



Consent and Notification in an Equitable Multi-level System of Support: Frequently Asked Questions & Definitions

1. Is consent or notification required for delivery of services within an equitable multilevel system of support (EMLSS) system?

School districts provide a continuum of instructional supports within the general education curriculum. Federal and state law, administrative rules, and guidance are generally silent regarding the need to provide notification or obtain consent from parents regarding the continuum of instructional supports within the general education curriculum. Notification or consent is not necessary to provide additional or intensified instructional supports or challenges in the general education setting and to determine how students are responding to those supports or challenges. Schools are encouraged to include parent perspectives when adopting curriculum, as well as when determining supports for a particular child.

2. Within an EMLSS, is parental consent required for academic screening and progress monitoring?

No. Academic screening and progress monitoring processes are part of a general education continuum of balanced assessment. Results are used to inform decisions about effective instruction within the scope of general education. As with other general education assessment practices, parental consent is not required for a student to access universal screening and progress monitoring processes. Schools are encouraged to include parent perspectives when adopting screening and progress monitoring tools and processes, as well as to inform parents when data will be collected and their results. If progress monitoring probe data collected during scientific research-based or evidence-based intervention is eventually used for specific learning disability eligibility determination, evidence of parent notification is required. See Question [#8](#).

3. Is parental consent required for behavioral screening or progress monitoring?

In general, no. Behavioral screening or progress monitoring that gathers information by reviewing existing data or gathering input from classroom teachers and other educators (i.e., review of student data, including office disciplinary referrals, suspension and detention rates, attendance, check in-check out and other intervention data, with no direct contact with a student) does not require parental consent.

The federal Protection of Pupil Rights Amendment (PPRA) requires consent to be obtained before students are given a “psychiatric or psychological examination or test,” in which the primary purpose is to reveal “mental and psychological problems potentially embarrassing to the student or his or her family” (see [Definitions](#)). This requirement applies to behavioral health surveys and assessment tools (e.g., depression screener). If a

school district requires a student to participate, active consent must be obtained. If a school district does not require a student to participate (i.e., a student is allowed to decline to participate given the opportunity and is developmentally able to do so and no incentives are offered for participating), passive consent may be used rather than active consent. ([34 CFR 98.5](#)) School districts may wish to document a student's assent or dissent to participate in a survey or assessment when using a passive consent process.

School districts must notify parents of their rights under the PPRA, including the right to opt their child out of a survey or assessment covered by the PPRA. Parents must also be given the opportunity to inspect any instruments (e.g., a screening tool) prior to administration. For more information, refer to ESEA Bulletin 02.14 at http://esea.dpi.wi.gov/files/esea/pdf/bul_0214.pdf.

4. Is parental consent required for students to take a climate survey?

If the climate survey does not address any of the topics (see Definition of [psychiatric or psychological examination or test](#)) in the federal Protection of Pupil Rights Amendment (PPRA), consent is not required. School officials may wish to notify parents and include them in the process.

The PPRA does not apply to anonymous surveys and consent is not necessary.

5. Is parental consent required to conduct what is commonly called a brief Functional Behavioral Assessment (FBA) by the Center on PBIS for students who do not receive special education services?

Yes. When not used as part of a referral for special education or to identify a student's IEP services, the national [Center on PBIS](#) provides guidance on how to conduct a "brief" functional behavioral assessment (FBA) that emphasizes the role of parental consent. "The goal of a streamlined or "brief" FBA is to prioritize 1 or 2 of the most concerning student behaviors to be addressed and identify the school routine(s) (e.g., independent seatwork, less structured times such as lunch or recess) in which the behavior is most likely to occur. After receiving parent/family member consent for evaluation [the] FBA/BSP process includes" [a focused interview with staff and direct observation of the student behavior of concern]. Center on PBIS, January 2022, *Tier 3 Brief Functional Behavior Assessment (FBA) Guide*, p.6.

When the frequency, intensity or duration of specific behaviors identifies that an FBA is needed to identify a student's needs, this is likely to trigger the LEA child find obligation under the IDEA (see question 9 below). When considering the use of a "brief FBA," LEAs must ensure staff are fully trained on what types of assessments, or other data collection tools may trigger child find requirements under IDEA and therefore require consent for a comprehensive special education evaluation of the student.

