

PROCEDURAL SAFEGUARDS IN SPECIAL EDUCATION UNDER IDEA

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**Linda McCulloch, Superintendent
Montana Office of Public Instruction**

Distributed by:



Linda McCulloch, Superintendent

Montana Office of Public Instruction
PO Box 202501

Helena, Montana 59620-2501

(406) 444-3095

1-888-231-9393

Fax: (406) 444-2893

www.opi.mt.gov

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State and Local Contacts

District Superintendent _____ Phone _____

School Special

Education Contact _____ Phone _____

Office of Public Instruction Telephone Number: (406) 444-4402 or 888-231-9393

Parents, Let's Unite for Kids Telephone Number (406) 255-0540 or 800-222-7585

Montana Advocacy Program Telephone Number (406) 449-2344 or 800-245-4743

hearing officer decides the information is not inaccurate, misleading or a violation of privacy, the school must inform you of your right to place a statement in the record stating your reasons for disagreeing with the school's decision. This statement must be maintained with the contested portion of the record as part of the education record as long as the record is maintained by the school and must be included with any request for disclosure.

12. You have the right to request the destruction of information in your child's special education record or be informed of the school's proposed destruction of information in your child's special education record. Information cannot be destroyed until at least five years after services to your child have ended.

Transfer of Parental Rights at Age 18

1. When your child reaches age 18, the school must provide any required notices to both you and your child. You retain the right to participate in meetings for which you receive notice. All rights transfer to your child. The school must inform you and your child of the rights that will transfer at least one year before he or she reaches age 18.
2. The school must inform you and your child in writing when the rights transfer. If you have legal guardianship of your adult child, you have the power to exercise all of his or her rights.
3. If you do not have guardianship but believe you should, you may pursue such under Title 72, Chapter 5, Part 300 of the Montana Codes Annotated.

Procedural Safeguards in Special Education

As the parent of a child who may receive special education, you have certain rights that are guaranteed by federal law: the Individuals with Disabilities Education Act (IDEA). These rights are listed in this brochure and include your right to participate in meetings dealing with the identification, evaluation, and educational placement of your child and the provision of a free appropriate public education to your child.

One of your rights is to be informed of all the rights available to you in writing, in your native language (unless it is clearly not feasible to do so), and at a level understandable to the general public. You are entitled to a copy of these procedural safeguards at least one (1) time per year, and:

1. upon initial referral or parental request for evaluation;
2. upon the initial filing of a complaint; and
3. upon request by a parent.

If you would like a full explanation of these rights, please contact your local school district superintendent or director of special education or the Legal Services Division, Office of Public Instruction in Helena.

Written Notice

1. You have the right to receive written notice a reasonable time before the school proposes or refuses to initiate or change the identification, evaluation, educational placement (including graduation from high school) or provision of a free appropriate public education to your child. The notice must be written in your native language (unless it is clearly not feasible to do so) and at a level understandable to the general public. If your method of communication is not a written language or the notice is not written in your native language, you have the right to have the notice translated orally or provided by other means. The school must keep written documentation that you received the notice. You may elect to receive notices by an electronic mail (e-mail) if the school makes such an option available.
2. The notice must provide:
 - a. a description of the action proposed or refused by the school;
 - b. an explanation of why the action is proposed or refused;
 - c. a description of any other options the school considered;
 - d. the reasons why those options were rejected;
 - e. a description of each evaluation procedure, assessment, report or record used as a basis for the action proposed or refused;
 - f. a description of any other factors relevant to the school's decision;

- g. a statement that you have protections under the procedural safeguards of the IDEA and if the notice is not for an initial referral for evaluation, how a copy of your rights can be obtained; and
- h. sources for you to obtain assistance in understanding your procedural safeguards

