

160-4-7-.09 PROCEDURAL SAFEGUARDS/PARENT RIGHTS.

(1) GENERAL.

(a) The term “Procedural Safeguards Notice” also refers to the document commonly identified as “Parent Rights” which, must be given to parents only one time per school year, except that a copy shall also be given to parents in the following circumstances -

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first state complaint in a school year;
3. Upon receipt of the first request for a due process hearing in a school year;
4. Upon notification by the LEA to the parent of the decision to remove the child from his or her current placement and the removal constitutes a change of placement under the discipline provisions of IDEA and state rules because of a violation of a code of student conduct;
5. Prior to accessing a child’s or parent’s public benefits or insurance for the first time; and
6. Upon request by the parent. [34 C.F.R. § 300.504(a)(1) – (4)]
7. The parent may elect to receive the Procedural Safeguard/Parent Rights notice by electronic mail, if the LEA makes that option available. [34 C.F.R. § 300.505]

(b) The State and each LEA may place a copy of the Procedural Safeguards/Parent Rights on its web site. [34 C.F.R. § 300.504(b)]

(c) The content of the notice must include a full explanation of all the procedural safeguards available relating to:

1. Independent educational evaluations;
2. Prior written notice;
3. Parental consent;
4. Access to education records;
5. Opportunity to present and resolve complaints through the State complaint procedures and a due process hearing including:

(i) The time period in which to file a complaint or due process hearing;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process hearing and the state complaint process, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

6. The availability of mediation;

7. The child's placement during the pendency of any due process hearing;

8. Procedures for children who are subject to placement in an interim alternative educational setting;

9. Requirements for unilateral placement by parents of children in private school at public expense;

10. Due process hearings, including requirements for disclosure of evaluation results and recommendations;

11. Appeals of due process hearings, including the time period in which to file those actions;

12. Attorneys' fees; [34 C.F.R. § 300.504(c)(1) - (13)] and

13. Notice provided in a language understandable to the parents. [34 C.F.R. § 300.504(d)]

(d) Each LEA shall establish and maintain procedures to provide an opportunity for the parents of a child with a disability to:

1. Inspect and review all education records relating to the identification, evaluation, educational placement and provision of FAPE to the child. [34 C.F.R. § 300.501(a)(1) – (2)]

2. Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education (FAPE) to such child. [34 C.F.R. § 300.501(b)(1)(i) – (ii)]

3. Obtain an independent educational evaluation of the child. [34 C.F.R. § 300.502]

(e) Each LEA shall establish and maintain procedures to provide to ensure that parents:

1. Receive notice before the school initiates or changes (or refuses to initiate or change) the identification, evaluation, educational placement of the child, or the provision of FAPE to the child. [34 C.F.R. § 300.503(a)(1) – (2)]

2. Receive notice of places to contact for assistance in understanding the procedural safeguards/parents' rights. [34 C.F.R. § 300.503(b)(5)]

3. Receive procedural safeguards notice and a full explanation of the procedural safeguards. [34 C.F.R. § 300.504(c)]

(2) PARENTAL OPPORTUNITY TO EXAMINE RECORDS. Each LEA shall establish and maintain procedures which permit the parents of a child with a disability an opportunity to inspect and review any education records relating to their children that are collected, maintained or used in the identification, evaluation, educational placement and provision of a FAPE. These rights include the right to a response from the LEA to reasonable requests for explanations and interpretations of the records, the right to request the LEA to provide copies of the records and the right to have a representative of the parent to inspect and review the records. All rights of parents to examine education records shall transfer to the child at age 18, consistent with Rule 160-4-7-.09 Confidentiality of Personally Identifiable Information. The LEA may presume that the parent has these rights unless the LEA has been advised that the parent does not have the authority due to State law governing, guardianship, separation and divorce. [See 34 C.F.R. § 300.613]

(3) PARENTAL PARTICIPATION IN MEETINGS.