6. Is consent required to provide social-emotional-behavioral counseling to students in general education?

In general, yes. The federal Protection of Pupil Rights Amendment (PPRA) requires consent to be obtained before students receive "psychiatric or psychological treatment," in which the primary purpose is to reveal "mental and psychological problems potentially embarrassing to the student or his or her family." This requirement may encompass the

social-emotional- behavioral counseling that pupil services professionals provide to students, both individually and in groups (see Definition of [psychiatric or psychological treatment](#)). If a school district requires a student to participate, active consent must be obtained. If a school district does not require a student to participate (i.e., a student is allowed to decline to participate given the opportunity and is developmentally able to do so and no incentives are offered for participating), passive consent may be used rather than active consent. ([34 CFR 98.5](#)) School districts may wish to document a student's assent or dissent to participate in social-emotional-behavioral counseling when using a passive consent process.

School districts must notify parents of their rights under the PPRA, including the right to opt their child out of the social-emotional-behavioral counseling. For more information, refer to ESEA Bulletin 02.14 at http://esea.dpi.wi.gov/files/esea/pdf/bul_0214.pdf.

7. Do parents have the right to opt out/revoke consent for instructional interventions or additional challenges in general education?

Within a framework for EMLSS, there is a continuum of general education instructional supports, all of which are considered a part of the general education curriculum. As with any general education curriculum, parental consent is not required for a student to access interventions or additional challenges. Therefore, schools are not required to adjust the curriculum based on parental requests. Schools are encouraged to include parent perspectives when adopting curriculum as well as when determining supports for a particular child.

Parents do have the right to opt their children out of supplemental instructional services through Title I.

8. What notice and consent requirements apply when a child is referred for a special education evaluation?

A copy of the Procedural Safeguards notice must be provided upon initial referral for evaluation. ([34 CFR 300.504\(a\)](#)) Prior written notice must be provided to the parents of a child with a disability any time the local education agency proposes to initiate or change the identification or evaluation of a child or refuses to initiate or change the identification or evaluation of a child. ([34 CFR 300.503\(a\)](#))

For students who are referred for a special education evaluation for Specific Learning Disabilities (SLD), Wisconsin rules require schools to document that parents are notified of the following, even when the intensive intervention took place prior to the referral, as part of the school district's multilevel system of support:

If the child has participated in a process that assesses the child's response to scientific, research-based or evidence-based intervention, documentation that the child's parents were notified about all of the following is required:

- the progress monitoring data collected,
- strategies for increasing the child's rate of learning including the intensive interventions used, and
- the parents' right to request an evaluation.

When a scientific, research-based or evidence-based intervention is being delivered,

teachers do not necessarily know whether any of the children may eventually be referred for a special education evaluation in the area of SLD. Local education agencies may wish to consider a systemic approach to parental notification when an additional scientific research- or evidence- based academic intervention is being delivered, and a child's response to the intervention is being assessed.

For children who are suspected of having a disability in any area (e.g., cognitive disability, emotional behavioral disability, specific learning disability, speech and language, etc.), informed consent meeting the criteria in [34 CFR 300.300](#) is required prior to an evaluation under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973.

When screening a student to determine appropriate instructional or curriculum strategies, consent is not required. ([34 CFR 300.302](#))

9. Is notification or consent required to conduct a Functional Behavioral Assessment (FBA) for students currently receiving or being evaluated for special education services?

Yes. When an individual or team believes that a functional behavior assessment (FBA) needs to be conducted due to the frequency, intensity or duration of specific behaviors, this is likely to trigger the Local Educational Agency (LEA) child find obligation under the Individuals with Disabilities Education Act (IDEA). Gathering in-depth, individual data related to a student's social, emotional, or behavioral functioning is an indication that an LEA either does or should suspect that a student may have a disability under IDEA. An FBA is a procedure that must be conducted in a manner that ensures procedural safeguards have been provided to parents and students, which includes obtaining informed written consent. This includes initiating a special education referral and following the required procedures in conducting the evaluation and determining eligibility.

