



OFFICE OF SPECIAL EDUCATION
ASSISTANT COMMISSIONER

November 2018

TO: District Superintendents
Superintendents of Schools
Public School Administrators
Superintendents of State-Operated and State-Supported Schools
Executive Directors of Approved Private Schools
Nonpublic School Administrators
Charter School Administrators
Directors of Special Education
Directors of Pupil Personnel Services
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
County Fiscal Officers
Authorized Municipality Representatives
Organizations, Parents, and Individuals Concerned with Special Education

FROM: Christopher Suriano 

SUBJECT: Parental Consent for the Use of Public Benefits or Insurance Pursuant to the Individuals with Disabilities Education Act (IDEA)

The purpose of this memorandum is to remind school districts and counties of federal and State requirements relating to students with disabilities who are covered by public benefits or insurance (e.g., Medicaid) and students who are covered by private insurance and the procedures for school districts and counties to access public benefits to pay for certain special education and related services. Given the recent Medicaid in Education Alert (Issue #18-08) specific to the Interim Process for Medicaid Client Identification Number (CIN) Matching, it is important to review the intended scope of the July 2013 Field Advisory, as well as §200.5(b) of the Regulations of the Commissioner of Education (8 NYCRR) regarding parental consent and the sharing of student information for the purpose of obtaining students' CINs or checking eligibility to public benefits or insurance (e.g., Medicaid).

This memorandum replaces the guidance issued by the New York State Education Department (NYSED) in July 2013 entitled *Parental Consent for the Use of Public Benefits or Insurance Pursuant to the Individuals with Disabilities Education Act*. That field advisory served as notification that in accordance with then recently amended federal regulations (34 Code of Federal Regulations (CFR) §300.154 (d) and (e)), NYSED amended 8 NYCRR §200.5(b) to require public agencies, including school districts, to obtain a one-time consent from a parent before accessing or using the child's or parent's public benefits or insurance (e.g., Medicaid) for the first time, and explained the initial and thereafter annual written

notification to parents informing them of their rights before a public agency accesses public benefits or insurance to pay for services under IDEA. Consistent with 8 NYCRR §200.5(b), public agencies must continue to:

1. obtain a one-time written consent from the parent before accessing the child's or parent's public benefits or insurance for the first time, including checking with the New York State Department of Health for a child's CIN or for whether a child has Medicaid coverage¹; and
2. prior to obtaining consent for the first time, and annually thereafter, provide parents with a written notification that ensures that they are fully informed of their rights before a public agency can access public benefits or insurance to pay for services under IDEA. This notice must be 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.

Please note that obtaining consent from the parents is not a duty that can be transferred to a third-party vendor such as a Medicaid billing agent. Consent must be obtained by the public agency.

Attached, for additional information, is a copy of 8 NYCRR §200.5(b) (Attachment 1); a sample written annual notification form based on the sample form issued by the U.S. Department of Education for this purpose (Attachment 2); and a sample consent form (Attachment 3) that districts and counties may use. Also attached are updated questions and answers based on federal guidance (Attachment 4). Please note that the attached sample forms replace those included in NYSED's July 2013 field memorandum regarding parental consent for the use of public benefits or insurance pursuant to IDEA.

Please direct questions regarding Medicaid reimbursement to NYSED's Medicaid Unit at (518) 474-7116 or MedinEd@nysed.gov. Questions relating to the IDEA requirements for parental consent may be directed to the Special Education Policy Unit at (518) 473-2878, speced@nysed.gov, the Nondistrict Unit at (518) 473-1185, or the Special Education Quality Assurance Unit in your region:

Central Region	(315) 428-4556
Eastern Region	(518) 486-6366
Hudson Valley Region	(518) 473-1185
Long Island Region	(631) 952-3352
New York City Region	(718) 722-4544
Western Region	(585) 344-2002

Attachments

¹ If a public agency has a child's Client Identification Number (CIN) but has never previously received consent from the parent to access the child's or parent's public benefits or insurance, the public agency must first obtain consent before checking with the New York State Department of Health on the child's Medicaid or other health insurance status. If consent has already been obtained, obtaining a new parental consent based on this memorandum is not necessary.