

SPECIAL EDUCATION RULES RLATING TO PARENTAL CONSENT

581-015-2090

Consent

(1) Consent means that the parent or adult student–

(a) Has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought; and

(b) Understands and agrees in writing to the carrying out of the activity for which his or her consent is sought.

(2) Consent is voluntary on the part of the parent and meets the requirements of the consent provisions of this rule and 34 CFR 300.622 and 34 CFR 99.30 implementing IDEA, and FERPA respectively.

~~(1)~~(3) Consent for initial evaluation:

(a) The school district must provide notice under OAR 581-015-2310 and obtain informed written consent from the parent or adult student before conducting an initial evaluation to determine if a child qualifies as a child with a disability under OAR 581-015-2130 through 581-015-2180.

(A) Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services.

(B) The school district must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for special education services.

(b) If a parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation, does not respond to a request for consent for an initial evaluation, or revokes consent for an initial evaluation, the school district may, but is not required to, pursue the initial evaluation of the child using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the evaluation using these procedures.

(c) Consent for initial evaluation for a child who is a ward of the state may be obtained under OAR 581-015-2095(2).

~~(2)~~(4) Consent for initial provision of services:

(a) A school district must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(c) If a parent or adult student does not respond or refuses to consent for initial provision of special education and related services or revokes consent for the initial provision of special education and related services, the school district may not seek to provide special education and related services to the child by using mediation or due process hearing procedures.

(d) If a parent or adult student refuses to grant consent for initial provision of special education and related services, does not respond to a request to provide such consent, or revokes consent for the initial provision of special education and related services:

(A) The school district will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the school district requests consent; and

(B) The school district is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the school district requests such consent.

(e) If, at any time subsequent to the initial provision of special education and related services, the parent or adult student revokes consent in writing for the continued provision of special education and related services, the school district

(A) May not continue to provide special education and related services to the student, but must provide prior written notice in accordance with OAR 581-015-2310 before ceasing the provision of special education and related services; and

(B) Is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

~~(3)~~(5) Consent for reevaluation:

(a) A school district must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2095.

(b) If a parent refuses to consent to the reevaluation or revokes consent for the reevaluation, the school district may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the reevaluation using these procedures.

~~(4)~~(6) Consent to Access Public Benefits or Insurance:

(a) Prior to accessing a child or parent's public benefits or insurance for the first time, or disclosing a child's personally identifiable information to a State's public benefits or insurance program for the first time, a public agency or school district must obtain informed consent in accordance with IDEA 34 CFR 300.622 and the Family Rights and Privacy Act (FERPA (34 CFR 99.30)).

(b) Such consent must specify—

(A) The personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);

(B) The purpose of the disclosure (e.g., billing for services), and

(C) The agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid); and

(D) Specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services.

(47) Revocation of consent:

(a) A parent or adult student may revoke consent at any time before the completion of the activity or action for which they have given consent.

(A) A parent or adult student may revoke consent for an evaluation or reevaluation that has not yet been conducted.

(B) A parent or adult student may revoke consent for the provision of special education services in writing at any time before or during the provision of those services.

(C) A parent or adult student may revoke consent for release of personally identifiable information to the State's public benefits or insurance program (e.g., Medicaid).

(b) If a parent or adult student revokes consent, that revocation is not retroactive.

(58) Other consent requirements:

(a) The school district must document its reasonable efforts to obtain parent consent in accordance with OAR 581-015-2195(3).

(b) 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 does not respond to a request for consent:

(A) The school district may not use mediation or due process hearing procedures to seek consent; and

(B) The school district is not required to consider the child as eligible for special education services.

(c) A refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the school district, except as provided in this rule.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155, 343.164

Stats. Implemented: ORS 343.155, 343.164, 34 CFR 300.9, 300.154, 300.300, 300.622

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 37-1978, f. & ef. 10-5-78; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0039, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2009, f. & cert. ef. 12-10-09

581-015-2310

Prior Written Notice

(1) For purposes of this rule, school district also means ECSE program and its contractors and subcontractors.