When information from an FBA is needed to determine appropriate goals, services, positive behavior strategies, supports, and other interventions for a student already receiving special education through an IEP, the IEP team must initiate a reevaluation. An FBA is part of a comprehensive reevaluation when the LEA determines an evaluation of a student's behavioral needs are warranted; or if the student's parent or teacher requests a reevaluation to address a student's behavioral needs and there is not sufficient existing information with which to review and revise (as appropriate) the student's IEP. The IEP team must provide notice of the evaluation and complete a thorough review of existing data before requesting consent for conducting any new assessment, including an FBA.

10. What notification and consent requirements apply before a child may receive special education services?

Prior written notice must be provided to the parents of a child with a disability any time the local education agency proposes to change the educational placement of the child or the provision of Free Appropriate Public Education (FAPE) to the child. Notice is also required when the district refuses to change the educational placement of the child or the provision of FAPE to the child. ([34 CFR 300.503\(a\)](#))

A local education agency must obtain informed consent meeting the criteria in [34 CFR 300.300](#) before providing special education and related services to the student. Parallel

guidelines apply prior to providing services under Section 504 of the Rehabilitation Act of 1973.

11. What other notice requirements apply to children with disabilities?

A copy of the Procedural Safeguards notice must be provided to the parents of a child with a disability one time per school year, and upon receipt of a state Individuals with Disabilities Education Act (IDEA) complaint, or request for a due process hearing, and on the date on which the decision is made to make a removal that constitutes a disciplinary change of placement because of a violation of a code of student conduct. ([34 CFR 300.504\(a\)](#))

Prior written notice must be provided to the parents of a child with a disability any time the local education agency proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. Notice is also required when the district refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. ([34 CFR 300.503\(a\)](#))

For questions related to general education, contact the [Student Services/Prevention and Wellness Team](#) at (608) 266-8960. For questions related to special education, contact the [Special Education Team](#) at (608) 266-1781.

This document can be found online on [Wisconsin's Framework for Equitable Multi-Level Systems of Supports](#) page.

Definitions

Definitions are provided within the context of a school-based equitable multilevel system of support. When definitions come from sources other than the Department of Public Instruction, the source is noted.

Additional Challenges

Additional challenges refer to the curriculum and instruction intended to meet the needs of students exceeding benchmarks. Source: [Wisconsin DPI, EMLSS](#)

Assessment

Strategic assessment systems use comprehension, systematic, and ongoing processes to drive teaching and learning. In a strategic assessment system, educators choose high-quality assessment tools and practices, including those that are formative, interim, and summative. They purposefully use the resulting information in a coherent manner in order to directly impact student achievement by making strategic decisions, engaging the learners themselves, to determine what comes next for students' learning. Source: [Wisconsin's Strategic Assessment Systems](#)

Diagnostic assessments are valid and reliable tools and techniques used to determine the specific nature of a student's learning difficulties. Source: Wisconsin RtI Center

Formative practices are teacher techniques designed to quickly inform instruction by providing specific and immediate feedback through daily, ongoing instructional strategies. These

practices are student- and classroom-centered, embedded into the instructional fabric of the classroom, and answer “What comes next for student learning?” Source: [Wisconsin’s Strategic Assessment Systems](#)

Summative assessments are designed to evaluate learning by providing cumulative snapshots, usually through standardized assessments. Summative assessments are typically school-, district-, or state-centered, and answer the question, “Are our students meeting the standards?” Source: [Wisconsin’s Strategic Assessment Systems](#)

Progress monitoring is a process used to assess students’ academic and behavioral performance, to measure student responsiveness to interventions/challenges, and to evaluate the effectiveness of interventions/challenges. Source: [Wisconsin DPI, EMLSS](#)

- *Progress monitoring* (for gathering data on intensive interventions for insufficient progress in academics) means a scientifically-based practice to assess pupil response to interventions. Source: Wisconsin Administrative Code sec. [PI 11.02\(10\)](#)

Psychiatric or psychological examination or test means a method of obtaining information, including a group activity, that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings, if the primary purpose of the examination or test is to reveal information in one or more of the following areas:

