



Procedural Safeguards

For Parents and Students with Exceptionalities

What are Procedural Safeguards?



The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) and Policy 2419: *Regulations for the Education of Exceptional Students* provide procedural safeguards to ensure parent participation in the special education process and to ensure the student's right to a free appropriate public education (FAPE).



Major Issues covered by Procedural Safeguards include:

- Independent Educational Evaluation
- Prior Written Notice to Parents
- Parent Participation, Consent & Agreement
- Confidentiality of Student Records
- Access to and Amendment of Records
- State Complaint Procedure
- Mediation
- Due Process Hearing
- Resolution Process
- Student's Status During Proceedings
- Civil Action



Independent Educational Evaluation



Parents who disagree with the school district's evaluation have a right to an independent educational evaluation at public expense. The school district must provide to parents, upon request, information about where to obtain an independent educational evaluation and the criteria for evaluation, including the location of the evaluation and the qualifications of the evaluator.

Prior Written Notice to Parents



The school district must give the parent written notice within a reasonable time before it initiates or changes or when it refuses to initiate or change the identification, evaluation or educational placement of student or the provision of FAPE.



Notice is given when parent consent is requested and before the school district carries out an IEP Team decision regarding the student, even when consent is not needed.



Parent Participation, Consent and Agreement



Parents must have an opportunity to participate in meetings with school personnel to discuss and make decisions regarding the identification, evaluation, placement or provisions of FAPE.

If the parent fails to respond to the school district's attempts to obtain consent before reevaluation, the school district may proceed without consent after taking reasonable measures to obtain it.

Confidentiality of Student Records



Each school district must protect the confidentiality of personally identifiable information at the collection, storage, disclosure and destruction stages.



Those collecting or using personally identifiable information must receive training regarding procedural safeguards and the requirements of Policy 4350: *Collection, Maintenance and Disclosure of Student Data*.



Access to and Amendment of Records



The parent's (and adult student's) right to inspect and review educational records includes:

- The right to a response from the school district to reasonable requests for explanations and interpretations of the records;
- The right to have a representative inspect and review the records; and
- The right to request copies of the records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records.

If parent believes information in education records is inaccurate or misleading or violates the privacy or other rights of the child, he or she may request that the school district amend the information.

State Complaint Procedure

Any individual or organization may file a complaint with the Office of Federal Programs and Accountability (OFPA) alleging that a school district has violated a State or federal special education law or regulation.

A complaint must be written and signed and must include the name of the school district or public agency, the student's name, the facts on which the complaint is based and the laws or regulations the complainant believes are being violated.



Mediation



A parent or school district may request mediation of a dispute in any matter relating to the identification, evaluation or educational placement of a student or the provision of FAPE.

Impartial mediators are not employees of the school district or State education agency. They must not have a personal or professional conflict of interest.

Due Process Complaint



The parent or a school district may request a due process hearing regarding the school district's proposal or refusal to initiate or change the identification, evaluation or educational placement of the student or the provision of FAPE by submitting a written due process hearing request notice to the OFPA or to the school district's superintendent.



A model form to assist parents that includes the required information may be obtained from the OFPA or accessed on the OSE website.



Resolution Process



Within 15 days of receiving the parent's due process hearing request notice and prior to initiation of a hearing, the school district must convene a meeting with the parents and the relevant IEP Team members who have specific knowledge of the facts identified in the notice as determined by the parents and the school district. The parents and the school district may agree in writing to waive the resolution meeting or agree to use the mediation process.

Student's Status During Proceedings



During the pendency of any administrative or judicial proceeding (except as provided under the discipline section), unless the parent and the school district agree otherwise, the student must remain in his or her current educational placement.

Civil Action



Any party aggrieved by the findings and decision made in a hearing has the right to bring a civil action in State court or in a district court of the United States within 120 days of the hearing officer's written decision.