~~(1-2)~~ Prior written notice must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district

~~(a)~~ Proposes to initiate or change, ~~or refuses to initiate or change~~, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; ~~or~~

~~(b)~~ Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

~~(2) Prior written notice must be given after a decision is made and a reasonable time before that decision is implemented~~ (3) The content of the prior written notice must include:

(a) A description of the action proposed or refused by the school district;

(b) An explanation of why the district proposes or refuses to take the action;

~~(c) A description of any other options that the IEP team considered and reasons why those options were rejected;~~

~~(d)~~ A description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action;

~~(e) A description of any other factors that are relevant to the school district's proposal or refusal; and~~

~~(f)~~ A statement that the parents of a child with a disability have protection under the procedural safeguards, and, if this notice is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;

~~(g)~~ Sources for parents to contact to obtain assistance in understanding their procedural safeguards.

~~(h)~~ A description of other options that the IEP Team considered and the reasons why those options were rejected; and

~~(i)~~ A description of other factors that are relevant to the agency's proposal or refusal.

(4) The prior notice must be: ~~—~~

(a) Written in language understandable to the general public; and

(b) 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.

(5) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure that –

(a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(b) The parent understands the content of the notice; and

(c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule ~~has~~ have been met.

~~(6) If the proposed action requires prior written notice and written consent, the district may give notice at the same time it requests consent.~~

Stat. Auth.: ORS 343.045, 343.155

Stats. Implemented: ORS 343.155, 343.159, 34 CFR 300.503

Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 18-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0075, ODE 10-2007, f. & cert. ef. 4-25-07

Children with Disabilities under IDEA Covered by Enrolled in Public Benefits or Insurance

(1) A school district program may use the State's Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for special education and related services required under IDEA as and permitted under the public benefits or insurance program, as specified provided in subsection (2) of this section below.

~~(2) A school district using public insurance to provide special education or related services With regard to services required to provide a free appropriate public education (FAPE) to a child with disabilities under IDEA, a school district must:~~

~~(a) Obtain parent consent for releasing information to the State Medicaid agency necessary to access public insurance for the period of time covered by the student's IEP;~~

~~(3) With regard to services required to provide FAPE to an eligible child under IDEA, a school district~~

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child with disabilities to receive ~~special education and related services~~ FAPE under the IDEA; ~~FAPE under IDEA;~~

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for special education and related services pursuant to IDEA, but may pay the cost that the parent otherwise would be required to pay; and

(c) May not use the child's benefits under a public insurance program if that use would:

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

~~((3) With regard to services required to provide a free appropriate public education to a child with disabilities under IDEA, a school district~~

~~(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child with disabilities to receive FAPE under IDEA;~~

4) IDEA funds:

~~(a) If a school district is unable [to] use a child's public insurance for a specified service required to ensure a free appropriate public education, the district may use its Part funds to pay for the service.~~

~~(b) If the parent would incur a cost for the school district's use of public insurance, the district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the public insurance (e.g., the deductible or co-pay amounts).~~

~~(c) Proceeds from public insurance will not be treated as program income for purposes of 34 CFR 80.25.~~

~~(d) If a school district spends reimbursements from federal funds (e.g., Medicaid) for special education and related services those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions under the IDEA.~~

~~(5) Nothing in this rule should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.~~

43) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with (54) below, the school district, must obtain written, parental consent that—

(a) Meets the requirements of the Family Education Rights and Privacy Act (34 CFR part 99) and the parental consent provisions in IDEA (34 CFR §300.622) requiring that consent state—

(A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);

(B) the purpose of the disclosure (e.g., billing for services under the Individuals with Disabilities Education Act (IDEA); and

(C) the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid); and

(D) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under IDEA.

(54) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide prior written notification, consistent with requirements of OAR 581-015-2310(4) and (5), to the child's parents, that includes –

(a) A statement of the parental consent provisions in paragraphs (43)(a)(A) and (B) above;

(b) A statement of the “no cost” provisions in paragraphs (2)(a) through (c) above.

(c) A statement that the parents have the right under the Family Education Rights and Privacy Act (FERPA) and IDEA, Part B, and OAR 581-015-2090 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(d) A statement that the withdrawal of consent or refusal to provide consent, pursuant to FERPA and IDEA, to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(45) Use of IDEA Part B funds.

(a) If a school district is unable ~~[to] use a child's to obtain parental consent to use the parents' public benefits or insurance when the parents would incur a cost public insurance~~ for a specified service required to ensure a free appropriate public education, the district may use its Part B funds to pay for the service.

