



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

GRETCHEN WHITMER
GOVERNOR

SHEILA A. ALLES
INTERIM STATE SUPERINTENDENT

MEMORANDUM

DATE: February 28, 2019

TO: Local and Intermediate School District Superintendents
Public School Academy Directors

FROM: Dr. Scott Koenigsknecht, Deputy Superintendent
P-20 System and Student Transitions

A handwritten signature in black ink, appearing to read 'SK', located to the right of the 'FROM' field.

SUBJECT: Update on Transition Assessment and Parent Consent – 2nd Notice

This communication was originally sent on February 26, 2019 and is being re-issued for consistency with our standard communication to the field.

The Michigan Department of Education (MDE) issued a memo on August 23, 2018 regarding parental consent for transition assessments. Through the investigation of a state complaint, the MDE recognized the lack of consistency of implementation regarding this issue.

After a review of the federal Office of Special Education Programs (OSEP) policy and guidance pertaining to evaluation and consent, as well as a review of other state practices pertaining to parent consent and transition assessment, the MDE clarified the need to obtain parent consent when assessing students with disabilities for the purpose of identifying appropriate transition programs and services. As parents are required to provide consent for all other assessments used to develop goals and objectives, the MDE viewed transition assessments in the same light.

In the absence of specific guidance from OSEP, the MDE determined, given the emphasis of Individuals with Disabilities Education Act (IDEA) on the protections of rights for children and families, this decision was consistent with the protection of those rights. The MDE acknowledged until OSEP provided the necessary policy guidance specific to parent consent for transition assessment, the MDE would continue to require parent consent.

In response to a policy request on the issue of parent consent and transition assessment, the federal Office of Special Education and Rehabilitative Services (OSERS) has now issued guidance regarding this issue. The policy letter is attached.

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The MDE memo is no longer in effect and districts are referred to the current OSERS guidance.

This directly aligns with the Michigan Top 10 in 10 Strategic Goal #7: Further develop an innovative and cohesive state education agency that supports an aligned, coherent education system at all levels (state, ISD, district, and school.)

Questions may be directed to the Michigan Special Education Information Line at 888-320-8384 or email at mde-ose@michigan.gov.

Attachment

cc: Michigan Education Alliance



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Karen J. Olex
Executive Director for Special Populations
Oakland Schools
2111 Pontiac Lake Road
Waterford, Michigan 48328

FEB 22 2019

Dear Ms. Olex:

This letter responds to your electronic correspondence (email) to me regarding the Michigan Department of Education's policy addressing transition assessments administered under the Individuals with Disabilities Education Act (IDEA). Specifically, you asked whether parental consent is required prior to conducting "age appropriate transition assessments" referenced in the IDEA Part B transition services provisions.

We note that section 607(d) of the IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

In brief, while there is nothing in IDEA that would prevent a State from requiring parental consent for age appropriate transition assessments related to appropriate measurable postsecondary goals, it is the position of the Office of Special Education Programs that in general, IDEA does not require a public agency to obtain parental consent before conducting those assessments, unless the assessments are part of an initial evaluation or reevaluation. Our explanation of relevant IDEA requirements follows.

Under 34 C.F.R. § 300.320(b), beginning with the first individualized education program (IEP) to be in effect when a child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include: (1) appropriate measurable postsecondary goals based on age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and (2) the transition services, including courses of study, needed to assist the child in reaching those goals. The term "evaluation," under IDEA, means procedures used in accordance with 34 C.F.R. §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. Once a child has been fully evaluated for the first time in a State, a decision has been rendered that a child is eligible under IDEA, and the required services have been determined, any subsequent evaluation of a child to determine

whether the child is a child with a disability and the nature and extent of special education and related services that the child needs would constitute a reevaluation. 20 U.S.C. § 1414(a)(2).

IDEA requires a public agency to obtain parental consent prior to conducting an initial evaluation or reevaluation. 20 U.S.C. §§ 1414(a)(1)(D)(i)(I) and 1414(c)(3) and 34 C.F.R. § 300.300(a) and (c). Under 34 C.F.R. § 300.300(a)(1), a public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 C.F.R. § 300.8 must, after providing notice consistent with 34 C.F.R. §§ 300.503 and 300.504, obtain informed consent, consistent with 34 C.F.R. § 300.9, from the parent of the child before conducting the evaluation. If the parent of a child enrolled in public school, or seeking to be enrolled in public school, does not provide consent for the initial evaluation, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the IDEA procedural safeguards (including the mediation procedures under 34 C.F.R. § 300.506 or the due process procedures under 34 C.F.R. §§ 300.507 through 300.516). See 20 U.S.C. § 1414(a)(1)(D)(ii)(I) and 34 C.F.R. § 300.300(a)(3)(i).

A public agency also must obtain informed parental consent, in accordance with 34 C.F.R. § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability. If the parent of a child who is enrolled or seeking to be enrolled in public school refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in 34 C.F.R. § 300.300(a)(3). Also, the informed parental consent to conduct a reevaluation need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain such consent and the child's parent has failed to respond. See 20 U.S.C. § 1414(c)(3) and 34 C.F.R. § 300.300(c)(1)-(2). Finally, parental consent is not required before reviewing existing evaluation data on the child as part of an evaluation or a reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. 34 C.F.R. § 300.300(d)(1).

In your correspondence you state that the assessments at issue are competency-based transition assessments that are administered to all transition-aged students on a yearly basis, in order to develop postsecondary goals. If those assessments are administered to all students, both with and without disabilities, consistent with 34 C.F.R. § 300.300(d)(1)(ii), parental consent would not be required unless it is required before the administration of the assessment to all children. Further, we believe that generally, parental consent is not required prior to conducting an age appropriate transition assessment because the purpose of the assessment is to develop appropriate postsecondary IEP goals and not to determine whether a child has or continues to have a disability, and the nature and extent of the special education and related services that the child needs. If, however, the IEP Team determines that a reevaluation of the child is warranted in order to obtain additional data, based on the student's educational or related services needs including improved academic achievement and functional performance, the public agency is required to obtain parental consent consistent with 34 C.F.R. § 300.300(c). See also 34 C.F.R. § 300.303(a)(1). Under 34 C.F.R. § 300.300(d)(2), a State may require parental consent for other services and activities under Part B of IDEA if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with a free appropriate public education. Consequently, if a State chooses to

require consent for transition assessments it would be required to inform its local educational agencies and the Secretary of Education of this State-imposed requirement. 20 U.S.C. § 1407(a)(2) and 34 C.F.R. § 300.199(a)(2).

If you have any further questions, please do not hesitate to contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

A handwritten signature in cursive script that reads "Laurie VanderPloeg".

Laurie VanderPloeg
Director
Office of Special Education Programs