

Procedural Safeguards

Common Parental Concerns in Formal State Complaints Dispute Resolution Options

What are Procedural Safeguards?

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, mandates that LEAs must establish and maintain procedures to assure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education.

Procedural Safeguards

- Procedural safeguards are an integral part of IDEA's requirements. They represent guarantees for parents and their child with disabilities, as well as offer both school and parents a variety of options for resolving any disagreements.
- Procedural Safeguards serve as an umbrella or security blanket of educational rights and responsibilities for children with disabilities and their parents.

Procedural Safeguards

Public agencies responsible for the education of children also operate beneath the umbrella of IDEA's procedural safeguards.

Amendments to Procedural Safeguards

The update change is:

Page 1- Unless you waive the timeline, written notice must be given to you seven (7) calendar days before the school district:

1. Proposes to initiate or change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
2. Refuses to initiate or change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

Major Issues Covered by Procedural Safeguards

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

When Should Procedural Safeguards be Given?

A procedural safeguard notice must be provided at least once a year and at:

- The initial referral
- A parental request for formal evaluation and **reevaluation**
- The initial filing for a due process hearing
- The date a decision is made to take a disciplinary action that requires a change of placement
- Initial IEP Committee Meeting
- At the request of the parent

Procedural Safeguard Notice

- Copies must be made available in print
- School districts may post their procedural safeguard notice on their website
- The procedural safeguard notice must include:
 - Timeframes for filing due process hearing request
 - The opportunity for resolution process
 - Information on mediation

Prior Written Notice to Parents

Prior Written Notice to Parents

Prior written notice refers to the public agency's obligation to inform parents a reasonable time before it takes specific action, or refuses to take a specific action.

Prior Written Notice to Parents

Written notice must be given to the parents of a child with a disability a reasonable time before the school:

- Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child; **or**
- Refuses to initiate or to change the identification, evaluation or educational placement of the child, or the provision of FAPE to the child.

34 C.F.R. §300.503 (a)

Prior Written Notice for Parents

Written notice must include:

- A description of the action proposed or refused by the school;
- An explanation of why the school proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the school used as a basis for their decision;
- A statement that the parents of a child with a disability have protection under the procedural safeguards and, how the parents can obtain a copy of them.

34 C.F.R. §300.503 (b)

Prior Written Notice to Parents

Written notice must include:

- Sources for parents to contact to obtain assistance in understanding these provisions;
- A description of other factors relevant to the school's proposal or refusal;
- A description of other options that the IEP Team considered and the reasons why those options were rejected.

34 C.F.R. §300.503 (b)

Prior Written Notice to Parents

Written notice must be:

- Written in language understandable to the general public;
- Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

Prior Written Notice to Parents

- If the native language or other mode of communication of the parent is not a written language, the school must take steps to ensure:
 - That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - That the parent understands the content of the notice;
 - That there is written evidence that these requirements have been met.

34 C.F.R. §300.503 (c)

Native Language

Native language means the following:

- The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
- In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment;
- For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses.

34 C.F.R. §300.29

Providing Prior Written Notice

- A parent of a child with a disability may elect to receive notices by an electronic mail communication, if the LEA makes that option available.
- Parents may also agree to receive via email the procedural safeguards notice and the notification of a due process complaint.

34 C.F.R. §300.505

State Complaint Cautions

When completing the WPN:

- Identify persons attending by name and position;
 - District staff/personnel cannot attend IEP meeting without being on WPN
- Invite students at the age of 14;
- Notify parents invited to attend the IEP meeting in a timely manner.

State Complaint Cautions

- Timely evaluations - (Memo 1107) states that “States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an Response to Intervention strategy.
- If the Teacher Support Team believes a comprehensive evaluation is warranted or a parent makes a request for an evaluation, the Multi-disciplinary Evaluation Team must meet within 14 calendar days.
- If the district has a team other than the MET to review the information, that team cannot circumvent the 14-day rule.

Parent Participation, Consent & Agreement

Parent's rights include:

- Access to educational records
- Participation in meetings related to identification, evaluation, and educational placement of their child
- Parental consent

Access to Educational Records

Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than **forty-five (45)** calendar days after the request has been made.

34 C.F.R. §300.613

The right to inspect and review includes:

- The right to a response from the school to the parents' reasonable request for explanations and interpretations of the records;
- The right to request copies of records;
- The right to have a representative inspect and review the records.