(b) ~~To avoid financial cost to parents who otherwise would consent to if the parent would incur a cost for the school district's use of public~~ benefits or insurance, the district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the public insurance (e.g., the deductible or co-pay amounts).

(c) Proceeds from public benefits or insurance will not be treated as program income for purposes of 34 CFR 80.25.

(d) If a school district or ECSE program spends reimbursements from federal funds (e.g., Medicaid) for special education and related services, those funds will not be considered “state or local” funds for purposes of the maintenance of effort provisions pursuant to IDEA 34 CFR §§ 300.163 and 300.203.

(56) Construction. Nothing in this rule should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397 aa through 1397jj. or any other insurance program.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045 & 343.155, 34 CFR 300.154

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0607, ODE 10-2007, f. & cert. ef. 4-25-07

581-015-2735

Parent Consent for ECSE

(1) Consent means that the parent–

(a) Has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought; and

(b) Understands and agrees in writing to the carrying out of the activity for which his or her consent is sought.

(2) Consent is voluntary on the part of the parent and meets the requirements of the consent provisions of this rule and 34 CFR 300.622 and 34 CFR 99.30 implementing IDEA, and FERPA respectively.

~~(+)~~(3) Consent for initial evaluation:

(a) The public agency must provide notice under OAR 581-015-2745 and obtain informed written parental consent before conducting an initial ECSE evaluation to determine if a child qualifies as a child with a disability under OAR 581-015-2795. Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services.

(b) The public agency must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for ECSE services.

(c) If a parent of a child enrolled in public preschool or seeking to be enrolled in public preschool does not provide consent for an initial evaluation, does not respond to a request for consent for an initial evaluation, or revokes consent for an initial evaluation, the public agency may, but is not required to, pursue the initial evaluation of the child using mediation or due process hearing procedures. A public agency does not violate its child find obligations if it declines to pursue the evaluation using these procedures.

~~(2)~~(4) Consent for initial provision of services:

(a) The contractor or subcontractor must obtain informed consent from the parent of the child before the initial provision of ECSE services to the child.

(b) The contractor or subcontractor must make reasonable efforts to obtain informed consent from the parent for the initial provision of ECSE services to the child.

(c) If a parent does not respond or refuses to consent for initial provision of ECSE services or revokes consent for the initial provision of ECSE services, the contractor or subcontractor may not seek to provide ECSE services to the child by using mediation or due process hearing procedures.

(d) If a parent refuses to grant consent for initial provision of ECSE services, does not respond to a request to provide consent for the initial provision of ECSE services, or revokes consent for such services:

(A) The contractor or subcontractor will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the ECSE services for which the contractor or subcontractor requests consent; and

(B) The contractor or subcontractor is not required to convene an IFSP meeting or develop an IFSP for the child for the ECSE services for which consent is requested.

(e) If, at any time subsequent to the initial provision of ECSE services, the parent of a student revokes consent in writing for the continued provision of ECSE services, the school district

(A) May not continue to provide ECSE services to the student, but must provide prior written notice in accordance with OAR 581-015-2310 before ceasing the provision of special education and related services; and,

(B) 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.

~~(3)(5)~~ Consent for reevaluation:

(a) The public agency must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2740(3).

(b) If a parent refuses to consent to the reevaluation or revokes consent for the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the reevaluation using these procedures.

(c) If, after reasonable efforts to obtain parent consent, the parent does not respond, the public agency may conduct the reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality.

(6) Consent to Access Public Benefits or Insurance

(a) Prior to accessing a child or parent's public benefits or insurance for the first time, or disclosing a child's personally identifiable information to the State's public benefits or insurance program for the first time, the ECSE program must obtain informed consent in accordance with IDEA, 34 CFR 300.622 and with the Family Rights and Privacy Act (FERPA), 34 CFR 99.30.

(b) Such consent must specify –

(A) The personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);

(B) The purpose of the disclosure (e.g., billing for services), and

(C) The agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and

(D) Specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services.

(7) Revocation of consent:

(a) A parent may revoke consent at any time before the completion of the activity or action for which they have given consent.

(A) A parent may revoke consent for an evaluation or reevaluation that has not yet been conducted.

(B) A parent may revoke consent for the provision of special education services in writing at any time before or during the provision of those services.

(C) A parent may revoke consent for release of personally identifiable information to the State's public benefits or insurance program (e.g., Medicaid).

(b) If a parent revokes consent, that revocation is not retroactive.

