

FINAL REGULATIONS ON PARENTAL CONSENT EFFECTIVE MARCH 18

Education Alert
March 12, 2013

The Department of Education issued final regulations relating to parental consent for the use of public benefits or insurance (Medicaid) to pay for services under Part B of the Individuals With Disabilities Education Act (IDEA). The prior regulations required public agencies (e.g. school districts) responsible for providing a free appropriate public education (FAPE) to obtain parental consent each and every time access to public benefits or insurance was sought. The purpose of the new regulations is to make it easier for school districts to access public benefits. The new regulations essentially contain two requirements:

1. A school district must notify the child's parent in writing prior to accessing the child's or parent's public benefits or insurance for the first time. The written notification must explain the protections afforded to parents under Part B so that parents are fully informed of their rights before the district accesses their or their child's Medicaid or other public benefits or insurance to pay for services under the IDEA. Furthermore, this notice must be in a language understandable to the general public and in the parent's native language or the mode of communication used by the parent. A subsequent annual written notification must also be provided to the parents.
2. Additionally, a school district must obtain a one-time written consent from the parent after providing the written notification described above and before accessing the child's or parent's public benefits or insurance for the first time. The consent must state that the parent understands and agrees that the school district may access the child's or parent's public benefits or insurance to pay for special education or related services. The consent must also specify a) the personally identifiable information that may be disclosed (this can include records or information about the services that will be provided to the student), b) the purpose of the disclosure, and c) the agency to which the disclosure may be made (Medicaid).

Because the new regulations go into effect on March 18, 2013, school districts should develop a written notification form that conforms with these requirements and develop written consent forms to be signed by parents so the district can access the child's or parent's public benefit or insurance while providing FAPE.

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