

IDEA 2004 Procedural Safeguards Notice: Special Education Rights of Parents and Children

What are procedural safeguards?

This information provides you as parent, legal guardian, or surrogate parent of a child with disabilities from 3 years of age through age 21 with an overview of your rights concerning special education for your child. These rights are referred to as procedural safeguards.

This information is your Procedural Safeguards Notice as required under the reauthorized Individuals with Disabilities Education Improvement Act (IDEA) of 2004. This notice is also provided to students with disabilities who reach the age of majority under state law.

A copy of the Procedural Safeguards Notice must be given to parents of a child with a disability only 1 time a year. A copy must also be given to parents

- upon initial referral or parental request for evaluation,
- upon the first occurrence of the filing of a due process complaint notice, and
- upon request by a parent.

What is the IDEA?

The IDEA is a federal law that requires school districts to provide a free appropriate public education to eligible children with disabilities. A "free appropriate public education" (referred to as FAPE) means special education and related services are to be provided as described in an individualized education program (IEP) and under public supervision to your child at no cost to you. An IEP is a written document developed by school professionals and the parent (called the IEP Team) that describes the educational program for a child with disabilities.

Can I participate in decisions about my child's education?

You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program.

You have the right to participate in IEP meetings about the identification (eligibility), assessment, educational placement of your child and other matters relating to your child's free appropriate public education.

You also have the right to participate in the development of the IEP and to be informed of the availability of free appropriate public education, including all program options, and of all available alternative programs, both public and nonpublic.

Notice, Consent, Assessment, and Access

PRIOR WRITTEN NOTICE

When is notice needed?

The school district must inform you when it is considering making certain decisions or taking certain actions concerning your child. The written notice must be understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so.

This notice must be given when the school district proposes or refuses to initiate or change the identification, assessment, or educational placement of your child with special needs or the provision of a free appropriate public education.

What will the notice tell me?

The Prior Written Notice must include the following:

- a description of the actions proposed or refused by the school district;
- an explanation of why the action was proposed or refused;
- a description of any other options considered and the reasons those options were rejected;
- a description of each assessment procedure, test, record, or report used as a basis for the action proposed or refused;
- a description of any other factors relevant to the action proposed or refused;
- a statement that parents of a child with a disability are protected by procedural safeguards and how a copy of a description of the procedural safeguards can be obtained; and
- sources for parents to contact to obtain assistance in understanding the procedural safeguards.

PARENT CONSENT

When is my consent required?

You must give informed, written consent before your child's first special education assessment can proceed and before the school district can initially provide your child a special education program.

In the case of reevaluations, the school district must document reasonable attempts to obtain your consent. If you as the parent do not respond to these attempts, the school district may proceed with the reevaluation without your consent.

NONDISCRIMINATORY ASSESSMENT

How is my child assessed for special education services?

You or someone else who believes your child has a disability may refer your child to be assessed in all areas of suspected disability. Materials and procedures used for assessment and placement must not be racially, culturally or sexually discriminatory. The school must give you written notice that your child will be considered for special education and must give you a copy of your procedural safeguards. The school will gather information to determine if your child should be evaluated. If the school refuses to evaluate, the school must give you written notice of the reasons why it decided an evaluation was not needed.

Assessment materials must be provided and the test administered in your child's native language or mode of communication, unless it is clearly not feasible to do so. The evaluation must be provided at no cost to you.

No single procedure can be the sole criterion for determining eligibility and developing an appropriate educational program for your child. Periodic reevaluations at least every 3 years are required unless you and the school district agree that a reevaluation is unnecessary.

INDEPENDENT EDUCATIONAL ASSESSMENTS

Can my child be tested independently at the district's expense?

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent educational assessment for your child from a person qualified to conduct the assessment at public expense.

The school district must respond to your request for an independent educational assessment and provide you information upon request about where to obtain an independent educational assessment.

If the school district disagrees that an independent assessment is necessary, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you

still have the right to an independent assessment but not at public expense. The IEP Team must consider independent assessments.

ACCESS TO EDUCATIONAL RECORDS

Can I examine my child's education records?

You have a right to inspect and review all of your child's education records without unnecessary delay. The school district will provide you access to records within 10 school days after the request has been made orally or in writing. However, the school must let you review the records in time for you to use them in an IEP Team meeting or due process hearing. The school must give you copies of the records only if that is the only way you will be able to inspect and review the records. The school may charge you a fee for copies of records.

