

Consent

CONSENT TO ACCESS PUBLIC BENEFITS

August 31, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP
ATTORNEYS | COUNSELORS

Disclaimer: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.

©2021 by Texas Association of School Boards, Inc.

TASB grants members/subscribers of TASB Student Solutions™ the limited right to customize this publication for internal (non-revenue generating) purposes only.



CONTENTS

CONSENT TO ACCESS PUBLIC BENEFITS..... 1

 What is Required 1

 Elements of Required Notice 1

 Elements of Consent to Access Public Benefits 2

 Additional Procedures 2

 School Health and Related Services (“SHARS”) 2

 Notification and Consent to Access Public Benefits and Insurance 2

 No-Cost Provisions 3

 Where a Parent Has Previously Declined Consent..... 3

 Students Who Transfer 3

 Communicating the Benefits of Providing Consent to Access Public Benefits..... 4

 Third-Party Liability 4

 Evidence of Implementation..... 4

 Resources..... 4

CITATIONS 5



CONSENT TO ACCESS PUBLIC BENEFITS

What is Required

With the written consent of the parent/adult student, the District may use Medicaid or other public benefits or insurance programs in which the student participates to provide or pay for services required under the IDEA, as allowed under the public benefits or insurance program, except as provided below. However, prior to accessing the child's or the parent's public benefits or insurance for the first time, and annually thereafter, the District must provide written notice to the parent regarding the District's access to the public benefits and the requirements of consent. The District may not refuse to provide special education services to an eligible student with a need simply because the parent refuses to consent to access the student's or parent's public insurance or benefits.

Elements of Required Notice

Special Education Personnel must provide written notice to the parent in the language understandable to the general public and in the parent's native language or other mode of communication (unless it is clearly not feasible to do so) prior to accessing the student's or parent's public benefits or insurance for the first time, and annually thereafter. This notice must contain:

- A statement of the parental consent provisions, including the personally identifiable information that may be disclosed, the purpose of the disclosure, and the agency to which the disclosure may be made. The statement must also affirm that the parent understands and agrees that the District may access the parent's or student's public benefits or insurance to pay for special education and related services under the IDEA;
- A statement that the parent understands that the granting of consent is voluntary on the part of the parent and can be revoked at any time;
- A statement that the parent's withdrawal of consent or refusal to consent to disclose personally identifiable information to Medicaid does not relieve the District of its responsibility to ensure that all required services are provided at no cost to the parents;
- A statement that the District cannot require the parent to (a) sign up for or enroll in public health benefits or insurance programs in order for the student to receive a FAPE or (b) incur an out-of-pocket cost, such as the payment of a deductible or co-pay amount incurred in filing a claim; and
- A statement that the District cannot use the student's benefits under a public benefits or insurance program if doing so would:
 - Decrease available lifetime coverage or any other insured benefit;



- Cause the family to pay for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
- Increase premiums or lead to the discontinuation of benefits or insurance for the parent or student; or
- Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

Elements of Consent to Access Public Benefits

After Special Education Personnel provides written notice to the parent as required above, Special Education Personnel must obtain written parental consent that is signed and dated before accessing the student's or the parent's public benefits or insurance for the first time. The consent must specify:

- The personally identifiable information that may be disclosed (e.g. records or information about the services that may be provided);
- The purpose of the disclosure (e.g. billing services);
- The agency to which the disclosure may be made (e.g. Medicaid); and
- That the parent understands and agrees that the District may access the parent's or the child's public benefits or insurance to pay for services under the IDEA.

Additional Procedures

School Health and Related Services ("SHARS")

Medicaid services provided by the District to Medicaid-eligible students are known as School Health and Related Services ("SHARS"). Oversight of SHARS is a joint effort between the TEA and Texas Health and Human Services Commission. SHARS allows the District to seek reimbursement from Medicaid for certain health-related services documented in the student's IEP so long as the parent consents to the District doing so.

Notification and Consent to Access Public Benefits and Insurance

The initial notification and consent may either be mailed or emailed to the parent. Digital or electronic signatures are acceptable. An electronic form must identify and authenticate the parent as the source of the consent and indicate the parent's approval of the information contained in the consent. Both paper and electronic consent forms must include a statement that the parent understands and agrees that the District can access the student's or parent's public benefits or insurance to pay for special education services.

If the parent has not yet provided consent to access public benefits or insurance, Campus Special Education Personnel will ensure that the parent has received the



notice and signs the consent at the ARD meeting, so long as it occurs prior to the first time the District accesses the student's or parent's public benefits of insurance.

