

# Consent

## CONSENT TO ACCESS PRIVATE INSURANCE

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 PRIVATE INSURANCE..... 1

    What is Required ..... 1

        Elements of Consent to Access Private Insurance ..... 1

        The Use of IDEA Part B Funds..... 1

    Additional Procedures ..... 1

        The Use of IDEA Part B Funds..... 2

    Evidence of Implementation..... 3

    Resources..... 3

CITATIONS ..... 3



# CONSENT TO ACCESS PRIVATE INSURANCE

## What is Required

The District may access the parent's private insurance proceeds to pay for special education and related services required to provide the student FAPE so long as the District obtains informed consent from the parent each time the District proposes to access the parent's private insurance proceeds.

## **Elements of Consent to Access Private Insurance**

To constitute informed consent for the District to access private insurance, the following must occur:

- The parent has been fully informed of all information related to the District accessing the parent's private insurance in the parent's native language or other mode of communication;
- The parent is informed that the parent's refusal to allow the District to access the parent's private insurance does not relieve the District of its duty to ensure all required special education services are provided at no cost to the parents;
- The parent understands and agrees in writing to the District accessing the parent's private insurance;
- The consent describes the activity of the District accessing the parent's private insurance and lists any records that will be released and to whom; and
- The parent understands that the granting of consent is voluntary by the parent and may be revoked at any time, except that if the parent revokes consent, the revocation is not retroactive (i.e. it does not negate any action occurring after the consent was given but before the consent was revoked).

## **The Use of IDEA Part B Funds**

The District may use IDEA-B funds to pay for a specified service required under the IDEA to provide FAPE when the District cannot obtain parental consent to use the parent's private insurance, and the parent would incur a cost for a specified service required under the IDEA. Additionally, the District may use IDEA-B funds to pay the cost that the parent otherwise would have to pay to use the parent's benefits or insurance if the parent would incur a cost and consent to use private insurance or public benefits to pay for services required to ensure the child receives FAPE, if the parent could avoid financial cost. See [USE OF IDEA PART B FORMULA AMOUNTS IN GENERAL].

## Additional Procedures



Campus Special Education Personnel will seek informed consent from the parent each time the District seeks to access the parent's private insurance. Likewise, at the beginning of each school year, Campus Special Education Personnel will send a letter to parents ensuring that they are fully aware of their rights, including the fact that the District cannot deny special education and related services to the student if the parent refuses to authorize the use of private insurance and that such consent is completely voluntary. This written notification can be mailed or e-mailed to the parents. Campus Special Education Personnel will request that the parent sign the letter and return it to the Campus Special Education Personnel. This signed letter should be maintained in the student's special education folder.

In addition to the consent to access private insurance, Campus Special Education Personnel will also obtain a consent for disclosure of the student's personally identifiable information for the private insurance company and/or health care providers, as necessary, to process claims for reimbursement for covered health-related services, evaluations for these services, and transportation as outlined in the student's IEP. See [CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION].

The District cannot deny services if the parent refuses to provide consent to access private health insurance. Furthermore, the District will not attempt to access the parent's private insurance where doing so would result in any cost to the parent. When providing notice to the parent, Campus Special Education Personnel will disclose the possible costs associated with the use of private insurance, including a possible co-payment; deductible or reduction of a cap on coverage; decrease in available lifetime benefits covered or decrease in any other policy benefit; an increase in premiums; and the cancellation or nonrenewal of coverage. The notice should also encourage parents to check with their insurance provider regarding possible consequences before giving consent. Campus Special Education Personnel will ensure that the parent understands that private health insurance payers can reduce or eliminate coverage of special education services that are required to provide the student FAPE because private insurers are not bound by IDEA regulations.

The District may offer to pay any financial costs related to accessing private insurance, so long as the parent agrees. This decision will be made by District Special Education Administration on a case-by-case basis.

The parent has the exclusive right to use or not use private insurance for medical evaluations. Likewise, as the IDEA requires the District to provide an independent educational evaluation ("IEE") at public expense, the District cannot require a parent to submit the bills for the cost of the evaluation to their private insurance company.

## The Use of IDEA Part B Funds

Should the parent notify Campus Special Education Personnel of the refusal to provide



parental consent for the use of private insurance, Campus Special Education Personnel will communicate the refusal to District Special Education Administration. The District will then use its Part B funds or other District funds to pay for special education services for that student. Campus Special Education Personnel will also indicate to District Special Education Administration if the parent has notified Campus Special Education Personnel that the refusal to provide consent to use private insurance is solely to avoid personal financial cost associated with doing so. District Special Education Administration will then determine if the District will use its Part B funding or other District funds to pay the cost that the parents otherwise would have to pay to use the insurance.

## **Evidence of Implementation**

- Initial Notification Requesting Access to Private Insurance Benefits
- Annual Notification Requesting Access to Private Benefits and Insurance form
- Consent(s) for Access to Private Insurance Benefits
- Consent for Disclosure of Information to Private Insurance

## **Resources**

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

[The Legal Framework for the Child-Centered Special Education Process: Use of IDEA Part B Formula Amounts in General - Region 18](#)

[OSEP Letter to Thompson \(Mar. 29, 2000\) - U.S. Department of Education](#)

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

## **CITATIONS**

Board Policy EHBAE; 34 CFR 300.154, 300.9