If you believe information in your child's education records is inaccurate, misleading or violates your child's rights, you may request that the records be amended. If the school refuses to amend the record, you have a right to request a records hearing. The school will provide a person to hear your concerns. If, after the hearing, the school still refuses to amend the record, you have a right to place a statement about your concerns in your child's education records. Your statement must be maintained with the dispute record as long as it is maintained by the school district. If the school shares the disputed record with anyone, your statement must be included.

How Disputes are Resolved

DUE PROCESS HEARING

When is a due process hearing available?

You, the school district, or any party have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of a free appropriate public education. The request for a due process hearing must be filed within **one year** from the date you, the school district, or other party had reason to know of the facts that were the basis for the hearing request.

FILING A WRITTEN DUE PROCESS COMPLAINT NOTICE

How do I file a due process complaint notice?

A due process complaint notice must be in writing and include the following information:

- the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;
- in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
- a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and
- a proposed resolution of the problem to the extent known and available to the party at the time.

Your right to a due process hearing may be delayed if the above information is not included in your due process complaint notice. The district will notify you if your due process complaint notice is not sufficient. A copy of the due process complaint notice must be provided to the other party and a copy forwarded to the State department of education.

RESOLUTION SESSION

Prior to the opportunity for an impartial due process hearing, the school district must convene a meeting, called a Resolution Session, with you and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint:

- within 15 days of receiving notice of the parent's complaint;
- which shall include a representative of the school district who has decision making authority on behalf of such school district;
- which may not include an attorney of the school district unless the parent is accompanied by an attorney; and
- where the parents of the child discuss their complaint and the facts that form the basis of the complaint, and the school district is provided the opportunity to resolve the complaint.

This meeting must be held unless both the parents and the school district agree in writing to waive such meeting or agree to use the mediation process. If the issue is resolved at this meeting, a legally binding agreement will be written. Either party may void this agreement within 3 business days. If the school district has not resolved the complaint to the parent's satisfaction within 30 days of receipt of the complaint, the due process hearing may occur and all applicable timelines shall begin.

AMENDING COMPLAINTS

Can I change or amend my original written due process complaint notice?

A due process complaint notice may be amended under the following conditions:

- the other party consents in writing to the amended complaint and is given the opportunity to resolve the amended complaint through a Resolution Session, or
- the hearing officer grants permission to amend the complaint not later than five days before a due process hearing begins.

MEDIATION

Can I request mediation as a way to resolve the dispute?

If your due process complaint notice is not resolved at the Resolution Session, you or the district may ask to resolve the dispute through a mediation process. You may also request mediation on an issue before filing a due process complaint notice. Mediation is voluntary and may not be used to delay your right to a due process hearing.

The parents and the school district must agree to try mediation before mediation is attempted. A mediator is a person who is trained in strategies that help people come to agreement over difficult issues. The district has the option of inviting you to a meeting to learn more about the mediation process. Such a meeting, if offered, must be conducted by a neutral party not under contract with the school district.

You or the district may agree to use the mediation process at any time to speed resolution of all disputes. Discussions in mediation are confidential. If the issue is resolved at mediation, a legally binding agreement will be written.

DUE PROCESS RIGHTS

What are my hearing rights?

You have a right to:

- have a fair and impartial hearing conducted by a hearing officer who (a) is not an employee of the school district or State department of education, (b) does not have a personal or professional interest that conflicts with the person's objectivity, (c) possesses knowledge and understanding of state and federal laws and regulations pertaining to special education and

pertinent legal interpretations, and (d) possesses knowledge and ability to conduct hearings and render written decisions in accordance with standard legal practice;

- be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities;
- present evidence, written arguments and oral arguments;
- confront, cross-examine and require witnesses to be present;
- receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions;
- have a mediation conference at any point during the due process hearing.

The party requesting the due process hearing may not raise issues at the hearing that were not raised in the due process complaint notice.

What information must be shared prior to a hearing ?

Not less than 5 business days prior to a hearing, the parent and district must disclose to each other all evaluations completed by that date and recommendations based on the evaluations that each party intends to use at the hearing.

A hearing officer may bar any party who fails to disclose this information from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Does my child's placement change during the proceedings?

Except in due process hearings regarding some discipline matters, the child involved in any administrative or judicial proceeding must remain in the then-current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission to a public school, your child will be placed in a public school program with your consent until all proceedings are completed.

Can the decision be appealed?

You or the school district may appeal the decisions made in a due process hearing. After a party has exhausted all appeals available at the local and state level, that party can appeal the hearing decision by filing a civil action in state or federal court within **30 days** of the final decision by the hearing officer who rendered the decision in the last administrative appeals process.