Informed Consent

1. Informed consent means that you have been fully informed, in your native language, of all information relevant to the activity for which your consent is sought, that you understand and agree to the carrying out of the activity, and that you understand that written consent is voluntary and you may revoke it at any time.
2. A school must obtain your consent before:
 - a. conducting an initial evaluation or re-evaluation of your child; and
 - b. initially providing special education and related services to your child.
3. Your consent is not required before a school reviews existing data as part of an evaluation or re-evaluation or before administering a test or other evaluation that is administered to all students unless consent is required of all parents.
4. If you refuse consent for initial evaluation the school may continue to pursue the evaluation by initiating a request for due process hearing, mediation, or other alternate dispute resolution processes. If a hearing officer upholds the school, an initial evaluation may be conducted subject to your right to appeal the hearing officer's decision into court.
5. If you refuse to consent, or refuse to respond to a request to provide consent to the special education services offered through an initial Individualized Education Plan (IEP), the district shall not provide special education and related services to your child and the school district shall not be considered to be in violation of the requirement to make available a free appropriate public education to your child.
6. If you and the school cannot agree on the annual placement, but can agree upon certain services or interim placement, your child's IEP would be implemented in the areas of agreement and his or her last agreed-upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. If you refuse or revoke consent for annual placement, the school shall informally attempt to obtain consent and may request a due process hearing.
7. If your consent for re-evaluation or annual placement cannot be obtained and you have not refused or revoked consent, the school may re-evaluate or provide special education and related services in accordance with your child's IEP 15 days from the date that it provided written notice to you of re-evaluation or annual placement.

the expiration of the 45-day period, unless the parent and the school agree otherwise.

Access to Records

1. You have the right to inspect and review any education records relating to your child unless the school has information that denies that right under state law.
2. You have the right to review records without unnecessary delay and prior to any meeting regarding an IEP or hearing relating to the identification, evaluation or placement of your child, but in no case later than 45 days after your request.
3. You have the right to a response from the school to reasonable requests for explanations and interpretations of the information in the record.
4. You have the right to request a list of the types and locations of education records collected, maintained or used by the school.
5. You have the right to request copies of your child's records if failure to obtain copies would keep you from reviewing or inspecting the records. The school may charge a fee for the copies if the fee does not prevent you from reviewing the records. This fee may include the cost of personnel during the copying process. The school may not charge a fee to search for or retrieve the records.
6. You have the right to have a representative of your choice inspect and review the records.
7. Upon your child's enrollment in a public school from another public school in Montana, the education and discipline records must be transferred to the new school within five working days of written or electronic request. You may request a copy of the information transferred.
8. You have the right to be informed of your rights under the Family Educational Rights and Privacy Act (FERPA) and local school board policy. You have the right to withhold consent to disclose records in some circumstances.
9. The school must keep a record of persons (except those indicated in school board policy) obtaining access to your child's records, including the name of the person, the date access was given and the purpose for which the person used the records.
10. If a record contains information about another child, you may inspect and review only the information relating to your child.
11. You have the right to request that the school change information in the record if you believe that the information is inaccurate, misleading, or violates the privacy or other rights of your child. If the school agrees to change the record, the record must be changed within a reasonable period of time. If the school refuses to change the record, you may request a hearing under FERPA regulations. If the hearing officer decides the information is inaccurate, misleading or a violation of privacy, the school must change the record and inform you in writing of the changes. If the

your child will progress in the general curriculum and appropriately advance toward achieving the goals in his or her IEP. Your child's placement and services will be determined by school personnel.

3. If the removal from school results in a change in educational placement (removal for more than 10 consecutive school days or a series of removals totaling more than 10 cumulative days that constitutes a pattern), the school must notify you in writing no later than the date on which the decision is made by the school to take that action, and provide you with a copy of your safeguards under IDEA.
4. If your child's removal from school results in a change in placement, you have the right to participate in an IEP meeting to determine if your child's behavior which led to the disciplinary action was a result of his or her disability, and to determine an interim alternative educational setting (subject to certain limitations.) If the school did not conduct a functional behavioral assessment and implement a behavioral intervention plan for your child before the behavior that resulted in the change in placement, the IEP team shall develop a plan to address that behavior. If your child already has a behavioral intervention plan, the IEP team shall review the plan and modify it as necessary to address the behavior.
5. If your child's behavior is determined not to be a result of his or her disability, he or she will be subject to the same disciplinary procedures as children without disabilities, except that the school must provide educational services for your child on the 11th day of removal from school.
6. If you disagree with the determination of the IEP team that your child's behavior was not a result of his or her disability or you disagree with the placement decision for your child, you have a right to request a due process hearing.
7. If your child possesses a weapon while at school or a school function, knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function, or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of either the school or the Office of Public Instruction, he or she will be subject to removal to an interim alternative educational setting for the same amount of time that a child without disabilities would be subject to discipline, but for not more than 45 days. (Serious bodily injury means bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.)
8. If the school believes your child poses a danger to himself/herself or others, and you disagree with the interim alternative educational placement of your child, the school may request an expedited due process hearing to determine if your child is a danger to himself/herself or others and the appropriateness of your child's alternative placement. During this appeal process your child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until

