
PROCEDURAL SAFEGUARDS NOTICE

PARENTAL RIGHTS FOR PUBLIC SCHOOL SPECIAL EDUCATION STUDENTS

October 2005

INTRODUCTION

This brochure provides an overview of parental special education rights, sometimes called procedural safeguards. This notice must be provided in your own language or any other mode of communication you may be using. These same procedural safeguards are also available for students with disabilities who have reached the age of 18. This Notice of Procedural Safeguards must be given to you at least one time per year, and it must also be given to you:

1. The first time your child is referred for a special education evaluation;
2. If you or the district requests a due process hearing; or
3. Upon your request.

PRIOR WRITTEN NOTICE

When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a pupil, or the provision of a free appropriate public education (FAPE) to the pupil, the district must serve prior written notice on the parent. The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.

All prior written notices must include:

1. A description of what the district wants to do or refuses to do;
2. An explanation of why the district proposes or refuses to take an action;
3. A description of any other options the district considered and why those options were rejected;
4. A description of each evaluation procedure, test, record, or report the district used as a basis for its proposal or refusal;
5. A description of any other factors relevant to the district's proposal or refusal;
6. A statement that you are protected by the procedural safeguards in this notice; and
7. Phone numbers you can call for help in understanding these procedural safeguards.

A prior written notice regarding initial placement and provision of services must also include the following statements:

1. That the district will not proceed with the initial placement without your consent;
2. That except for the initial placement and provision of services, the district will proceed with its proposal unless you object in writing within 14 calendar days after you receive the notice; and
3. That if you refuse to provide consent for an initial evaluation or initial placement or object in writing to any proposal or if the district refuses your request regarding identification, evaluation, educational placement or a free appropriate public education, you may request a conciliation conference.

The district must provide you with a copy of the proposed IEP whenever the district proposes to initiate or change the content of the IEP.

FOR MORE INFORMATION

If you need help in understanding this notice or anything about your child's education, please contact your child's principal, the special education director, or the person listed below.

If you have any questions or would like further information, please contact:

Name _____
Phone _____

For more help, you may contact any of the groups listed below:

ARC Minnesota (advocacy for persons with developmental disabilities):
651-523-0823
1-800-582-5256
Children's Home Society (CHS) and Family Service, Learning Disabilities Program:
651-646-7771,
1-800-982-2303
651-222-0175 (TTY)
MN Association for Children's Mental Health:
651-644-7333
1-800-528-4511
MN Brain Injury Association:
612-378-2742

1-800-444-6443
MN Disability Law Center:
612-332-1441
1-800-292-4150
612-332-4668 (TTY)
PACER (Parent Advocacy Coalition for Educational Rights):
952-838-9000
1-800-53-PACER
952-838-0190 (TTY)
You may also contact the Minnesota Department of Education:
651-582-8689
651-582-8201 (TTY)

PARENTAL CONSENT

1. Consent means that you have been fully informed of the information relevant to the activity for which your written permission is sought. Consent is voluntary and may be revoked at anytime. However, revocation of consent does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation of consent for a behavior intervention plan requires the district to immediately stop using the plan.
2. The district must obtain your consent before conducting its initial evaluation of your child and before the first time it provides special education and related services to your child. Consent for an initial evaluation is not consent for the initial provision of special education and related services.
3. Your consent is required before the initial provision of special education and related services and placement. If you refuse to consent to the initial provision of services to your child, the district may not override your refusal. In that case, the district will not be considered in violation for a failure to provide your child with special education and related services for which the district requested consent.
4. Your consent is required before a district conducts a reevaluation of your child. The reevaluation may occur without your consent if the district has taken reasonable steps to get your consent and you have failed to respond.
5. Your consent is not required for the district to review existing data on your child or to administer a test or other evaluation that is given to all children, unless consent is required from parents of all children.
6. You have a right to object in writing to any action the district proposes. Upon receipt of your written objection, the district will ask you to attend a conciliation conference. You and the district may also agree to use mediation or a facilitated IEP team meeting to resolve your disagreement. If you object to a proposed service or evaluation, the district may not deny your child any other service or activity. The district must continue to provide an appropriate education to your child.
7. Generally, your consent is required before a district may disclose personally identifiable information about you or share such data with anyone other than officials of participating agencies collecting or using the information under the Individuals with Disabilities Education Act (IDEA) or for any purpose other than meeting a requirement of that law. There are exceptions to this rule. Please refer to 34 C.F.R. Part 99 for additional information on consent requirements concerning data privacy under federal law.
8. Your consent is required before the district may access your private insurance to pay for services to ensure FAPE. Your refusal to provide this consent does not release the district from ensuring all required services are provided at no cost to you.

