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

June 11, 2013

TO: State Directors of Special Education

FROM: Michael K. Yudin
Delegated the authority to perform the functions and duties of Assistant Secretary for Special Education and Rehabilitation Services

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

SUBJECT: Suggested Model for Written Notification of Parental Rights regarding Use of Public Benefits or Insurance

On February 14, 2013, the Office of Special Education and Rehabilitative Services (OSERS) published the final regulations under the Individuals with Disabilities Education Act (IDEA) to amend 34 CFR §300.154(d) governing the use of public benefits or insurance, at 78 Fed. Reg. 10525. Section 300.154(d)(2)(v) includes a new requirement for public agencies to provide written notification to a child's parents before accessing a child's or parent's public benefits or insurance (e.g., Medicaid) for the first time and annually thereafter. This notification, which must be written in language understandable to the general public and in the parent's native language or other mode of communication used by the parent, unless it is clearly not feasible to do so, must inform the child's parents of all of the rights and protections that are available to them under the IDEA so that they can make an informed decision regarding whether to allow a public agency to use their or their child's public benefits or insurance to pay for services for their child under the IDEA.

Specifically, the written notification must contain: a statement of the parental consent requirements in new §300.154(d)(2)(iv); a statement of the "at no cost" provisions in §300.154(d)(2); a statement that parents have the right to withdraw their consent to disclosure of their child's personally identifiable information to the public benefits or insurance program (e.g., Medicaid) at any time; and a statement of the public agency's continuing obligation to ensure that all required services are provided at no cost to the parent even if the parent withdraws his or her consent or refuses to consent. 34 CFR §300.154(d)(2)(v).

To assist States and public agencies in implementing this new requirement, we are providing the attached model written notification, which you may wish to provide to school districts in your State to use to meet the requirements of new §300.154(d)(2)(v). If you choose to use the attached notification to meet this new IDEA requirement, we would encourage you to tailor it to include your State-specific information, for example, by including your State name, school district name, and the name of your State's agency responsible for administering the public benefits or insurance program. Your State and local educational agencies are not required to use this model notification to satisfy their responsibilities under new §300.154(d)(2)(v). If you choose instead to develop your own notification, it must include all of the required information in 34 CFR §300.154(d)(2)(v).

Thank you for your ongoing commitment to improving results for children with disabilities. If you would like further assistance, please contact Mary Louise Dirrigl at 202-245-7324 or via e-mail at mary.louise.dirrigl@ed.gov .

IDEA PART B WRITTEN NOTIFICATION REGARDING USE OF PUBLIC BENEFITS OR INSURANCE

INTRODUCTION

You are receiving this written notification to give you information about your rights and protections under Part B of the Individuals with Disabilities Education Act (IDEA), so that you can make an informed decision about whether you should give your written consent to allow your school district to use your or your child's public benefits or insurance to pay for special education and related services that your school district is required to provide at no cost to you and your child under IDEA. First, we will provide some basic information about IDEA.

Part B of IDEA is the Federal law that provides for assistance to States and school districts in making a free appropriate public education (FAPE), which includes special education and related services, available to children with disabilities in the least restrictive environment. If your child has been evaluated and found eligible for services under IDEA because he or she has a disability and needs special education and related services, your school district must develop an individualized education program (IEP) for your child. Your school district must provide the special education and related services included in your child's IEP at no charge to you or your child.

IDEA funds pay a portion of your child's special education and related services. Funds from a public benefits or insurance program (for example, Medicaid funds) also may be used by your school district to help pay for special education and related services, but only if you choose to provide your consent, as explained below. Also, your school district cannot access your or your child's public benefits or insurance if it would result in a cost to you, such as a decrease in your benefits or an increase in your premiums. These "no cost" provisions are explained below as well.

Before your school district can ask you to provide your consent to access your or your child's public benefits or insurance for the first time, it must provide you with this notification of the rights and protections available to you under IDEA. This notification is intended to help you understand these rights and protections, including the type of consent your school district will ask you to provide. If you choose not to provide your consent, or later decide to withdraw your consent, your school district has a continuing responsibility to ensure that your child is provided all required special education and related services under IDEA at no charge to you or your child.

NOTIFICATION REQUIREMENTS

34 CFR §300.154(d)(2)(v)

You are receiving this notification because IDEA requires that you be informed of your rights and protections when your school district seeks to use your or your child's public benefits or insurance to pay for special education and related services. The following sections explain when you must receive this notification and what information must be included in the notification.

When Notification Must Be Provided

You must receive this notification:

- before your school district seeks to use your or your child's public benefits or insurance for the first time and before it obtains your consent to use those benefits or insurance for the first time (the consent requirement is described below); and
- annually thereafter.

