



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

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The Office of Special Education Programs (OSEP), within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issues this Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part C procedural safeguards in the current COVID-19 environment.

This Q & A document does not impose any additional requirements beyond those included in applicable law and regulations. It does not create or confer any rights for or on any person. The responses presented in this document generally constitute informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and are not legally binding and does not establish a policy or rule that would apply in all circumstances.

To review other Q & A documents that OSEP has provided related to COVID-19, please visit <https://sites.ed.gov/idea/topic-areas/#COVID-19>. Additional information specific to the COVID-19 pandemic may be found online at <https://www.ed.gov/coronavirus>.

IDEA PART C PROCEDURAL SAFEGUARDS

Parental Consent

Q1. May a State Lead Agency (State LA) or early intervention service (EIS) provider accept an electronic or digital signature to indicate that the parent provides consent under Part C of the IDEA (when required for screening if a State has opted to offer screening, the evaluation, assessment, provision of early intervention services, disclosure of personally identifiable information (PII), or the use of benefits or insurance for their infant or toddler)?

Yes, so long as the State LA or EIS provider ensures there are appropriate safeguards for the parental consent required under Part C of IDEA under [34 C.F.R. § 303.7](#). The lead agency may, but is not required to, accept an electronic or digital signature provided it adopts the appropriate safeguards. OSEP has previously advised that these safeguards include that the electronic signature:

- 1) is signed and dated;
- 2) identifies and authenticates a particular person as the source of the electronic consent;

- 3) indicates such person's approval of the information contained in the electronic consent; and
- 4) is accompanied by a statement that the person understands and agrees.¹

IDEA requires State LAs and EIS providers to obtain informed written consent from parents, consistent with [34 C.F.R. § 303.7](#) for their child's screening (in States that have adopted screening procedures), evaluations and assessments, and before the provision of early intervention services, including before the initiation of each early intervention service. Parental consent is also required before the disclosure of PII under certain circumstances in accordance with [34 C.F.R. § 303.414](#) or prior to the use of public benefits or insurance or private insurance in certain circumstances in accordance with [34 C.F.R. § 303.520](#) and [34 C.F.R. § 303.420\(a\)\(1\)-\(4\)](#). Because of social distancing and other restrictions during the pandemic, it may not be possible to obtain a parent's signed, written consent in-person.

Q2. May the State LA or EIS provider accept a parent's electronic or digital signature as written parental consent to disclose PII from the child's early intervention records?

Yes, so long as the safeguards described in Q1 above are applied and met. These safeguards include that the electronic signature:

- 1) is signed and dated;
- 2) identifies and authenticates a particular person as the source of the electronic consent;
- 3) indicates such person's approval of the information contained in the electronic consent; and
- 4) is accompanied by a statement that the person understands and agrees.

Parental consent must be obtained before PII is disclosed to parties other than authorized representatives, officials, or employees of participating agencies (which includes the State LA and EIS provider) unless a specific exception applies under [34 C.F.R. § 303.414\(b\)](#) of the IDEA Part C regulations, which incorporates the exceptions under the Family Educational Rights and Privacy Act (FERPA) regulations in [34 C.F.R. Part 99.31](#).²

¹ [34 C.F.R. 303.7](#); also see OSEP [Letter to Greer](#) (July 19, 2013)

² For further information regarding consent for disclosure of PII, see [Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs Frequently Asked Questions](#) (October 2016).

Prior Written Notice and Procedural Safeguards Notice

Q3. How can a State LA or EIS provider provide the prior written notice required under [34 C.F.R. § 303.421](#), while agencies and other facilities are closed due to the pandemic?

If the parent has previously agreed, or agrees during the pandemic, the prior written notice and procedural safeguards notice can be provided through electronic mail (email). The State LA or EIS provider must provide parents written notice a reasonable time before it proposes or refuses to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and his or her family. [34 C.F.R. § 303.421](#). The prior written notice must include information regarding all procedural safeguards that are available under Part C. [34 C.F.R. § 303.421](#).

The term “reasonable time” is not defined in the regulation. The Department believes that it would be appropriate to consider factors such as the closure of agencies and public facilities such as schools, social distancing, and other health-related orders during the pandemic in determining what constitutes a reasonable time for this purpose. Nevertheless, the State LA or EIS provider should make every effort to ensure that written notice is provided as soon as possible prior to the proposed or refused action.

The determination of when prior written notice is required will depend on the particular facts and circumstances, but OSEP encourages State LAs and EIS providers to ensure that parents are fully informed of how their infant's or toddler's early intervention service needs are addressed during the time that IDEA Part C services are provided remotely.

Access to Early Intervention Records

Q4. How can a State LA or EIS provider comply with a parent's request to inspect and review the infant's or toddler's early intervention records³ while agencies and other public facilities are closed due to the pandemic?

In light of the social distancing and physical contact restrictions of many jurisdictions during the pandemic, parents and State LAs and EIS providers may identify a mutually agreeable timeframe and method for providing access to the infant's or toddler's early intervention records. If the parent asks to inspect and review specific documents from the infant's or toddler's early intervention records while agencies and public facilities

³ Each participating agency must permit parents of a child referred to, or served under Part C, to inspect and review all early intervention records relating to their child and family. Under IDEA, the agency must comply with a request without unnecessary delay, and before any individualized family service plan (IFSP) team meeting, or a due process hearing, or a resolution session (if the Lead Agency has adopted Part B due process hearing procedures) and, in no case more than 10 days after the request has been made. [34 C.F.R. § 303.405](#).

are closed during the pandemic, State LA staff, EIS providers, and the parent should work together to identify mutually agreeable options to provide access to the early intervention records. For example, the State LA or EIS provider could provide the parent with the requested information from the infant's or toddler's records via email, a secure on-line portal, or postal mail until the State LA or EIS provider offices reopen. Note though, the State LA or EIS provider must use reasonable methods when transmitting PII in early intervention records through email or an on-line portal. See, [FERPA and Virtual Learning During COVID-19](#).