- political affiliations;
- mental and psychological problems potentially embarrassing to the student or his or her family;
- sex behavior and attitudes;
- illegal, anti-social, self-incriminating and demeaning behavior;
- critical appraisals of other individuals with whom the student has close family relationships;
- legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers;
- religious practices, affiliations, or beliefs of the student or student’s parent; or income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program. Source: [34 CFR 98.4\(a\), \(c\)](#)

Screening reading assessment means an assessment that is 1) valid, reliable, and based on scientifically based reading research; and 2) a brief procedure designed as a first step in identifying children who may be at high risk for delayed development or academic failure and in need of further diagnosis of their need for special services or additional reading instruction. Source: [20 USC 6368\(7\)\(B\)](#) [Title 20. Education; Chapter 70]

Universal screening is a process in which data from multiple measures are analyzed to determine whether each student is likely to meet, not meet, or exceed academic benchmarks or behavioral expectations. Source: [Wisconsin RtI Center](#)

Child with a Disability

Child with a disability means a child evaluated in accordance with 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment,

autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. Subject to 34 CFR 300.8(a)(2)(ii), if it is determined, through an appropriate evaluation under 300.304 through 300.311, that a child has one of the disabilities identified in 34 CFR 300.8(a)(1), but only needs a related service and not special education, the child is not a child with a disability under 34 CFR 300. If, consistent with 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under 34 CFR 300.8(a)(1). *Child with a disability for children aged three through nine* (or any subset of that age range, including ages three through five), may, subject to the conditions described in 300.111(b), include a child who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services. Source: [34 CFR 300.8](#)

Consent

Consent (related to special education) means the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. Source: [34 CFR 300.9](#)

Active Consent (not related to special education) is the practice of providing a school-based activity (assessment, service, program or event) to a student only after a parent has provided written consent.

Assent means affirmative agreement by a student (who has not reached the age of majority or been emancipated) to participate in a specified assessment, service, activity or program. Assent may or may not be accompanied by active or passive consent by the parent/guardian. If the parent has not consented, assent is moot.

Dissent means active disagreement by a student (who has not reached the age of majority or been emancipated) to participate in a specified assessment, service, activity, or program. If parents have provided written consent to a special education evaluation, student dissent is moot. If parents have given active or passive consent unrelated to a special education evaluation, student dissent is allowable. Allowing student dissent means that a student is not required to participate.

Passive consent means the practice of notifying parents of a school-based activity (assessment, service, program or event) that is available to or will be directed to students. Parents are given direction regarding whom to contact at school if they have questions, want to review any related materials, or wish to opt their children out of the school-based activity. Communication back to the school from a parent is necessary only if the parent does not want the student to participate. The lack of a response from a parent means the student has permission to participate. See definition of [Notification](#) for more information.

Passive consent is not allowable when the activity is related to a special education evaluation.

Evaluation

Evaluation (related to special education) means procedures used in accordance with 34 CFR 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. Source: [34 CFR 300.15](#)

Equitable Multi-Level System of Supports (EMLSS)

EMLSS means systematically providing differing levels of intensity of supports (interventions/additional challenges, collaborative structures, monitoring of learner progress) based upon learner responsiveness to instruction and intervention. Source: [DPI, EMLSS](#)

Functional Behavioral Assessment (FBA)

FBA is an assessment for identifying;

1. The variables that influence the student's behavior, including all relevant ecological factors such as cultural background, instruction, curriculum, environment, adult behavior, relationships, school climate, et cetera.
2. The root cause or function of the behavior that helps identify the unique disability-related needs of the student.
3. The components of an effective behavioral intervention plan (BIP) as well as IEP goals and services to address a student's unique disability-related needs.

General Education

General education means the standard curriculum and extracurricular opportunities presented and available to ALL students in public educational settings (including students requiring specialized instruction).