After the initial consent is obtained, the District is not required to obtain consent to access public benefits or insurance annually. However, Special Education Personnel will provide annual written notification to parents of students in special education to ensure that parents understand their rights when the District uses the student's or parent's public benefits or insurance. At the beginning of each school year or at the annual ARD for the student, Special Education Personnel will send the notice to parents ensuring that they are fully aware of their rights. This written notification can be mailed or e-mailed to the parents. Special Education Personnel shall maintain documentation of the delivery of this notice to the parent including the date the notice was sent and the method of delivery. Such documentation should be maintained in the student's special education folder.

No-Cost Provisions

The District will ensure that all "no cost" provisions outlined in the required notice are met before providing written notification and seeking consent to use the student's or parent's public benefits or insurance to pay for special education services. For example, if the District's use of public benefits for physical therapy will limit the amount of physical therapy the student can receive outside of school, the District will not use the student's or parent's public benefit or insurance to pay for that services. However, the District is still responsible under the IDEA for providing those services at no cost to the parent.

Where a Parent Has Previously Declined Consent

If a parent has previously declined to provide consent or withdrawn consent to disclose personally identifiable information to the State's public benefits or insurance program for billing purposes, the District may make reasonable subsequent requests to obtain parental consent after providing written notification. However, the District is still responsible for ensuring that all required services are provided at no cost to the parents, even if the parent has withdrawn consent or refused to provide consent to disclose personally identifiable information to the agency responsible for administering the public benefits or insurance program.

Students Who Transfer

If a student transfers to a different campus within the District, the District is not required to obtain new consent prior to disclosing personally identifiable information for billing purposes. However, if a student transfers from another school district into the District, Special Education Personnel will provide the parent written notification, informing the parent of their rights and protections when access to the student's or parent's public benefits or insurance is sought. Special Education Personnel will then obtain parental consent to disclose personally identifiable information to the public benefits or insurance



program for billing purposes before the District may access the child's or parent's public benefits or insurance for the first time.

Communicating the Benefits of Providing Consent to Access Public Benefits

When explaining the notice and consent provisions to the parent, Special Education Personnel should also explain that signing the consent form allows the District to recover federal funds (in the case of Medicaid) that help defray a portion of the high costs associated with providing health-related services to students with disabilities. This also aides the District in attracting and retaining highly-qualified personnel to assist the students. Furthermore, it may allow the District the opportunity to obtain more expensive and specialized equipment and to allocate more resources for professional development and parent training.

Third-Party Liability

Under SHARS, Medicaid will pay the District for services before seeking third party reimbursement (i.e. through private insurance). However, once the District has sought reimbursement through Medicaid for services, the state may then seek to recover funding from the student's private insurance. The state may seek recovery for claims for up to 3 years. If the third-party insurance denies a claim for an acceptable reason, no further action will be taken. No additional consent is required on behalf of the parent for third-party recovery.

Evidence of Implementation

- Initial Notification of Access to Public Benefits and Insurance form
- Consent for Access to Public Benefits and Insurance form
- Annual Notification of Access to Public Benefits and Insurance form
- *Notice of Procedural Safeguards*

Resources

[The Legal Framework for the Child-Centered Special Education Process: Consent to Access Public Benefits - Region 18](#)

[School Health and Related Services - Texas Education Agency](#)

[Non-Regulatory Guidance on the IDEA Part B Regulations Regarding Parental Consent for the Use of Public Benefits or Insurance to Pay for Services under the IDEA \(Feb. 14, 2013\) - U.S. Department of Education](#)

[OSERS Memorandum to State Directors of Special Education - IDEA Part B Written Notification Regarding Use of Public Benefits or Insurance \(June 11, 2013\) - U.S. Department of Education](#)



[IDEA Part B Final Regulations Related to Parental Consent to Access Public Benefits or Insurance - U.S. Department of Education](#)

[IDEA Part B Issue Brief: Parental Consent for Use of Public Benefits or Insurance to Provide or Pay for Services Under IDEA Part B - American Speech-Language-Hearing Association](#)

[OSEP Letter to PAVE \(Sept. 5, 2013\) - U.S. Department of Education](#)

[OSEP Letter to Kinney \(July 23, 2008\) - U.S. Department of Education](#)

[OSEP Letter to Kinney \(May 7, 2008\) - U.S. Department of Education](#)

[OSEP Letter to Hill \(Mar. 8, 2007\) - U.S. Department of Education](#)

[OSEP Letter to Smith \(Jan. 23, 2007\) - U.S. Department of Education](#)

[OSEP Letter to DuRant \(Nov. 6, 2002\) - U.S. Department of Education](#)

[Update to HHSC Third Party Liability for SHARS Interim Claims - Texas Education Agency Information on School Health and Related Services \(SHARS\) - Texas Association of School Boards](#)

CITATIONS

34 CFR 99.30(a)–(b); 300.154(d), 300.503(c)