- “Education records” are records which –
 - 1) Contain information which is directly related to a student; and
 - 2) Are maintained by an educational agency or institution or by a party acting for the agency or institution.

Education Records

- “Record” means any information maintained in any way, including, but not limited to:
 - Handwriting;
 - Video or audio tape;
 - Computer media;
 - Film;
 - Print;
 - Microfilm and microfiche.

Access to Educational Records

An agency may presume that the parent has authority to inspect and review the records relating to his or her child unless the agency has been advised that parent does not have the authority under applicable state laws governing such matters as guardianship, separation, and divorce.

Record of Access

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

34 C.F.R. §300.614

School Rights and Responsibilities

- Schools must comply with a parent's request to inspect and review records without unnecessary delay before any meeting—regarding an IEP, a hearing or resolution session, and in no case more than 45 days after the request has been made.
- Schools must respond to reasonable requests for explanations and interpretations of the records.
- Schools can charge a fee for copies of records made for parents, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. Schools may not charge a fee for searching for, or retrieving, a child's records for parents.

State Complaint Cautions

Districts must provide, at parent's request, copies of any evaluation results prior to any IEP meeting.

Content of Educational Record

A parent who believes that information in their child's educational record is inaccurate, misleading, or violates the privacy or other rights of their child may request that the information be amended.

School Responsibilities and Rights

- The school must decide whether to amend the information as requested by the parent within a reasonable period of time after receiving the request.
- If the school refuses to amend the information as requested by the parent, it must inform the parent of the refusal and advise the parent of the right to a hearing.

Parent's Right to Hearing

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Results of Hearing

- If the agency decides that the information is inaccurate or misleading:
 - Amend the information;
 - Inform parent in writing.
- If the agency decides that the information is not inaccurate or misleading;
 - Inform parent of their right to place a statement commenting on the information in child's education record.

Parents have the right to participate in:

- Evaluation;
- Identification;
- Educational placement;
- Provision of FAPE (Free Appropriate Public Education) to their child, including IEP meetings.

Parents' Rights

Parents are members of:

- The group that determines whether their child is a child with a disability;
- The IEP committee for their child;
- Any group that makes educational placement decisions for their child.

LEA Responsibilities

LEAs must:

- Provide parents with an appropriate notice of a meeting;
- Use other methods to ensure parent participation in IEP committee and placement meetings.

LEAs may:

- Hold the IEP meeting and the meeting where the child's placement is determined without the parents in attendance if unable to convince the parents to attend and if efforts to secure their participation are documented.

Appropriate Notice of Meeting

- Must be early enough to ensure parents have an opportunity to attend
- Must include the purpose, time and location of meeting
- Must include who will attend meeting
- Must tell parents they can invite individuals with knowledge or special expertise about the child

Parental Consent

Consent means that:

- 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 other 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.

Parental Consent

- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
- If a parent revokes consent, that revocation is not retroactive.

Parental Consent for Services

- The LEA must make reasonable efforts to obtain informed consent before providing special education and related services to the child for the first time.
- If the parent does not respond to a request to provide consent for the child to receive special education and related services for the first time, or if the parent refuses to give consent or later revokes their consent in writing, the school district may not use the dispute resolution process in order to obtain agreement or provide services.

Parental Consent for Services

If the parent refuses to give consent for the child to receive special education or related services for the first time, or if the parent does not respond to a request to provide consent or later revokes their consent in writing and the school district does not provide the child with special education and related services for which the LEA sought consent, the LEA:

1. Is not in violation of the requirement to provide a FAPE;
2. Is not required to have an IEP meeting or develop an IEP for the child for which the consent was requested.

Parental Consent for Reevaluations

- If the parent fails to respond to the school district's attempt to obtain consent before reevaluation, the school district may proceed without consent after taking reasonable measures to obtain it and the parent did not respond.
- If the parent refuses to consent to the child's reevaluation, the school district may, but is not required to, pursue the child's reevaluation by using the dispute resolution process to override the refusal to consent to the child's reevaluation.

Reasonable Efforts to Obtain Parental Consent

Reasonable documented attempts include:

- Detailed records of telephone calls made or attempted and results of those calls;
- Copies of correspondence sent to the parents and any responses received;
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Independent Education Evaluation (IEE)

INDEPENDENT EDUCATION EVALUATION

What is an Independent Educational Evaluation (IEE)?