WRITTEN NOTICE TO PARENTS WHOSE CHILDREN ARE ON MEDICAL ASSISTANCE OR MINNESOTACARE

School districts must try to get funding from other sources for health related services given under special education. If your child has Medical Assistance (MA) or MinnesotaCare (MnCare) and no other health insurance:

1. Your district will ask you for a voluntary, written, one-time release of information. If you agree to the release, the district will bill MA or MnCare for covered IEP health-related services identified on your child's Individualized Education Plan (IEP/IFSP/IIIP);
2. You have a right to ask for, and get a copy of, all records about IEP health-related services shared by the district with the Minnesota Department of Human Services (DHS) as part of the billing process; and
3. You have the right to tell the district not to share information with DHS. If you don't let the district share this information, it will not change anything about your child's IEP or the services your child gets. It will only stop the MA or MnCare funding to the district.

INDEPENDENT EDUCATIONAL EVALUATIONS

An independent educational evaluation (IEE) is an evaluation by a qualified person(s) who is not an employee of your district. You may ask for an IEE at school district expense if you disagree with the district's evaluation. A hearing officer may also order an independent evaluation of your child at school district expense during a due process hearing.

Upon your request for an IEE, the district must provide you with information about where an IEE may be obtained and the district criteria applicable for IEEs.

If you request an IEE, the district must, without delay, ensure that it is provided at public expense or request a hearing to determine the appropriateness of the district's evaluation. If the district goes to hearing and the hearing officer determines the district's evaluation is appropriate, you still have the right to an independent evaluation, but not at public expense.

If you obtain an IEE at your own expense, the results of the evaluation must be considered by the IEP/IIIP/IFSP team and may be presented as evidence at a due process hearing regarding your child.

EDUCATION RECORDS

Access to Your Child's Education Records

If you want to look at your child's education records, the district must give you access to them for your review. Education records include most of the information about your child that is held by the school. However, information held solely by your child's teacher for his or her own instructional use may not be included in the education records.

The district must allow you to review the records without unnecessary delay, and before any meeting regarding an IEP or any hearing or resolution session about your child. In addition, the district must comply with your request to review your child's education records within 10 business days.

Your right to inspect and review records includes the right to:

1. Receive an explanation or interpretation of your child's records upon request;
2. Have your representative inspect and review the records on your behalf;
3. Review your child's records as often as you wish; and
4. Request that the district provide copies of your child's education records to you.

Fees for Searching, Retrieving, and Copying Records

The district may not charge a fee to search or retrieve records. However, if you request copies, it may charge a reasonable fee for the copies, unless charging that fee would prevent you from exercising your right to inspect and review the education records because you cannot afford to pay it. If you request 100 or fewer copies of black and white, letter or legal size paper copies, the district may charge no more than 25 cents for each page copied.

Record of Access by Others

The district must keep a record of each request for access to, and each disclosure of, personally identifiable information in your child's education records. This record of access must include the name of the individual who made the request or received personally identifiable information from your child's education records, the date access was given, and the purpose of the disclosure or the individual's legitimate interest in the information.

Consent to Release Records

Parent consent is required before personally identifiable information is released to unauthorized individuals or agencies. The consent must be in writing and must specify the individuals or agencies authorized to receive the information, along with the type of information to be disclosed and the purpose for the disclosure. Upon request, the district must provide you with a copy of records it discloses after you have given this consent.

The district may not disclose information contained in your child's IEP/IIIP/IFSP, including diagnosis and treatment information, to a health provider without your signed consent.

Amendment of Records at Parent's Request

If you believe that information in your child's records is inaccurate, misleading, incomplete, or in violation of your child's privacy or other rights, you may request in writing that the district amend or remove the information.

