

New York State Department of Health
Bureau of Early Intervention
Guidance to Early Intervention Providers
Guidance on Collection of Parent/Guardian Consent Using Electronic Systems
January 2022

Background and Purpose

The New York State Department of Health (Department) Bureau of Early Intervention (BEI) is issuing this guidance to assist with reducing barriers in obtaining informed parental/guardian consent for Early Intervention Program (EIP) services.

The purpose of this guidance is to provide early intervention (EI) stakeholders with guidelines for the collection and use of electronic signatures from parents/legal guardians to indicate parent consent, as mandated by federal and State regulations for participation in, and initiation of, services in the EIP. In accord with federal and state education laws, **under no circumstances may verbal consent be treated as sufficient to initiate EIP services.** However, effective with this guidance, consent to receive EIP services may be obtained electronically.

The Use of Electronic Signatures for EIP Parental Consent

The Department has reviewed the federal guidance provided by the United States Department of Education Office of Special Education Programs (OSEP), pertaining to Part C Procedural Safeguards and the use of electronic or digital signatures to indicate that the parent provides consent under Part C of the Individuals with Disabilities Education Act (IDEA) for early intervention services.¹

Federal guidance permits a State Lead Agency (State LA) or EI provider to *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 (EIS), including before the initiation of each early intervention services, disclosure of personally identifiable information (PII), or the use of benefits or insurance for their infant or toddler, as 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](#)¹.*

OSEP has advised that these safeguards include that the electronic signature:

¹ [QA Part C Procedural Safeguards. 06/30/2020 \(PDF\)](#)

- 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.

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.

After reviewing the federal and State statutory and regulatory requirements, the Department is providing the following updated guidance regarding expanded use of electronic signatures for EIP consents.

An approved provider of EIP services may accept an electronic or digital signature to indicate that the parent provides consent under Part C of the IDEA when required for screening, multidisciplinary evaluation, assessment, provision of EIS, to initiate services on the child's Individualized Family Service Plan (IFSP), disclosure of PII or the use of benefits or insurance for their infant or toddler.

In instances where a provider chooses to use electronic means to obtain a parent's signature for consent, it is the responsibility of the provider who chooses to use a particular software program, application, or web-based platform, to determine that what they have chosen to use is in compliance with regulations and standards of the EIP, particularly that it is compliant with the Health Insurance Portability and Accountability Act (HIPAA), FERPA, and Medicaid standards.

The Department cannot endorse use of any particular software, application, or web-based platform. It is also incumbent upon the provider to ensure that once they have obtained the electronic signature, it is maintained properly in the child's record as required by EIP regulations and that the electronically signed, required documentation is maintained by the provider. Electronically signed Part C consents for EIS must be available upon monitoring/audit.

As stated above, all consents for the EIP may be obtained electronically if the provider can ensure:

- the electronic system they have chosen is in compliance with regulations and standards of the EIP, particularly that it is compliant with HIPAA, FERPA, and Medicaid standards;
- that the electronic system/consent/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 to the content of the prior written notice of service terms.

Parental consent must be obtained before PII is disclosed to parties other than authorized representatives, officials, or employees of participating agencies 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 FERPA regulations in 34 C.F.R. Part 99.31;

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.

- signed documents are maintained in the child's record as required by regulation.²
- electronically signed documentation can be produced upon request during monitoring/audit.

Additionally, if the provider will be using email to communicate with the parent and transfer electronic documents containing a consent signature, the provider must first have signed consent from the parent to use email for EIP purposes. All regulations pertaining to confidentiality and PII must also be adhered to. Counties and municipalities are responsible to ensure providers adhere to requirements for documentation of EIP services and maintenance of child records and may choose to impose more stringent requirements.

For additional information about requirements for Early Intervention Program Records, please also refer to the Department's guidance provided in the document, *Early Intervention Program Memorandum 2003-1 Early Intervention Program Records*.²

² 10 NYCRR 69-4.26

The most current guidance about program records and record keeping for the EIP can be found in the Department sponsored training course offered by the New York Early Intervention Program Online Professional Development Center, maintained by Measurement Inc. on the dedicated training website.³

² http://www.health.ny.gov/community/infants_children/early_intervention/memo03-1.htm

³ www.nyseipopdc.org