Who pays for my attorneys' fees?

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing.

Fees may be reduced if any of the following conditions prevail:

- the court finds that you unreasonably delayed the final resolution of the complaint;
- the hourly attorneys' fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;
- the time spent and legal services provided were excessive; or
- your attorney did not provide to the school district the appropriate information in the due process complaint notice.

Attorney fees will not be reduced, however, if the court finds that the state or the school district unreasonably delayed the final resolution of the action or proceeding or there was a violation of this section of law.

Attorney fees may not be awarded relating to any meeting of the IEP Team unless an IEP meeting is convened as a result of a due process hearing proceeding or judicial action. Attorney fees may not be awarded related to being accompanied by an attorney to the Resolution Session. Attorney fees may also

be denied if you reject a reasonable settlement offer made by the district/public agency ten days before the hearing begins and the hearing decision is not more favorable than the settlement offer.

Attorney fees may be awarded to the school district to be paid by you and/or your attorney if the due process complaint was frivolous, unreasonable or without foundation, or it was presented for an improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

School Discipline and Placement Procedures for Students with Disabilities

SCHOOL DISCIPLINE

Can my child be suspended or expelled?

Children with disabilities may be suspended or placed in other interim alternative educational settings up to 10 school days during the school year to the same extent these options would be used for children without disabilities who have violated a code of student conduct.

If a child exceeds ten days in such a placement, a meeting must be held to determine whether the child's misconduct (a) was caused by, or had a direct and substantial relationship to the child's disability, or (b) was a direct result of the school district's failure to implement the IEP. This procedure is called a Manifestation Determination Review (MDR) and must take place within ten days of the school district's decision to assign disciplinary action that would change the child's placement for more than 10 consecutive school days.

As a parent, you will help the district determine which members of your child's IEP Team should participate with you in the MDR. If it is determined the misconduct was not a manifestation of your child's disability, the school district may take disciplinary action, such as expulsion, in the same manner and duration as it would for a child without disabilities.

If it is determined the misconduct was a manifestation of the child's disability, the child must be returned to the placement from which he or she was removed unless (a) you and the district agree to a change in placement, or (b) the child was removed to an interim alternative setting for up to 45 school days because the child possessed or used a weapon, illegal drugs or inflicted serious bodily injury.

If disciplinary action results in a change of placement for more than 10 school days, the full IEP Team must determine what the interim alternative educational setting will be, develop or modify a behavior intervention plan to address the misconduct, including the completion of a functional behavior assessment, if necessary, and provide for the continuation of educational services that enable your child to continue to participate in the general education curriculum and to progress toward meeting the child's IEP goals.

If you disagree with the IEP Team's decision regarding the interim alternative educational placement or the outcome of the manifestation determination, you may request a due process hearing concerning the decision. Arrangements will be made for an expedited hearing, which shall occur within 20 school days of the date of your request and shall result in a determination within 10 school days after the hearing. When you request a due process hearing regarding a discipline matter, the child remains in the interim alternative educational setting pending the decision of the hearing officer or until the disciplinary assignment has expired, whichever occurs first.

CHILDREN ATTENDING PRIVATE SCHOOL

When is reimbursement required for private school tuition?

Children who are enrolled by their parents in private schools may participate in publicly funded special education programs, but the type and amount of services will be limited by how the school district decides to serve private school students. While school districts have the clear responsibility to offer a free appropriate public education to students with disabilities, recent changes in federal law have significantly limited the school district's responsibility to provide services to students whose parents have chosen for

them to attend private schools. Federal law limits the amount that school districts must spend of the federal entitlement to a proportionate share of federal IDEA funds.

Parents are entitled to reimbursement for costs associated with the private school placement only if a court or hearing officer determines that the school district had not made a free appropriate public education available to the child.

When may reimbursement be reduced or denied?

The court or hearing officer may reduce or deny reimbursement if you move your child from public to private school and you did not make your child available for an assessment upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district and give notice of your concerns and intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- at the most recent IEP meeting you attended before removing your child from the public school, or
- in writing to the school district at least ten business days (including holidays that occur on a business day) before removing your child from the public school.

When can reimbursement not be reduced or denied?

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the school district for any of the following reasons:

- illiteracy and inability to write in English,
- giving notice would likely result in physical or serious emotional harm to the child,
- the school prevented you from giving notice, or
- you had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of this notice requirement.

If you have any questions regarding your procedural safeguards, please contact:

Name: Jerry Sjolander, Executive Director

Address: 4600 DeBarr Rd

City: Anchorage AK, 99504

Telephone: 907-742-3236