

Department of Exceptional Student Education

Procedural Safeguards

Fast Facts# 1 (5-15)

These Fast Facts are created as a helpful tool for school district personnel and should not be provided to parents in lieu of the document titled "Part B Notice of Procedural Safeguards for Parents of Students with Disabilities."

A parent of a child suspected of or identified as having a disability who needs special education and related services has protections and rights under the Individuals with Disabilities Education Act (IDEA 2004). IDEA 2004, the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under Part B of the IDEA and the U.S. Department of Education Federal Regulations.

A copy of the *Part B Notice of Procedural Safeguards* must be given to parents: (1) upon initial referral for evaluation or upon parental request for an evaluation; (2) in accordance with discipline procedures when a change in placement occurs; (3) upon receipt of the first State complaint in a school year; (4) upon receipt of the first request for a due process hearing in a school year; (5) in accordance with the provisions of 1008.212, F.S., upon the school district superintendent's recommendation to the commissioner of education that an extraordinary exemption for a given state assessment administration window be granted or denied; and (6) upon parent request.

The following is an outline of the Part B Notice of Procedural Safeguards available to the parents of a student with a disability:

Prior Written Notice – The school district must give written notice by providing the parent with certain information in writing whenever it proposes to initiate or to change the identification, evaluation, eligibility determination, or educational placement of the student, or the provision of a free appropriate public education (FAPE) to the student; or, refuses to initiate or to change the identification, evaluation, eligibility determination, or educational placement of the student or the provision of FAPE to the student. The notice must be in language understandable to the general public; and provided in the parent's native language or other mode of communication, unless it is clearly not feasible to do so.

Parental Consent – Informed written consent must be provided by a parent before the school district: conducts an initial evaluation of the student to determine eligibility to receive special education and related services; starts providing special education and related services to the student; reevaluates the student (unless the district can demonstrate that it took reasonable steps to obtain the parent's consent and the parent did not respond); and for administration of alternate assessment and provision of instruction in the state standards access points curriculum or for placing a student in an ESE center (unless the district took reasonable steps to obtain parental consent and the parent did not respond, or unless a change of placement is determined due to a violation of the student code of conduct related to weapons, possession, use or sale of illegal drugs or infliction of serious bodily injury upon another person.). If a parent does not provide consent for an initial evaluation, the school district may, but is not required to, pursue the evaluation through mediation or due process hearing request.

Independent Educational Evaluations (IEEs) - Parents have the right to obtain an IEE, and the school district must provide information about where an IEE may be obtained. Parents may request an IEE *at public expense* if the parent disagrees with the evaluation provided by the school district. If a parent requests an IEE *at public expense*, the school district must, without unnecessary delay, either request a due process hearing to show that its evaluation is appropriate or ensure that an IEE is provided for the student.

Access to Education Records – Without unnecessary delay and before any meeting regarding an individual educational plan (IEP) or a due process hearing, and in no case more than 30 calendar days after a parental request, the school district must permit the parent to inspect and review any education records relating to the student that are collected, maintained, or used by your school district under Part B of the Individuals with Disabilities Education Act (IDEA). The parent has the right to request the district to change information in the education records that is inaccurate, misleading, or violates the privacy or other rights of the student. The Family Educational Rights and Privacy Act (FERPA) protects the personally identifiable information in the student's records from disclosure to unauthorized parties.

Revocation of Parental Consent – After the initial provision of special education and related services, the parent of a student may revoke consent in writing for the continued provision of special education and related services. The school district must comply, after providing the required prior written notice.

Availability of Mediation – Mediation is available to allow parents and school districts to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process hearing request or state complaint. The mediation process is voluntary for both parties and may not be used to deny or delay the right to a due process hearing or state complaint, or to deny any other rights of parents under Part B of the IDEA.

Opportunity to Present and Resolve Complaints Through Due Process - All parents of a child with a disability must be given a full explanation of all procedural safeguards available including the procedures for resolving a complaint through a due process hearing request. Parents and school districts may request a due process hearing, using a two-year statute of limitations.

State Complaint Procedures - A state complaint may be filed by a parent, an organization or another individual, even from another state. The written complaint must be signed and allege a violation of Part B of the IDEA or its regulations or related state requirements. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

The Child’s Placement During the Pendency of any Due Process Hearing Request – During the time that any administrative or judicial proceeding is taking place, the student is to remain in his or her current educational placement unless the parent and the school district agree otherwise.

Hearings on Due Process Hearing Requests, Including Requirements for Disclosure of Evaluation Results and Recommendations – At least five (5) business days prior to the commencement of the hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing.

Civil Actions – Within ninety (90) days following a final order from a due process hearing, a party dissatisfied with the final order has the right to bring a civil action in the appropriate federal district court, state circuit court, or state district court of appeal.

Attorneys’ Fees – Attorneys’ fee may be awarded at the discretion of the court to the parents of a student with a disability as a prevailing party.

Procedures for Students Who Are Subject to Placement in an Interim Alternative Educational Setting (IAES) – After a student with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the school district must provide educational services to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the individual educational plan (IEP) goals. The student’s IEP team must determine the IAES.

- **Discipline Procedures** – Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school district, the parent and relevant members of the IEP team must conduct a manifestation determination.

Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense – A school district is not required to pay the cost of education at a private school if the school district made a FAPE available for the student. However, a court or a hearing officer may require the school district to reimburse the parent(s) for the cost of private school placement if the court or hearing officer finds that the school district has not made FAPE available to the student in a timely manner. Reimbursement may be reduced or denied if the parent did not inform the district of the intent to enroll the student in a private school at public expense.

For further assistance with understanding the procedural safeguards, school personnel and parents may contact the Area Office ESE Team which includes the ESE Supervisor, Staffing Coordinator, ESE District Resource Teacher, and Staffing Specialists. Additional assistance is also available from the Supervisors for ESE Staffing (273-7035) and ESE Compliance (273-7060), other ESE personnel at the Velasco Student Services Center, and the ESE Hotline (273-7221). The online *Understanding Compliance Issues* manual (which may be accessed via the District’s ESE Web site) contains a section titled “Procedural Safeguards” which contains very detailed information regarding the contents of the *Part B Notice of Procedural Safeguards*.