Format of Notification

This notification must be:

- written;
- in language understandable to the general public; and
- in your native language or in another mode of communication you use, unless it is clearly not feasible to do so.

CONTENTS OF NOTIFICATION

34 CFR §300.154(d)(2)(v)(A)-(D)

This notification will explain: 1) the consent that your school district must obtain from you before it can use your or your child's public benefits or insurance for the first time; 2) IDEA's "no cost" provisions that apply to your school district if it seeks to use your or your child's public benefits or insurance; 3) your right to withdraw your consent to the disclosure of your child's personally identifiable information to your State's public benefits or insurance program agency at any time; and 4) your school district's continuing responsibility to ensure that your child is provided all required special education and related services at no charge to you or your child, even if you withdraw your consent or refuse to provide consent.

PARENTAL CONSENT

34 CFR §300.154(d)(2)(iv)(A)-(B)

**If your school district has not accessed your public benefits or insurance in the past to pay for services that it was required to provide your child under IDEA at no charge to you or your child, all of the parental consent requirements described below apply.

Before your school district can use your or your child's public benefits or insurance for the first time to pay for special education and related services under IDEA, it must obtain your signed and dated written consent. Generally, your school district will provide you with a consent form for you to sign and date. Note that your school district is only required to obtain your consent one time.

This consent requirement has two parts.

1. Consent for Disclosure of Your Child's Personally Identifiable Information to the State agency responsible for administering your State's Public Benefits or Insurance Program

Under Federal law—the Family Educational Rights and Privacy Act (FERPA) and the confidentiality of information provisions in IDEA—your school district is required to obtain your written consent before disclosing personally identifiable information (such as your child's name, address, social security number, student number, IEP, or evaluation results) from your child's education records to a party other than your school district, with some exceptions. In this situation, your school district is required to obtain your consent before disclosing personally identifiable information for billing purposes to the agency in your State that administers the public benefits or insurance program. Your consent must specify the personally identifiable information that your school district may disclose (for example, records or information about the services that may be provided to your child), the purpose of the disclosure (for example, billing for special education and related services), and the agency to which your school district may disclose the information (for example, the Medicaid or other agency in your State that administers the public benefits or insurance program).

> **[Optional**: If you choose to provide consent and your child's personally identifiable information is disclosed to your State's public benefits or insurance program agency, you may request and receive from your school district a copy of the records your school district disclosed to that agency.**]**

2. Statement to Access Public Benefits or Insurance

Your consent must include a statement specifying that you understand and agree that your school district may use your or your child's public benefits or insurance to pay for services under 34 CFR part 300, which are special education and related services under IDEA.

[Note to States and School Districts: You should include in the notification how your school district is expected to obtain this consent statement (for example, by adding the statement to the consent form for the disclosure of personally identifiable information; or by providing a separate consent form).**]**

Both parts of this consent requirement apply to the school district that is responsible for serving your child under IDEA. If your child moves to a new school within the same school district, you would not be required to provide a new consent because the same school district is still responsible for serving your child under IDEA. But if you enroll your child in a new school in a new school district, the new school district that is responsible for serving your child under IDEA must obtain a new consent from you before it can bill your child's public benefits or insurance program for the first time. The consent you would provide to your child's new school district must include both parts of the consent as described above.

[Optional:

Electronic consent, if applicable (34 CFR §99.30(d))

As noted above, your consent must be written, signed, and dated. While there generally will be a paper form for you to fill out, you may provide your written consent in an electronic form, if your submission identifies and authenticates you as the individual providing the consent, includes an electronic signature and date, and your submission indicates that you approve the information contained in the consent.**]**

[Optional:

Previous consent

If you gave your consent in the past for your school district to access your or your child's public benefits or insurance to pay for special education and related services under IDEA, your school district is not required to obtain a new consent from you if the following two conditions are present:

1. There is no change in any of the following: the type of services to be provided to your child (for example, physical therapy or speech therapy); the amount of services to be provided to your child (for example, hours per week lasting for the school year); or the cost of the services (that is, the amount charged to the public benefits or insurance program); and
2. Your school district has on file the consent you previously provided. This previous consent must meet the requirements that were in effect under the prior IDEA regulations, and your school district will know what requirements applied under those prior regulations. An example of a previous consent your school district may have on file is a parental consent form you gave directly to another agency, such as the **[**insert name of State**]** Medicaid agency.

Even if your school district is not required to obtain a new consent from you, your school district still must provide you with this notification before it may continue to bill your or your child's public benefits or insurance program to pay for special education and related services under IDEA.

If your school district already has on file your consent to use your or your child's public benefits or insurance to pay for special education and related services under IDEA, your school district must request that you provide a new consent when there is a change in any of the following: the type (for example, physical therapy or speech therapy), amount (for example, hours per week lasting for the school year), or cost of services (that is, the amount charged to the public benefits or insurance program).