An IEE is an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for educating the child.

Parents' Rights to IEE

- Parents have a right to obtain an IEE of their child subject to certain procedures.
- If a parent disagrees with an evaluation conducted by the school, he or she has the right to request an IEE of the child at public expense.
- When parents request an IEE, the LEA must provide the parents with information about where an evaluation may be obtained and the criteria that applies to the IEE.

State Complaint Cautions

1. Districts must provide a list of qualifications for examiners.
2. The list of examiners must be a comprehensive list.

Parents' Right to IEE

- If parent requests an IEE, the school may ask for the parent's reason as to why they object to the LEA's evaluation. However, the LEA may not require the parent to provide an explanation.
- If parent request an IEE, the LEA may not unreasonably delay either agreeing to the IEE or requesting a hearing to defend the LEA's evaluation.

IEE at Public Expense

- A parent is entitled to one IEE at public expense each time the LEA conducts an evaluation with which the parent disagrees.
- If parent obtains an IEE at public expense or shares with the school an evaluation obtained at private expense, the results:
 1. Must be considered by the LEA in making any decisions with respect to FAPE for the child;
 2. May be presented as evidence at hearing on a due process complaint for the child.

IEE at Public Expense

- If a parent requests an IEE at public expense, the LEA must either:
 1. File a due process complaint requesting a hearing to show that its evaluation is appropriate;
 2. Ensure that an IEE is provided at no cost to the parent.
- If a hearing officer requests an IEE as part of a hearing on a due process complaint, the cost of the evaluation must be at LEA's expense.

IEE at Public Expense

- If the school files a due process hearing and the decision is that that school's evaluation is appropriate, the parent still has a right to an IEE, but not at public expense.
- The agency criteria under which the evaluation is obtained, including location of evaluation and qualifications of the examiner must be same criteria LEA uses when it initiates an evaluation.

Dispute Resolution Options in IDEA and Mississippi State Board Policy 7219

What is Dispute Resolution?

It is a process that gives parents and schools expanded opportunities to resolve their disagreements in a positive and constructive way.

- State Complaint
- Mediation
- Due Process Complaint
- Resolution Process
- Expedited due process hearings in disciplinary situations

- IEP Facilitation
- Contact Office of Parent Outreach
- IEP review meeting

IEP Facilitation

- IEP facilitation is a voluntary early dispute resolution option available to parents of children with disabilities and school districts/agencies when both parties agree it would be valuable to have a neutral person-the IEP facilitator-present at an IEP meeting to assist with the IEP process.
- IEP facilitation is requested when parents and school district/agency personnel are experiencing difficulties communicating and reaching agreement about a student's needs. IEP facilitation may be used for any IEP team meeting, including the initial, annual, or reevaluation process.

- What is a State Complaint?
- Who may file one?
- What information must be included?
- What are the SEA's procedures for handling the complaint?
- Are there time limits?

Allows for parent, individual, or organization to formally register concern(s), and alleged IDEA violations with the Mississippi Department of Education.

Who may File Complaint?

- A child's parent or individual may file, but so may any organization (including those from another state).
- Must be written and signed.

A State Complaint must include-

- Statement of violation of requirement of Part B;
- Facts on which statement is based;
- Signature and contact information for the complainant;
- Name and address of residence of child and name of school child is attending;
- Description of nature of problem;
- Proposed resolution of the problem.

- Violation must have occurred within one year.
- The party filing the complaint must forward a copy of the complaint to the LEA at the same time it files with the MDE.

Procedure for Handling Complaint

- 60 day time limit (after complaint is filed)
- Independent investigation if determined necessary by SEA
- Opportunity for complainant to submit additional information about the allegations in the complaint

Procedure for Handling Complaint

- Provide LEA opportunity to respond to allegations – 1) resolution 2) mediation
- SEA reviews all relevant information and makes independent determination as to compliance with Part B and
- Issue written decision to the complainant for findings of fact, conclusions and reasons for the SEA's final decision.

