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Bureau of Student Support FY'20 Memo #28

Date: April 17, 2020
To: Superintendents of Schools
Administrators of Special Education
From: Bureau of Student Support
Division of Learner Support
RE: Electronic Signatures

Some districts and schools have inquired whether they may accept electronic signatures on IEPs and placement forms during the time of the pandemic.

This issue is narrowly tailored to the decisions made as a result of an IEP team meeting and to specific decisions pertaining to the special education process. Specifically, this memo concerns the acceptance of an electronic signature for the proposals contained within Ed. 1120.04, aptly entitled "Parental Consent," and covers the following:

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.

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By way of reference, the New Hampshire Department of Education has historically interpreted the phrase "written consent" to be a signature. As such, this interpretation continues during the time of the pandemic. Districts *may, however are not required to*, accept electronic signatures on any of the documents enumerated in Ed. 1120.04. Districts are also allowed to apply the use of electronic signatures retroactively to the start of the Governor's Executive Order 2020-04, as extended by Executive Order 2020-05.

If a district chooses to utilize electronic signatures, the applicable law is found in RSA 294-E:2, IX and XVI and: 5, which allow state and local government agencies to utilize electronic signatures in their course of business, but only if all parties agree to conduct these transactions by electronic means. However, in accepting electronic signatures on IEPs and placement forms, LEAs should be mindful to work with district counsel to establish appropriate parameters of what will constitute an electronic signature and that the necessary safeguards are in place. To effectuate this, LEAs should establish and enumerate for parents the acceptable options for electronic signatures, being mindful of utilizing a program that would be secure. Additionally, the LEA is still responsible for ensuring that each student's education file contains a copy of each such electronically-signed document and that the parent receives a copy of all electronically-signed documents.

In creating guidelines for electronic signatures, LEAs are encouraged to review Chapter RSA 294-E, which governs New Hampshire's Uniform Electronic Transactions Act, which can be accessed here: <http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XXVII-294-E.htm>; and the Attorney General's Electronic Signatures Analysis and Implementation Guide, which is attached to this email.

To reiterate, this memo is narrowly tailored to the items enumerated in Ed. 1120.04. There very well could be situations within the special education process which require "consent" but do not necessarily equate to a signature. An example of this might be when a parent and LEA "agree, in writing, that the attendance of a member of the IEP team is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting." (34 CFR §300.321 (e)). In such an instance, districts should be proactive to think about how they would document that written agreement and if it should be done with a signature, as best practice would dictate.

If you have any questions regarding this process please contact Rebecca Fredette at Rebecca.A.Fredette@doe.nh.gov or 271-6693.