(a) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a FAPE to the child. [34 C.F.R. § 300.501(b)(1)]

1. A meeting does not include informal or unscheduled conversations involving LEA personnel and does not include conversations on issues such as teaching methodology, lesson plans or coordination of service provision. [34 C.F.R. § 300.501(b)(3)]

2. A meeting also does not include preparatory activities that LEA personnel engage in to develop a proposal or to respond to the parent's proposal that will be discussed at a later meeting. [34 C.F.R. § 300.501(b)(3)]

3. Each LEA shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. [34 C.F.R. § 300.501(c)(1)]

(i) If the parents cannot participate in a meeting in which a decision is to be made relating to the educational placement of their child, the LEA shall use other methods to ensure their participation, including individual or conference telephone calls or video conferencing. [34 C.F.R. § 300.501(c)(3)]

(ii) A placement decision may be made by a group without the involvement of the parent(s) if the LEA is unable to obtain their participation in the decision. In this case, the LEA must have a record of its attempts to ensure their involvement, including information that is consistent with Rule 160-4-7-.06 Individualized Education Program. [34 C.F.R. § 300.501(c)(4)]

4. The LEA shall make reasonable efforts to ensure that the parents understand and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness or whose native language is other than English. [34 C.F.R. § 300.322(e)]

(b) Each LEA must provide notice consistent with Rule 160-4-7-.06(11)(a) and (b) Individualized Education Program to ensure that parents of children with disabilities have the opportunity to participate in meetings described in (3)(a) above. [34 C.F.R. § 501(b)(2)]

(4) INDEPENDENT EDUCATIONAL EVALUATION. As used in this section, independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child with a disability in question. As used in this section, public expense means that the LEA pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents. [34 C.F.R. § 300.502(a)(3)(i) – (ii)]

(a) The parent(s) has/have the right to an independent educational evaluation at public expense if the parent(s) disagree(s) with an evaluation conducted/obtained by the LEA, subject to the conditions in paragraphs (a)(1) – (3) of this section. [34 C.F.R. § 300.502(b)(1)]

1. If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay either, initiate an impartial due process hearing to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. [34 C.F.R. § 300.502(b)(2)(i) – (ii)]

2. If the final decision is that the LEA's evaluation is appropriate, the parent(s) still has/have the right to an independent educational evaluation but not at public expense. [34 C.F.R. § 300.502(b)(3)]

3. If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the LEA may not unreasonably delay either providing the independent educational evaluation at public expense or initiating an impartial due process hearing to defend the LEA evaluation. [34 C.F.R. § 300.502(b)(4)]

4. The LEA must provide to the parents, upon request, information about where an independent educational evaluation may be obtained and the LEA's criteria applicable for independent educational evaluations. [34 C.F.R. § 300.502(a)(2)]

(b) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

1. Shall be considered by the LEA, if it meets state and LEA criteria, in any decision made with respect to the provision of a FAPE to the child; and

2. May be presented by either party as evidence at an impartial due process hearing under these Rules regarding that child. [34 C.F.R. § 300.502(c)(1) – (2)]

(c) If the administrative law judge or hearing officer conducting the impartial due process hearing requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense. [34 C.F.R. § 300.502(d)]

(d) Whenever the state or LEA pays for an independent educational evaluation, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the state or LEA uses when it initiates an evaluation. Except for the criteria described in this Rule, a LEA may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. [34 C.F.R. § 300.502(e)(1) – (2)]

(e) A parent is entitled to only one independent education evaluation at public expense each time the LEA conducts an evaluation with which the parent disagrees. [34 C.F.R. § 300.502(b)(5)]

(5) NOTICE TO PARENTS/GUARDIAN/SURROGATE.