(58) Other consent requirements:

(a) The public agency must document its reasonable efforts to obtain parent consent in accordance with OAR 581-015-2755(2)(b).

(b) A parent's refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the contractor or subcontractor, except as provided in this rule.

(c) If a parent of a child who is 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 does not respond to a request for consent:

(A) The public agency may not use mediation or due process hearing procedures to seek consent;

and

(B) The public agency is not required to consider the child as eligible for ECSE services.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.531, 34 CFR 300.300; 34 CFR 300.622

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0939, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2009, f. & cert. ef. 12-10-09

581-015-2745

Prior Written Notice and Notice of Procedural Safeguards - EI/ECSE Program

(1) Prior written notice must be given to the parent or surrogate parent a reasonable time before the contractor or subcontractor ~~proposes to initiate-initiates~~ or changes, or refuses to initiate or change, the identification, evaluation, placement of the child; or

(a) The provision of appropriate EI services if the child is from birth to age three; or

(b) The provision of a free appropriate public education to the child if the child is three years of age to eligibility for public school.

~~(2) Prior written notice must be given after a decision is made and a reasonable time before the decision is implemented~~(3)2) The content of the prior written notice must include:

(a) A description of the action proposed or refused by the contractor or subcontractor;

(b) An explanation of why the contractor or subcontractor proposed or refused to take the action;

(c) A description of any options that the IFSP team and reasons why those options were rejected;

(d) A description of each evaluation procedure, assessment, test, record, or report which is directly relevant to the proposal or refusal;

(e) A description of any other factors relevant to the contractor's or subcontractor's proposal or refusal;

(f) A statement that the parents of a child with a disability have procedural safeguards and, if it is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;

(g) Sources for parents to contact to obtain assistance in understanding their procedural safeguards; and

(h) For children in EI, a statement of the complaint procedures under OAR 581-015-2030, including a description of how to file a complaint and the timelines under those procedures.

(4)3) The prior notice must be:

(a) Written in language understandable to the general public; and

(b) 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.

(5)4) If the native language or other mode of communication of the parent is not a written language, the contractor or subcontractor must take steps to ensure that:

(a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(b) The parent understands the content of the notice; and

(c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule have been met.

(65) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).

~~(7) If the proposed action requires prior written notice and written consent, the contractor or subcontractor may give notice at the same time it requests consent.~~

(86) Notice of Procedural Safeguards: Contractors and subcontractors must provide notice of Procedural Safeguards as described in OAR 581-015-2315.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.527, 343.531, 34 CFR 300.503, 300.504

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0940, ODE 10-2007, f. & cert. ef. 4-25-07

581-015-2885

Preschool Children with Disabilities Covered by Public Insurance

(1) Applicability: For purposes of OAR 581-015-2885, IDEA Part C requirements apply to children ages birth through two; IDEA Part B requirements apply to children ages three and above.

(2) For purposes of this rule the term “public benefits” means public insurance including but not limited to Medicaid.

(3) The contractor or subcontractor may use a child or family’s public benefits to provide or pay for early intervention ~~or a Free Appropriate Public Education~~, as permitted under the public insurance program and the requirements of this rule.

(4) The contractor or subcontractor may not require a parent to sign up for, or enroll in, public benefits to receive early intervention services under Part C. ~~or a free appropriate public education (FAPE) under Part B.~~

(5) For a child under age three, the contractor or subcontractor:

(a) Must obtain, prior to using public benefits, parent consent if the child or family is not enrolled in the public benefits program or if that use would:

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits;

(C) Increase premiums or lead to the discontinuation of insurance; or

(B) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(b) Must provide, if the parent does not consent to use of their public benefits, the early intervention services on the IFSP for which the parent has provided consent.

(c) Must provide written notification, prior to using public benefits, to the parents that includes:

(A) A statement that parental consent must be obtained before the contractor or subcontractor discloses a child’s personally identifiable information to the State Medicaid Agency for billing purposes;

(B) A statement of the no-cost protection provision in subsection (5)(a)–(b) that early intervention services on the IFSP must still be made available if the parent has consented to these services;

(C) A statement that the parents have the right to withdraw their consent to disclose personally identifiable information to the public agency responsible for the administration of public benefits or insurance program (e.g., Medicaid) at any time; and

(D) A statement of the general cost categories that the parent would incur as a result of participating in a public benefits program.