Evaluation Procedures

Initial Evaluation

1. You have the right to a full and individual evaluation of your child's educational needs prior to initial placement in a special education program. Your child should be assessed in all areas of suspected disability. The evaluation must be based on a variety of assessment tools and strategies, including information provided by you, that may assist in determining whether your child has a disability, what your child's present level of academic achievement and functional performance and educational needs are, and whether your child needs special education and related services. The evaluation materials must be in your child's native language or other mode of communication unless it is clearly not possible to do so, and must not be culturally or racially discriminatory. The tests must be given by trained personnel according to the instructions of the test makers, and for the purpose they were made so that results accurately reflect your child's aptitude or achievement level rather than reflecting any sensory impairment which your child may have.
2. The eligibility decision will be made by a team of qualified professionals which includes you, your child's regular education teacher, the special education teacher, the school administrator, and at least one person who is knowledgeable in the area of the suspected disability and is knowledgeable about your child, the meaning of the test results, and the placement options.
3. The team shall ensure that evaluation decisions are not based upon a single procedure, that assessments used with you child are tailored to address specific areas of educational need and not just an intelligence score, and that information obtained from the evaluation is carefully considered.

Re-evaluation

1. Children who receive special education services are required to be re-evaluated at least every three years unless the parent and the school agree that a re-evaluation is unnecessary or more frequently if conditions warrant or if you or your child's teacher request it. The types of assessments, if any, conducted at the time of the re-evaluation are determined by the child's IEP team prior to the development of an evaluation plan.
2. If the IEP team decides that no additional data are needed to determine whether your child continues to be a child with a disability, you will be notified. Notification shall include the reason(s) for the decision and your right to request an assessment to determine whether your child continues to be a child with a disability. The school will not be required to do such an assessment unless you request it.

Independent Educational Evaluation

1. You have the right to request an independent educational evaluation at public expense if you disagree with the educational evaluation provided by the school. The school must provide you with information upon request on how and where an independent educational evaluation may be obtained to ensure that the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, are the same as the criteria which the school must meet when it initiates an evaluation. These criteria must be met for the evaluation to be at public expense.
2. Before paying for such evaluation, the school may initiate a due process hearing to show that its evaluation is appropriate.
3. If the final decision in the hearing is that the school's evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
4. If a due process hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.
5. If you obtain an independent educational evaluation at your own expense, the school must consider the results of the independent educational evaluation and any other evaluations in any decision it makes about your child's educational program. You may present the results of an independent educational evaluation at a due process hearing.

Least Restrictive Environment

1. Your child must be educated with children who do not have disabilities to the maximum extent appropriate to your child's individual needs. Removal from the regular educational environment should happen only when your child's educational needs are such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
2. Your child must be educated in the school that he or she would attend if not disabled, unless the IEP requires some other arrangement.
3. Your child's educational placement must be based upon his or her IEP and determined at least annually.

Private School Placements by Parents

1. The school is not required to pay for the cost of education, including special edu-

the request and attempt to resolve the problem. The parents and the school, however, may agree in writing to waive this meeting or agree to use the mediation process instead. The school cannot include an attorney in the resolution meeting unless the parent is accompanied by an attorney.

If the issues raised in the due process request are not resolved by the school within 30 days of the receipt of the request, the due process hearing may occur and applicable timelines for the hearing shall begin.