An example of a change in the type of services would be that your child would receive speech therapy in addition to physical therapy and therefore, the services billed to your public benefits or insurance program would be different. An example of a change in the amount of services would be if your child was previously receiving 3 hours per week of physical therapy and will now be receiving 2 hours per week. An example of a change in the cost of your child's services would occur if the amount billed to the public benefits or insurance program for a particular service increases or decreases.

If any of these changes occur, your school district must obtain from you a one-time consent, specifying that you understand and agree that your school district may access your or your child's public benefits or insurance to pay for special education and related services under IDEA. Before you provide your school district the new, one-time consent, your school district must provide you with this notification. Once you provide this one-time consent, you will not be required to provide your school district with any additional consent in order for it to access your or your child's public benefits or insurance if your child's services change in the future. However, your school district must continue to provide you with this notification annually.**]**

NO COST PROVISIONS

34 CFR §300.154(d)(2)(i)-(iii)

The IDEA "no cost" protections regarding the use of public benefits or insurance are as follows:

1. Your school district may not require you to sign up for, or enroll in, a public benefits or insurance program in order for your child to receive FAPE. This means that your school district may not make your enrollment in a public benefits or insurance program a condition of providing your child the services it is required to provide your child under IDEA at no charge to you or your child.
2. Your school district may not require you to pay an out-of-pocket expense, such as the payment of a deductible or co-pay amount for filing a claim for services that your school district is otherwise required to provide your child without charge. For example, if your child's IEP includes speech therapy and your insurance requires a $25 co-pay or deductible payment for a session, you could

not be charged the $25. Your school district would need to pay the cost of your co-pay or deductible in order to bill your or your child's public benefits or insurance program for the particular service.

3. Your school district may not use your or your child's public benefits or insurance if using those benefits or insurance would:
    a. Decrease your available lifetime coverage or any other insured benefit, such as a decrease in your plan's allowable number of physical therapy sessions available to your child or a decrease in your plan's allowable number of sessions for mental health services;
    b. Cause you to pay for services that would otherwise be covered by your public benefits or insurance program because your child also requires those services outside of the time your child is in school;
    c. Increase your premium or lead to the cancelation of your public benefits or insurance; or
    d. Cause you to risk the loss of your or your child's eligibility for home and community-based waivers that are based on your total health-related expenditures.

WITHDRAWAL OF CONSENT

34 CFR §300.154(d)(2)(v)(C)

If you provided your consent for your school district to disclose your child's personally identifiable information to the State agency that is responsible for administering your public benefits or insurance program **[**insert the name of the agency**],** you have the right under 34 CFR part 99 (FERPA regulations) and 34 CFR part 300 (IDEA regulations) to withdraw that consent at <u>any</u> <u>time.</u>

If you do not want your school district to continue to bill your or your child's public benefits or insurance program for special education and related services under IDEA, you would need to withdraw your consent to your school district's disclosure of your child's personally identifiable information to the agency in your State that is responsible for administering that program. The FERPA and IDEA regulations, however, do not contain procedures for withdrawal of consent to disclosure of your child's personally identifiable information. If you wish to withdraw your consent, you should ask your school district what procedures you would need to follow. For example, your school district may ask you to submit your withdrawal request in writing.

> **[Optional:** School districts may wish to include in this notification their procedures for withdrawal of consent to the disclosure of personally identifiable information.**]**

WHAT YOUR SCHOOL DISTRICT MUST DO IF YOU WITHDRAW YOUR CONSENT OR REFUSE TO PROVIDE YOUR CONSENT

34 CFR §300.154(d)(2)(v)(D)

Finally, without your consent, your school district cannot bill your or your child's public benefits or insurance program to pay for special education and related services that it is required to provide your child under IDEA at no charge to you or your child. If you withdraw your consent or refuse to provide consent under the FERPA and IDEA regulations, your school district may not use your withdrawal of consent or refusal to provide consent to disclose personally identifiable information to a public benefits or insurance program to deny your child the special education and related services he or she is otherwise entitled to receive under IDEA. Therefore, if you refuse to provide consent or withdraw consent, your school district has a continuing responsibility to ensure that your child is provided all required services necessary to receive an appropriate education at no charge to you or your child.

We hope this information is helpful to you in making an informed decision regarding whether to allow your school district to use your or your child's public benefits or insurance to pay for special education and related services under IDEA.

CONTACT INFORMATION:

For additional information and guidance on the requirements governing the use of public benefits or insurance to pay for special education and related services see: http://www2.ed.gov/policy/speced/reg/idea/part-b/part-b-parental-consent.html.

[States and LEAs include contact information here]