The district must decide within a reasonable time whether it will amend the records. If the district decides not to amend the records, it must inform you that you have the right to a hearing to challenge the district's decision. If, as a result of that hearing, the district decides that the information is not inaccurate, misleading, incomplete, or in violation of your child's privacy rights, it must inform you that you have the right to include a statement of your comments and disagreements alongside the challenged information in your child's education records.

Destruction of Records

The district must inform you when personally identifiable information is no longer needed in order to provide education services to your child. That information must be destroyed at your request. However, the school may retain a permanent record of your child's name, address, phone number, grades, attendance records, classes attended, grade level completed, and year completed.

The district must not destroy any education records if there is an outstanding request to review those records.

MEDIATION

Mediation is a voluntary process to help resolve disputes. You or your district may request mediation from the Minnesota Special Education Mediation Service (MNSEMS) at 651-582-8222 or 1-866-466-7367. Mediation uses a neutral third party trained in facilitative dispute resolution techniques. Mediation may not be used to deny or delay your right to a due process hearing. Both you and district staff must agree to try mediation before a mediator can be assigned. At any time during the mediation, you or the district may end the mediation.

WRITTEN COMPLAINTS

Any organization or individual may file a complaint with the Minnesota Department of Education (MDE). Complaints sent to MDE must:

1. Be in writing and be signed by the individual or organization filing the complaint;
2. Allege violations of state or federal special education law or rule which have occurred within the last year, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received;
3. State the facts upon which the allegation is based; and
4. Include the name, address, and telephone number of the person or organization registering the complaint.

The complaint must be sent to:

Minnesota Department Education
Division of Compliance and Assistance
Due Process Supervisor
1500 West Highway 36
Roseville, MN 55113-4266
(T) 651-582-8689 (F) 651-582-8725

MDE will issue a written decision within 60 days. Final complaint decisions may be appealed to the Minnesota Court of Appeals within 60 days of the date the decision is issued.

IMPARTIAL DUE PROCESS HEARING

Both you and the district have a right to request in writing an impartial due process hearing within two years of the date you or the district knew or should have known about the alleged action that forms the issues of the complaint. A request for hearing must be sent to MDE and to the other party. A due process hearing may address any matter related to the identification, evaluation, educational placement, manifestation determination, or provision of a free appropriate public education of your child. Before you can have a hearing, the district must arrange for a resolution meeting to occur within 15 days of the hearing request. If you do not attend a resolution meeting or mediation, and the district does not agree in writing to waive the meeting, your opportunity for a hearing will be delayed. If the resolution session or mediation does not resolve the matter within 30 days of the request the hearing timelines below begin.

Procedures for Initiation of a Due Process Hearing

Upon a written request for a hearing, the district must give you a copy of this procedural safeguard notice and a copy of your rights at hearing. Written requests for a hearing must include:

1. The name of your child;
2. The address of your child;
3. The name of the school your child is attending;
4. A description of the problem(s), including your view of the facts; and
5. A proposed resolution of the problem to the extent known to you at the time.

MDE will appoint an impartial hearing officer to conduct the hearing. Below are a few of your rights at hearing. [This is not a complete list of your rights.]

Rights at hearing

Both you and the district have the right to:

1. Be accompanied and advised by an attorney and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence;
3. Confront, cross-examine, and compel the attendance of witnesses;
4. Block the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing, including evaluation data and recommendations based on that data; and
5. Receive a free copy of the hearing transcript or recording and the findings of fact and decisions.

As a parent, you have the right to:

1. Have your child who is the subject of the hearing present; and
2. Open the hearing to the public.

Timelines

A hearing decision must be issued within 45 days of the expiration of the 30-day resolution period. Extensions may be available under some circumstances. The hearing decision is final unless you or the district file a civil action.

Disclosure of Additional Evidence Before a Hearing

At least five business days before a hearing, you and the district must disclose to each other all evaluations of your child completed by that date as well as any recommendations based on those evaluations that you or the district intend to use at the hearing. A hearing officer may refuse to allow you to introduce any undisclosed evaluations or recommendations as evidence at the hearing unless the other party consents to the disclosure. All evidence must be limited to the specific issues described to the hearing officer.