(a) The parents shall be provided notice written in language understandable to the general public a reasonable time before the LEA proposes to initiate or change the identification, evaluation or educational placement of a child or the provision of a FAPE to the child. Written notice shall also be provided if the LEA refuses to take such action. After rights have been transferred to a child who has reached the age of majority, any written notice covered under this Rule shall be provided to both the child and to the parent(s) of the child. [34 C.F.R. § 300.503(a) & (c); 34 C.F.R. § 300.625(c)]

(b) LEAs shall provide a full explanation of all procedural safeguards/parents' rights available to the parent(s). The communication to the parent(s) shall include a description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any options the LEA considered and the reasons why those options were rejected. Communication to the parent(s) shall include a description of each evaluation procedure, assessment, record or report the LEA used as a basis for the proposed or refused action. Also included shall be a description of any other factors which are relevant to the LEA's proposal or refusal, a statement that the parent(s)

of a child with a disability has protection under the procedural safeguards/parents' rights, a statement of the means by which a copy of the procedural safeguards/parents' rights may be obtained, and information providing sources to contact for assistance in understanding the procedural safeguards/parents' rights. [34 C.F.R. § 300.503(b)]

(c) In most cases, the above Notice requirements can be addressed by providing the parent(s) with a copy of documents such as the consent to evaluate, consent for placement, consent for accessing a child's or parent's public benefits or insurance, evaluation report, eligibility report, invitation to a meeting, the full individualized education program (IEP) (with minutes, if taken), and/or other relevant documents, as appropriate. However, there may be circumstances when a parent makes a request but these items have not yet been generated for the child. In such a case, the LEA must respond to the request through an alternative manner, such as through a letter to the parent(s), which provides all of the required elements identified in paragraph (5)(b) above.

(d) Graduation from high school with a regular education diploma constitutes a change in placement and requires written prior notice, in accordance with information above. [34 C.F.R. § 300.102(a)(3)]

(e) Language Understandable to the General Public.

1. Each LEA shall ensure that the notice required in this rule shall be written in language understandable to the general public. [34 C.F.R. § 300.503(c)(1)(i)]

2. 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. [34 C.F.R. § 300.503(c)(1)(ii)]

3. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(i) The LEA must ensure the parent understands the content of the notice; and

(ii) That there is written evidence that the requirements have been met. [34 C.F.R. § 300.503(c)(2)(i) – (iii)]

(6) CONSENT.

(a) At a minimum, informed parental consent shall be obtained before:

1. Conducting an initial evaluation to determine if the child qualifies as a child with a disability; [34 C.F.R. § 300.300(a)(1)(i)]

2. Conducting any re-evaluation of a child with a disability; [34 C.F.R. § 300.300(c)(1)(i)]

3. Providing initial special education and related services to a child with a disability; [34 C.F.R. § 300.300(b)(1)]

(i) Consent to provide special education and related services is the consent for any special education and related services described in the IEP to provide FAPE.

(ii) Annual decisions about what services are to be provided are made through the IEP process and are not part of this consent requirement.

4. Disclosing personally identifiable information under conditions described in Rule 160-4-7-.08 Confidentiality of Personally Identifiable Information; and [See 34 C.F.R. § 300.622(a) – (b)]

5. Accessing a child's or parent's public benefits or insurance for the first time as described in Rule 160-4-7-.02 Free Appropriate Public Education (FAPE). [See 34 CFR § 300.154(d)(iv)]

(b) Except for an initial evaluation, initial placement, and re-evaluation, consent is not required as a condition of any benefit to the parent(s) or child.