Handicapped Person (related to Section 504)

Handicapped person means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. *Physical or mental impairment* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. *Is regarded as having an impairment* means has a physical or mental impairment that does not substantially limit major life activities but that is treated by the school district as constituting such a limitation; has a physical or mental impairment that substantially limits

major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments delineated above but is treated by the school district as having such an impairment. Source: [34 CFR 104.3](#)

Interventions

Interventions are research-based instructional practices and programs used systematically to increase the performance in the universal curriculum of students not meeting academic or behavioral benchmarks. Source: Wisconsin RtI Center

Intensive intervention (for gathering data on intensive interventions for insufficient progress in academics) means interventions used with individual or small groups of pupils, focusing on single or small numbers of discrete skills, with substantial numbers of instructional minutes in addition to those provided to all pupils. Source: Wis. Admin. Code sec. [PI 11.02\(6m\)](#)

Notice

Notice (related to special education) means:

- 1) a description of the action proposed or refused by the agency;
- 2) an explanation why the agency proposes or refuses to take the action;
- 3) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- 4) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- 5) sources for parents to contact to obtain assistance in understanding the provisions of this part;
- 6) a description of other options that the IEP Team considered and the reasons why those options were rejected; and
- 7) a description of other factors that are relevant to the agency's proposal or refusal.

Notice must be given before a school district 1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or 2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. Source: [34 CFR 300.503](#)

Notification

Notification (not related to special education) means a procedure used to inform parents/guardians of a school-based activity, event, news or process. The scope of the notification can range from individual students to classrooms to schools or the entire school district. Use of multiple notification practices can help increase the likelihood that parents become aware of the school-based activity, event, news or process. Some practices to inform parents and the community about EMLSS activities include:

- parent-friendly brochures to inform and answer commonly asked
- questions, monthly or quarterly newsletters delivered by U.S. Mail or
- email, community forums,
- RtI-centered individual student "report cards" sharing data-based academic or behavioral growth, individual meetings with parents to share data-based academic or behavioral growth, and parent participation in data-based, decision-making meetings for

their children.

Notification to parents can be universal or targeted.

Universal notification involves proactively contacting all parents (in a particular group, grade or school) about:

- a school-based activity,
- why the school makes this activity available to students,
- why the school may choose to offer this activity to students or students might elect to seek out this activity,
- how the parent can learn more about this activity, who the parent should contact if they have questions.

Targeted notification involves reactively contacting selected parents whose children have demonstrated some kind of potential need for further services or interventions. This notification is typically done by a letter home or some other direct and confidential communication to the parent and would include:

- why the school is contacting the parent, what specific service is being proposed,
- how the parent can learn more about these services, who the parent should contact if they have questions.

Positive Behavioral Interventions and Supports (PBIS)

Positive Behavioral Intervention and Supports (PBIS) means a systemic approach of proactive, school-wide discipline based on a framework for EMLSS. PBIS applies evidence-based programs, practices and strategies for all students to increase academic performance, improve safety, decrease problem behavior, and establish a positive school culture. Schools implementing PBIS build on existing strengths, complementing and organizing current programming and strategies. Data-based decision making is fundamental to PBIS, allowing successes to be easily and objectively shared with all relevant stakeholders. Source: Wisconsin PBIS Network

Psychiatric or psychological treatment

Psychiatric or psychological treatment means an activity involving the planned, systematic use of methods or techniques that are not directly related to academic instruction and that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group, if the primary purpose of the treatment is to reveal information in one or more of the following areas:

- 1) political affiliations;
- 2) mental and psychological problems potentially embarrassing to the student or his or her family;
- 3) sex behavior and attitudes;
- 4) illegal, anti-social, self-incriminating and demeaning behavior;
- 5) critical appraisals of other individuals with whom the student has close family relationships;
- 6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers;
- 7) religious practices, affiliations, or beliefs of the student or student's parent; or

- 8) income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

Source: [34 CFR 98.4\(a\),\(c\)](#).

Individual and small group counseling provided by schools dealing with social-emotional-behavioral issues may be included in this definition and fall under the requirements of the PPRA.

Special education

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. Source: [34 CFR 300.39\(a\)\(1\)](#). Additional specificity is provided in [34 CFR 300.39\(a\),\(b\)](#).

Universal Screeners

Universal Screeners means valid and reliable data collection tools and processes used to assess students' current level of performance in relation to grade level benchmarks. Source: Wisconsin RtI Center