Complaints

The Office of Public Instruction (OPI) has established procedures to provide for the filing of complaints by individuals or organizations alleging that a school has failed to follow state and/or federal law in providing a student with disabilities a free appropriate public education. When a formal complaint is filed with the Office of Public Instruction, informal dispute resolution procedures (EAP) are initiated in an attempt to resolve the issues. If the dispute is not resolved within 15 business days, the formal complaint process will continue. To file a complaint you must send a written and signed statement to the OPI that includes:

1. the name of your child, the residential address of your child, and the name of the school your child is attending;
2. a statement that the school has violated a requirement of federal and/or state law; and
3. the facts on which the statement is based.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. A final decision will be issued within 60 days of receipt of the complaint. A complaint form is available from the Office of Public Instruction upon request (406-444-4402). The complaint must be filed with the Compliance Officer, Office of Public Instruction, PO Box 202501, Helena, Montana 59620-2501.

Discipline

1. Your child may be removed to an appropriate interim alternative educational setting, another setting or suspended from school the same as children without disabilities would be removed from school for the same violation of school rules for up to 10 consecutive school days, and additional removals of not more than 10 consecutive school days in the same school year for separate incidences that do not result in a change in your child's educational placement.
2. If your child has been removed from school for 10 school days in the same school year, during any additional days of removal the school must provide services so

educational setting because of dangerous behavior, your child shall remain in the interim setting and an expedited hearing shall be initiated. If school personnel propose to change your child's placement after expiration of the interim alternative educational setting, your child shall remain in the placement he or she was in prior to the interim alternative educational setting. The school may seek subsequent expedited hearings if, at the expiration of the 45-day placement, the school maintains that your child is still dangerous and the issue has not been resolved through due process.

5. You have the right to appeal the decision to court. The school also has the right of appeal. The decision of the hearing officer is final unless you or the school appeals the decision. The findings and decisions may be made available to the public after deleting any personally identifiable information.
6. Reasonable attorney fees may be awarded in some instances. Attorney fees may only be awarded by a court and must be calculated at the community rate. Attorney fees may not be awarded for legal services performed after a written offer of settlement to you if:
 - a. the offer is made any time more than 10 days before the hearing begins;
 - b. the offer is not accepted within 10 days; and
 - c. the court finds that the relief obtained by you is not more favorable than the settlement offer. Attorney fees may be awarded to a parent who prevails and who was substantially justified in rejecting the settlement offer.

Attorney fees may not be awarded for legal services relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.
7. Attorney fees may be awarded to the school district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation. Attorney fees may also be awarded to the school district against the attorney of a parent, or against the parent, if the complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
8. To request a due process hearing or request additional information, you can write to the State Superintendent of Public Instruction, PO Box 202501, Helena, Montana 59620-2501.

Resolution Session

Within 15 days of receiving a due process request, the school shall convene a meeting with the parents, relevant members of the IEP team who are knowledgeable of the facts presented in the request, and a representative of the school who has decision making authority. The parents and the school can discuss the facts forming the basis of

cation and related services, for your child at a private school or facility if the public school has made a free appropriate public education available to your child and you choose to place your child in the private school.

2. If you voluntarily enroll your child in a private school for purposes other than the provision of a free appropriate public education, your child may continue to receive special education and related services subject to financial limits and location options prescribed in the Individuals with Disabilities Education Act. However, voluntary enrollment in private school does not guarantee your child's individual right to receive a free appropriate public education.
3. If you believe a free appropriate public education is not available at your public school and you place your child at a private school, you may seek reimbursement for the cost of the enrollment through a due process hearing. If the hearing officer or court finds that the public school did not make a free appropriate public education available to your child in a timely manner prior to your child's enrollment in the private school, the hearing officer or court may order the public school to reimburse you.
4. Even if the hearing officer or court finds your actions reasonable, they may limit reimbursement if:
 - a. at the most recent IEP meeting that you attended before removing your child from public school you did not inform the IEP team that you were rejecting the placement proposed by the public school; or
 - b. 10 business days before removing your child from public school you did not give written notice to the public school that you were rejecting the proposed placement, what your concerns are, and your intent to enroll your child in a private school at public expense for the purpose of a free appropriate public education.
 - c. The hearing officer shall not limit reimbursement if the public school did not inform you of the 10 business day notice requirement in b. above.