CIVIL ACTION

If you or the district disagrees with the findings or decisions made by a hearing officer, either party may file a court action. The action may be brought in Federal District Court or the state Court of Appeals. Different standards of review apply in each court. An appeal to the state Court of Appeals must be made within 60 days of the date of the decision. An appeal to Federal District Court must be made within 90 days of the date of the decision.

PLACEMENT DURING A HEARING OR CIVIL ACTION

During a hearing or court action, unless you and the district agree otherwise, your child will remain in the education placement where he/she is currently placed. This is commonly referred to as the “stay-put” rule.

Two exceptions to the “stay-put” rule exist:

1. Students may be removed from their educational setting for not more than 45 days to an interim alternative educational placement for certain weapon, drug, or serious bodily injury violations; and
2. A hearing officer’s decision that confirms the proposed change in placement is appropriate is the “stay-put” placement during subsequent appeals.

EXPEDITED HEARINGS

Expedited hearings may occur in the following situations:

1. Whenever you request a hearing to dispute the district’s determination that your child’s behavior was not a result of his/her disability;
2. Whenever you request a hearing to dispute a 45-day interim alternative education placement order by school personnel; or
3. When a district requests an expedited hearing to establish that it is dangerous for your child to remain in the current placement.

Expedited hearings must be held and a decision issued within 10 days of the expiration of a 15-day resolution period. The district must arrange for a resolution meeting to occur within seven days of a request for an expedited hearing. If you do not attend the resolution meeting or mediation, and the district does not agree to waive the meeting in writing, you are not entitled to a hearing.

A hearing officer may decide to move your child to an interim alternative educational setting for up to 45 calendar days if the hearing officer determines your child is substantially likely to injure self or others if he/she remains in the current placement.

INTERIM ALTERNATIVE EDUCATIONAL PLACEMENT

The district may change your child’s educational placement for up to 45 school days if your child:

1. Possesses a dangerous weapon at school or at a school function;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or at a school function; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

The IEP/IIP/IFSP team determines the interim alternative educational setting. Even though this is a temporary change, the setting must allow your child:

1. To continue to progress in the general curriculum, although in a different setting;
2. To continue to receive those services and modifications, including those described in your child’s IEP/IIP/IFSP, that will help your child meet his/her IEP/IIP/IFSP goals; and
3. Include services and modifications designed to prevent the behavior from recurring.

If your child is placed in an interim alternative educational setting, an IEP/IIP/IFSP meeting must be convened within ten school days of the decision. At this meeting, the team must discuss the behavior and its relationship to your child’s disability, review evaluation information regarding the behavior, and determine the appropriateness of your child’s IEP/IIP/IFSP and behavior plan.

ATTORNEY’S FEES FOR HEARINGS

You may be able to recover attorney’s fees if you prevail in a due process hearing. A petition for fees must be filed in a court of competent jurisdiction. A judge may make an award of attorney’s fees based on prevailing rates in your community. The court may reduce an award of attorney’s fees if it finds that you unreasonably delayed the settlement or decision in the case. If the district prevails and a court agrees that your request for a hearing was for any improper purpose, you may be required to pay the district’s attorney’s fees.

PRIVATE SCHOOL PLACEMENT

If your district has failed to or is unable to provide your child an appropriate education you may be able to recover costs from placement at an appropriate private school. You may be able to recover tuition expenses for a private school placement if you inform the district of your intent to enroll your child in private school at public expense. This must be done at the most recent IEP/IIP/IFSP meeting prior to removal of your child from public school or by written notice to the district at least 10 business days prior to removal of your child from public school. Your notice must state why you disagree with the district's proposed IEP/IIP/IFSP or placement. Failure to tell the school of your intent to enroll your child in a private school at public expense, failure to make your child available for evaluation, or other unreasonable delay on your part could result in a reduction or denial of reimbursement for the private school placement. If you request a due process hearing, and if the district prevented you from providing notice or you cannot write in English, the hearing officer may not reduce the reimbursement.

If a hearing officer or court finds that the district failed to provide or is unable to provide your child with an appropriate education and that the private placement is appropriate, you may be reimbursed for the cost of the private placement.