(d) Must pay any costs incurred as a result of using public benefits for early intervention services, such as a deductible or copayment.

(e) May use its Part C funds to pay fees and costs (e.g., the deductible or co-pay amounts) the parents otherwise would have to pay to use public benefits.

(f) May use its Part C funds to pay for early intervention services;

(g) Must notify EI parents that they may use any of the state's dispute resolution procedures including, but not limited to, the state complaint system under OAR 581-015-2030, and mediation, due process and related resolution sessions under 581-015-2865 through 581-015-2870 to contest the imposition of an insurance-related fee or cost, such as co-payments or deductibles, to provide early intervention services for a child who may have a disability.

(6) For a child over age three, the ECSE program, the contractor, or subcontractor may use the State's Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for special education and related services required under IDEA and permitted under the public benefits or insurance program, as specified in subsection (2) below.

~~) Must obtain parent consent for releasing information to the state Medicaid agency necessary to access public insurance for the period of time covered by the child's IFSP;~~(7) With regard to services required to provide a free appropriate public education (FAPE) to a child with disabilities under IDEA, the ECSE program, contractor, or subcontractor

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child with disabilities to receive FAPE under the IDEA;

~~(b) Must notify parents that the parents' refusal to allow access to their public benefits does not relieve the contractor or subcontractor of responsibility to ensure that all required services are provided at no cost to the parent~~

~~(b) Must~~ May not require parents to incur an out-of-pocket expense such as the payment of deductible or copay amount incurred in filing a claim for special education and related services, pursuant to IDEA, but may ~~and must~~ pay the cost that the parent otherwise would be required to pay; and

~~(c) Must~~ May not use ~~the~~ child's benefits under a public insurance program if that use would:

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and-

(d) Must not use a child's benefits under a public insurance program if that use would:

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(48) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with (5) below, the ECSE program, contractor, or subcontractor must obtain written, parental consent that—

(a)(b) Meets the requirements of the Family Education Rights and Privacy Act (34 CFR part 99) and the parental consent provisions in IDEA (34 CFR §300.622) requiring that consent state—

(A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);

(B) the purpose of the disclosure (e.g., billing for services under the Individuals with Disabilities Education Act (IDEA)); ~~and~~

(C) the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid); and

(D) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under IDEA.

(59) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the District or ECSE program must provide prior written notification, consistent with requirements of OAR 581-015-2310(4) and (5), to the child's parents, that includes —

(a) A statement of the parental consent provisions in paragraphs (4)(a)(A) and (B) above;

(b) A statement of the "no cost" provisions in paragraphs (2)(a) through (c) above.

(c) A statement that the parents have the right under the Family Education Rights and Privacy Act (FERPA) and IDEA, Part B, and OAR 581-0152005 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(d) A statement that the withdrawal of consent or refusal to provide consent, pursuant to FERPA and IDEA, to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(10) Use of IDEA Part B funds.

(a) If the ECSE program, contractor, or subcontractor is unable to obtain parental consent to use the parents' public benefits or insurance when the parents would incur a cost for a specified service required to ensure a free appropriate public education, the district or ECSE program ~~May~~ use its Part B funds to pay for the service_s to ensure FAPE ;

(b) To avoid financial cost to parents who would otherwise consent to use public benefits or insurance, the ECSE program, contractor, or subcontractor ~~May~~ use its Part B funds to pay the cost the parents otherwise would have to pay to use the public ~~benefits~~ insurance (e.g., the deductible or co-pay amounts).

(c) Proceeds from public benefits or insurance ~~are will not be~~ treated as program income for purposes of 34 CFR 80.25.

~~(d) If a contractor or subcontractor spends reimbursements from federal funds (e.g., Medicaid) for early intervention, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions.~~ If the ECSE program, contractor, or subcontractor spends reimbursements from federal funds (e.g., Medicaid) for special education and related services, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions pursuant to IDEA. If a contractor or subcontractor spends reimbursements from federal funds (e.g., Medicaid) for early intervention, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions.

~~(511)~~ Construction. Nothing in this rule should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under ~~applicable titles~~ title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397 aa through 1397jj, or any other insurance program.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495, 34 CFR 303.430, 303.520, 303.521; 300.154

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1051, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 30-2012, f. 11-7-12, cert. ef. 11-9-12