the district must honor the revocation and provide the parent with prior written notice identifying the date the district will stop providing services. The district may not use due process or mediation procedures to challenge the parent’s revocation. Beginning the effective date indicated in the prior written notice, the district may no longer provide special education and related services to the child. The district is not required to amend the child’s education records to remove references to the child’s receipt of special education and related services. Once the revocation is effective, the student is no longer entitled to receive special education or related services, and the district will not be considered in violation of the requirement to make FAPE (a free, appropriate public education) available to your child.*

Date: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

To: \_\_\_\_\_  
*Parent(s)/guardian(s)/adult student*

Re: \_\_\_\_\_  
*Student’s name*

**The purpose of this prior written notice is to inform you that, while the district believes that your child continues to be in need of services, the district will stop providing special education and related services to your child, based on your written revocation of consent.**

Services to your child will be discontinued on: \_\_\_\_\_  
*Date*

- When you revoke (withdraw) consent for the continued provision of special education services for your child, the district may not challenge your decision using any formal dispute resolution options. The district must honor your revocation within a reasonable time after you have provided the district with the written revocation.
- Once your revocation is effective, your child will no longer be considered a child with a disability for educational purposes. This means that your child will no longer be eligible to receive a free appropriate public education (FAPE) as defined under IDEA, and will no longer be entitled to protections he or she received when identified as a child eligible for special education. The district will not be required to conduct reevaluations, convene an IEP team meeting, or develop an IEP for your child.
- Your child will be subject to all of the same requirements that apply to general education students, such as academics, statewide and district-wide assessments, extracurricular activities, graduation requirements, discipline, and all other general education requirements.
- Revocation of consent is not retroactive. Your child’s records will not be amended to remove references to the receipt of special education and related services prior to your revocation of consent.

If, after the revocation is effective, you change your mind and wish for your child to again receive special education services, you may refer your child for an initial evaluation and the district will follow procedures, including all associated timelines, for an initial special education eligibility request.

**Other considerations or additional information:**

**Acknowledgement**

- I have been fully informed of all information relevant to the proposal to terminate services to the student named in this notice. I understand that until the date the district discontinues services (as specified on this notice), my child has procedural safeguards under the Individuals with Disabilities Education Act (IDEA).

Date \_\_\_\_\_

\_\_\_\_\_  
*(Parent/Legal Guardian or Student who is Age of Majority)*

## Other Resources

The publicly funded organizations listed here may be able to assist you in understanding the procedural safeguards and other provisions of the IDEA.

Your local school district: \_\_\_\_\_

### ***Pathfinder Parent Center***

Minot: (701) 837-7500  
Toll Free: 1-800-245-5840  
Website: <http://www.pathfinder-nd.org>  
FAX: 1-701-837-7548

### ***National Information Center for Children and Youth with Disabilities (NICHCY)***

Toll Free: 1-800-695-0285  
Website: <http://www.nichcy.org/>

### ***North Dakota Protection & Advocacy (P & A) Project***

Bismarck: (701) 328-2950  
Toll Free: 1-800-472-2670

### ***North Dakota Department of Public Instruction***

Office of Special Education

Bismarck: (701) 328-2277  
TDD: (701) 328-4920  
Website: <http://www.dpi.state.nd.us/>

The IDEA Advisory Committee meets several times each school year. This representative group of parents, administrators, university personnel, and general and special educators makes recommendations about special education in North Dakota. Information about the advisory committee and its meeting schedule are available from the NDDPI Office of Special Education by calling 701-328-2277.