

1. How are the consent laws regarding IEPs structured in other states?

New Hampshire: Section Ed 1120.04

Parental Consent

(a) An LEA shall obtain informed, written consent from the parent of a child with a disability prior to:

- (1) Conducting an initial evaluation;
- (2) Initial provision of special education and related services to a child with a disability;
- (3) Annual renewal of the IEP and placement of a child with a disability;
- (4) Determining or changing the disability classification;
- (5) Changing the nature or extent of the special education or special education and related services;
- (6) Conducting a reevaluation;
- (7) Access to public insurance pursuant to 34 CFR 300.154(d); and
- (8) Each time the public agency proposes to access private insurance.

(b) If a parent fails to respond to a request for informed, written consent to any of the actions described in Ed 1120.04(a)(3), (4), (5), or (6), the LEA shall proceed in accordance with Ed 1120.06.

(c) Parents of children with disabilities shall have 14 days after the sending of written prior notice under Ed 1120.03 to sign documents included with the notice to indicate consent, or refusal of consent or partial consent as set forth below:

(d) A public agency shall not use a parent's refusal to consent to one service or activity or request of additional services, or activities to deny the child any other services or activities to which the parent has consented.

(e) When the parent refuses consent to one or more of the proposed services or activities, and/or requests changes to services or activities in the initial proposal, the parent shall specify, in writing, the items that they are refusing or requesting.

(f) Upon receipt of a parent's partial consent, the LEA:

- (1) May schedule a mutually agreeable time and date for an IEP team meeting;
- (2) Shall, if requested by the parent, pursuant to Ed 1109.06(b) convene the IEP team to discuss the requested changes and/or additions to the IEP, except as set forth in (3) below.
- (3) May refuse to convene the IEP team meeting if it determines that the requested changes and/or additions to the IEP have been addressed at a prior IEP team meeting.

In such event, the LEA shall issue a Written Prior Notice pursuant to Ed 1109.06(b)(3), explaining why the LEA refuses to convene the meeting.

(g) If a parent refuses consent for a proposed IEP or placement, the child's most recent agreed upon IEP placement, or both shall remain in effect unless the LEA and parent agree otherwise, until the matters are resolved unless and until a party files for due process, in which case the IEP and placement shall be governed by 34 CFR 300.518.

(h) A parent or a public agency may file a due process complaint on any of the matters described in 34 CFR 300.503(a) (1) and (2) and Ed 1120.04(a), pursuant to 34CFR 300.507.

- (i) The 14-day time limit shall be extended if the LEA and the parent mutually agree to an extension.
- (j) LEAs shall advise the parent in writing of:
 - (1) The necessity of signing documents which describe actions requiring the parent's consent for the purpose of ensuring the timely provision of appropriate services;
 - (2) The parent's right to access all of the rights and procedures outlined in this section if the parent disagrees; and
 - (3) The parent's right to an extension of the 14-day time limit, provided the parent and the LEA mutually agree to such extension.
- (k) A copy of any document signed by a parent in which the parent gives consent in writing shall be provided to the parent, and a copy of such document shall also be placed in the child's education records.

Section Ed 1120.05 –

Parental Refusal of Consent; Initiation of Due Process Hearing by LEA

- (a) A parent who refuses informed consent to all or part of any change proposed by the LEA shall indicate the refusal in writing within 14 days after the sending of written prior notice as provided in Ed 1120.03, or within the time frame allowed by a mutually agreed-upon extension as provided in Ed 1120.04(d).
- (b) Alternative dispute resolution as provided in Ed 1122 may be requested by either party at any time.
- (c) If a parent refuses consent to a proposal included in Ed 1120.04(a)(1) or (a) (6), the LEA shall have the authority to pursue the initial evaluation or re-evaluation by the initiation of a due process hearing under Ed 1123.
- (d) If a parent refuses consent or fails to respond for the initial provision of special education services, the LEA shall not pursue the initial provision of special education services by initiating a due process hearing under Ed 1123.
- (e) If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, pursuant to 34 C.F.R § 300.300(b)(4) the LEA:
 - (1) Shall not continue to provide special education and related services to the child;
 - (2) Shall provide a prior written notice in accordance with 34 C.F.R § 300.503 before ceasing the provision of special education and related service;
 - (3) Shall not use the mediation or due process procedures to obtain an agreement or ruling that the services may be provided to the child;
 - (4) Shall not be considered in violation of the requirement to make FAPE available to the child; and
 - (5) Shall not be required to convene the IEP Team meeting or develop an IEP for the child.
- (f) A public agency shall not use a parent's refusal to consent to one service or activity to deny the child services, benefits, or activities that the parent has agreed to.

N.H. Code Admin. R. Ed 1120.05

2. What are some critical elements that must be addressed in an IEP consent law?

- a) Parent engagement: If a SAU cannot locate a parent or the parent refuses to participate in the IEP process, may the SAU initiate changes in the IEP after documented attempts to communicate? DOE recommends including clarifying language that would prevent prolonging services that are no longer needed or change them accordingly in the case that they are no longer appropriate.
- b) Dangerous behavior: If a student displays dangerous behavior that is a threat to a school community, what action must the SAU take? DOE recommends that the SAU must be provided an opportunity to provide a FAPE in a more restrictive setting, based on an IEP determination.

3. What are the expected fiscal implications?

If a SAU takes a parent to due process, the fees associated are not covered by insurance. It costs several hundred thousand dollars to participate in a due process event. In addition to the actual cost, there are costs associated with preparing school personnel to participate in a hearing and gathering the necessary documents for the hearing.

Regarding ed techs attending IEP meetings, there will be additional costs associated with hiring substitutes to support students during the school day. SAUs are currently experiencing substitute shortages statewide. In many cases, teachers may not participate in IEP meetings after school because the meeting would fall outside of the contractual day.

If the SAU cannot change the IEP due to a parent's lack of consent, the SAU is still responsible for FAPE and will potentially be subject to compensatory education (CE) in the event they did not provide the appropriate services. CE is very costly.

4. Are there any concerns related to existing staffing shortages?

Anecdotally, special educators from states with an IEP consent law have shared that their state experienced increased numbers of staff leaving special education due to increased administrative duties and time associated with attempting to obtain consent.

5. What other items should be considered?

There should be a provision in this bill to allow for electronic signature.