- Description
- Benefits
- Procedures
- SEA's obligations
- Confidentiality of discussions
- Enforcement of written agreement

- Parent or district requests mediation through OSE (verbal or written).
- OSE is responsible for assignment of mediator.
- Both parties must agree to participate in mediation to resolve disputed issue – It is a voluntary process.

- If successful, written agreement will be signed by parents and district at close of session.
- If unsuccessful, parents or district may choose to pursue resolution of disputed issues through other OSE processes.
- If disputed issue becomes a due process request, no information obtained from the mediation session may be utilized within the due process hearing.

- Responsible for paying for the mediation process
- Responsible for maintaining a list of qualified mediators who are knowledgeable about the laws and regulations relating to special education and related services
- Must select mediators on random, rotational basis

- If disputed issue becomes a due process request, no information obtained from the mediation session may be utilized within the due process hearing.
- All discussions that occur during mediation are confidential.

Enforcement of Written Agreement

- Written agreement is signed by both the parent and the representative of the agency who has the authority to ‘bind’.
- A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

- LEA must convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint and prior to initiating the hearing.
- This meeting includes a representative of the public agency who has decision-making authority on behalf of the agency.
- May not include an attorney of the LEA unless the parent is accompanied by an attorney.

- Resolution session is NOT required if it is the LEA that filed the Due Process Complaint.
- The Resolution Session is an opportunity for the LEA to resolve the issue that is the subject of the parent's Due Process Complaint.
- Resolution is required only within the context of Due Process Hearing.

Two Exceptions to Resolution Meeting

- When the parent and LEA agree in writing to waive the meeting, and
- When the parent and LEA agree to use the mediation process.

Except in these two circumstances, the resolution meeting is required when a parent files a Due Process Complaint.

- What is a Due Process Complaint?
- Who may file one?
- Are there time limits?
- What information must be included?
- How does an LEA respond?
- How does the SEA respond?

A Due Process Complaint is a filing by a parent or public agency on matters related to:

- Identification;
- Evaluation;
- Educational placement; or
- Provision of free appropriate public education (FAPE) to the child.

Who May File ?

- A parent or a public agency may file a Due Process Complaint with issues relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child.
- If filed by the parent, the request is mailed to the superintendent of the LEA and OSE.
- If filed by the LEA, the request is mailed to the parent and OSE.

A Due Process Complaint must allege a violation that occurred not more than two (2) years before the date the parent or public agency knew or should have known about the alleged action.

Required Information on Due Process Request

- Name of the child
- Address of the residence of the child
- Name of the school the child is attending
- Description of nature of the problem relating to the proposed or refused initiation or change, including facts relating to the problem
- Proposed resolution of the problem

How Does an LEA Respond?

- Upon receipt of the first Due Process Complaint, school district must provide parents with procedural safeguards.
- District must inform parents about the availability of free or low-cost legal service (advocacy).

How does OSE Respond?

- Once request is received by OSE, an impartial hearing officer is assigned.
- Once hearing officer has been assigned, OSE may no longer discuss disputed issue with parent or district.
- Parent and district are to contact hearing officer if they have questions.

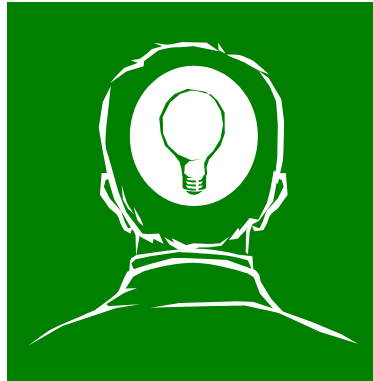
Pre-Hearing Conference

- Conducted by the hearing officer
- At the conference, each side is expected to provide to the hearing officer and the opposing party:
 - List of witnesses who may be called by the party
 - List of documents the party may use as evidence at the hearing

Pre-Hearing Conferences (cont.)

- Matters that are discussed in the conference:
 - Issues in the dispute
 - The action(s) the parties want the hearing officer to order
 - Disputes concerning the witnesses and documents the opposing parties may use
 - Whether the parties will be using legal representatives or advocates at the hearing
 - The scheduling of the hearing

- A copy of the hearing officer's finding of facts and decision will be issued in writing to the parties.
- Decisions made by the hearing officer are final. They may be appealed to a higher court, within 90 days from the date of the hearing officer's decision. This action may be brought to any State court of competent jurisdiction or in a district court of the United States.



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