Surrogate Parents

1. The school must ask the Youth Court or Tribal Court (as appropriate) to appoint a surrogate parent when:
 - a. the parents of the child are not known;
 - b. after reasonable efforts, no parent can be located;
 - c. the child is a ward of the state; or
 - d. the child is an unaccompanied homeless youth.
2. The surrogate parent protects the rights of the child and may represent the child in all matters relating to a free appropriate public education, including identification, evaluation and educational placement. A surrogate parent shall have knowledge and skills that ensure adequate representation, shall have no interest that conflicts with the interests of the child he or she represents, and shall not be an employee of

the Office of Public Instruction or local school or any agency involved in the care, custody, or education of the child.

Dispute Resolution

Both you and the school share in the education of your child. If you have concerns about the education your child receives, you and your child's teacher should hold early and open discussions about the issues. You are urged to become actively involved in the development of your child's IEP.

At times, you may disagree with the school's educational decisions. Every attempt should be made to resolve these differences with the school as soon as they arise. If they cannot be resolved, you may request mediation or a due process hearing.

The Office of Public Instruction's Early Assistance Program (EAP) is designed to provide alternate dispute resolution and technical assistance to you and the school regarding the delivery of a free appropriate public education for your child. Under the IDEA, you can pursue due process if you feel your child has been denied a free appropriate public education, or you can file a complaint with the Office of Public Instruction if you feel a school is not following state and federal laws.

Early Assistance Program

The intent of the EAP is to intervene before the due process hearing stage or when a complaint is filed. At this intervention point, the EAP will gather information about the situation from you, the school, and others who are involved with the issue(s), and attempt to resolve the problem. If a formal complaint has been filed, the EAP has 15 business days to resolve the problem before the official complaint process will continue. However, with permission from you, the Early Assistance Program may exceed 15 days. Contact the Office of Public Instruction for further information.

Mediation

Mediation is a process to assist you and the school in resolving disagreements regarding your child's special education program. Mediation is voluntary and may be used when you and the school are unable to modify your positions without outside assistance. A trained, impartial mediator works with both you and the school to guide you toward a mutually satisfactory solution in the best interest of your child. Inquiries about mediation should be directed to your local special education director.

Due Process Hearing

You have the right to initiate an administrative hearing, called a due process hearing, on any matter relating to the proposal or refusal of a school to initiate or change the identification, evaluation, educational placement or free appropriate public education of your child. A request for a due process hearing shall include a clear and concise description of the exact nature of the disagreement and a proposed solution to the problem. The request must be signed and dated. A due process hearing request form is available from the Office of Public Instruction upon request.

1. The hearing is conducted by an impartial hearing officer who is not employed by a public agency involved in the education or care of your child and does not have a personal or professional conflict of interest. The hearing must comply with Administrative Rules of Montana (ARM) 10.16.3507-10.16.3523. The Office of Public Instruction must keep a list of qualified hearing officers together with a statement of the qualifications of each person. A copy of the rules or list of hearing officers may be obtained by writing to the Office of Public Instruction.
2. The hearing will be scheduled at a time and place reasonably convenient to you and your child. During the hearing procedures, you have the right to:
 - a. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to problems of children with disabilities;
 - b. present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - c. prohibit the introduction of any evidence at the hearing that has not been disclosed to you at least five business days prior to the hearing (be aware that you must disclose evidence to the school at least five business days prior to the hearing or the school has the right to prohibit its introduction as well);
 - d. obtain a written or electronic verbatim record of the hearing;
 - e. open the hearing to the public if you desire;
 - f. have your child present during the hearing; and
 - g. obtain written findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the hearing within 45 days after request for the hearing unless a specific extension of time is granted by the hearing officer at the request of either party.
3. You have the right to be informed of any free or low-cost legal or other relevant services if you request the information or you or the school initiates a due process hearing.
4. Your child will remain in the current educational placement (referred to as "stay put") unless you agree in writing to other arrangements. If the dispute is over initial admittance to school, you have the right to have your school-aged child placed in a public school program with your consent until the hearing proceedings are over. If the dispute is over your child's placement in an interim alternative