



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

March 23, 2020

To: Superintendents, Member School Districts (K-12)
From: Jennifer E. Nix, Associate General Counsel ^{JEN}
Subject: FAQ on Holding IEP Meetings Remotely
Memo No. 22-2020

Given the shelter-at-home orders, many of our clients have had questions regarding holding virtual IEP meetings. This FAQ addresses the four most common questions. We understand that convening IEP meetings for all of your students with disabilities will be challenging during school closures. As circumstances can vary from district to district, please contact our office for advice as to your school district’s specific concerns.

1. Does the IDEA permit schools to hold IEP meetings via telephone or video conference?

Yes. The IDEA permits parents and districts, with agreement, to use an alternative means of participation to conduct IEP meetings or carry out other administrative matters. Those alternative means could be video conferences or conference calls via telephone. (34 C.F.R. §§ 300.322(c), 300.28)

During an emergency school closure, IEP teams are not required to meet in person, and accessible technology may be used to conduct IEP meetings or carry out other administrative matters. (*Fact Sheet: Addressing the Risk of COVID-19 in Schools while Protecting the Civil Rights of Students* (OCR 3/16/20))

You should document efforts to provide alternative means for parents to participate in an IEP meeting. (34 C.F.R. § 300.322(d))

2. May schools deliver special education documents via email?

Yes. The IDEA provides that parents may elect to receive prior written notices, procedural safeguards, and due process complaints by email, if that option is available. (34 C.F.R. 300.505) Additionally, the U.S. Department of Education has opined that schools may distribute IEP documents and progress reports via



email if the parents are in agreement to such delivery and the emails are secure. (*Letter to Breton* (OSEP 3/21/14); *Analysis of Comments and Changes to the 2006 IDEA Part B Regulations*, 71 Fed.Reg. 46,540 (2006))

3. Does an electronic signature fulfill the requirements for informed parental consent under the IDEA and in California?

Yes. When consent is required, it must be “fully informed” consent in order to be valid. (20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.9. Educ. Code § 56346) A parent is considered to have consented if he/she is: 1) fully informed of all information relevant to the activity for which consent is sought, in his/her native language, or through another mode of communication; 2) understands and **agrees in writing** to the carrying out of the activity for which his/her consent is sought, and the consent describes the activity and lists the records (if any) that will be released and to whom; and 3) understands his/her related procedural safeguards. (34 C.F.R. § 300.9)

California law provides for any person to use a digital signature in a written communication with a public entity, including a school district. (Gov’t Code §§ 16.5, 811.2) That digital signature has the same force and effect of a physical signature if it: 1) is unique to the person using it; 2) is capable of verification; 3) is under the sole control of the person using it; 4) is linked to data in such a manner that if the data are changed, the digital signature is invalidated; and 5) conforms to regulations adopted by the Secretary of State. (Gov’t Code § 16.5) A school cannot require a parent to use a digital signature. (Gov’t Code § 16.5) The application “DocuSign” meets these legal requirements.

Additionally, in comments to the regulations, the U.S. Department of Education provided that schools may use electronic or digital signatures for consent if they take steps to ensure the integrity of the process. (*Analysis of Comments and Changes to the 2006 IDEA Part B Regulations*, 71 Fed.Reg. 46,629 (2006))

Based on the above, a digital signature would suffice as written consent to an IEP or IEP amendment. During an emergency school closure, it may not be reasonable for you to obtain a parent’s physical signature on an IEP or IEP amendment to which you need consent. You must ensure that the parent receives a copy of the document to which you are requesting consent, in his/her native language, and that the parent is otherwise fully informed in accordance with Federal and state law.

4. Does written consent provided through email or text message fulfill the requirements for informed parental consent under the IDEA and in California?

Probably; however, this type of consent should be used as a last resort. The Electronic Signatures in Global and National Commerce Act provides that most electronic agreements are enforceable as if they were paper documents. (Pub. L. 106-229 (2000)) The Act does not specify an approved method of signing electronic agreements. It defines “electronic signature” broadly to mean “an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” (15 U.S.C. § 7706)



Accordingly, based on this broad definition, if a school emails a copy of an IEP amendment to a parent and the parent responds that they consent to the attached IEP document, it is likely that the parent has provided the needed consent to implement that attached IEP. If a school mails a copy of an IEP amendment to the parent, and the parent is only able to access text messaging to provide consent, you should ensure that it is clear to what document the parent is providing consent. In both situations, you should ensure you maintain copies of the electronic consent.

In the event you rely on written consent provided through email or text message during school closures, you should obtain a parent's actual signature on any IEP documents still being implemented once face-to-face meetings are resumed.

Moreover, once in-person instruction resumes, schools should return to obtaining written consent via written or digital signature.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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