(c) Consent for initial evaluation shall not be construed as consent for initial provision of special education and related services. [34 C.F.R. § 300.300(a)(1)(ii)]

(d) The LEA must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. [34 C.F.R. § 300.300(a)(1)(iii)]

(e) For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the LEA is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

1. Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child;

2. The rights of the parents of the child have been terminated in accordance with state law;

3. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. [34 C.F.R. § 300.300(a)(2)(i) – (iii)]

(f) If the parent of a child in public school or seeking to enroll in public school does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the LEA may, but is not required to pursue, the initial evaluation by utilizing the procedural safeguards of mediation or due process hearings. [34 C.F.R. § 300.300(a)(3)(i)]

1. The LEA does not violate its obligations under Child Find if it declines to pursue the evaluation. [34 C.F.R. § 300.300(a)(3)(ii)]

(g) A LEA that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. [34 C.F.R. § 300.300(b)(1)]

(h) If the parents of a child fail to respond or refuse to consent to services, the LEA may not utilize the procedural safeguards of mediation or a due process hearing in order to obtain agreement that service may be provided. [34 C.F.R. § 300.300(b)(3)]

1. If the parents of the child do not provide consent for the initial provision of special education and related services, or the parents fail to respond to a request to provide consent for the initial provision of special education and related services, the LEA will not be considered in violation of the requirement to make FAPE available to the child for which the LEA sought consent. [34 C.F.R. § 300.300(b)(4)(i)]

2. The LEA is not required to convene an IEP Team meeting or develop an IEP for the child for whom the LEA requests consent. [34 C.F.R. § 300.300(b)(4)(ii)]

(i) The LEA must obtain informed parental consent prior to conducting a re-evaluation of a child with a disability. [34 C.F.R. § 300.300(c)(1)(i)]

1. If the parent refuses to consent to the re-evaluation, the LEA may, but is not required to, pursue the re-evaluation by using the consent override procedures by accessing the mediation or due process hearing procedures. [34 C.F.R. § 300.300(c)(1)(ii)]

(i) The LEA does not violate its obligation if it declines to pursue the re-evaluation. [34 C.F.R. § 300.300(c)(1)(iii)]

2. The LEA need not obtain informed parental consent if it can demonstrate that:

(i) It made reasonable efforts to obtain such consent;

(ii) The child's parents failed to respond. [34 C.F.R. § 300.300(c)(2)(i) – (ii)]

3. Parental consent is not required before:

(i) Reviewing existing data as a part of an evaluation or re-evaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless consent is required of parents of all children. [34 C.F.R. § 300.300(d)(1)(i) – (ii)]

(j) A LEA may not use a parent's refusal to consent to one service or activity under subparagraph (d) – (f) of paragraph 6 of this Rule to deny the parent or child any other service, benefit, or activity of the LEA. [34 C.F.R. § 300.300(d)(3)]

(k) If the parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the LEA may not use the consent override procedures described in this rule; [34 C.F.R. § 300.300(d)(4)(i)]

1. The LEA is not required to consider the child as eligible for services. [34 C.F.R. § 300.300(d)(4)(ii)]

2. To meet the reasonable efforts requirement in the consent section of this rule, the LEA must document its attempts to obtain parental consent. [34 C.F.R § 300.300(d)(5)]

(l) A parent may revoke consent for the receipt of special education and related services once the child is initially provided special education and related services.

1. Revocation of consent to provide special education and related services is for all special education and related services; not individual services.

2. The intent to withdraw the child from special education and related services must be made in writing by the parent to the LEA. [34 C.F.R § 300.300(b)(4)]

3. The LEA may not continue to provide special education and related services to the child, but must, prior to removing the child from special education and related services, provide the parent prior written notice that meets the requirements of paragraph (5) of this rule.

4. The LEA may not use the procedures of mediation or due process hearings to override the withdrawal of consent.

5. The LEA will not be in violation of the responsibility to provide a free and appropriate public education (FAPE) to a child with a disability because of the failure to provide further special education and related services.

6. The LEA is not required to convene an IEP meeting for a child whose consent to receive special education and related services has been revoked.

7. Subsequent referrals for special education and related services shall be considered an initial evaluation and subject to the sixty day evaluation time period.

8. The LEA is not required to amend the records of the child to remove any references to the provision of special education and related services prior to the receipt of the revocation of consent. [34 C.F.R § 300.9(c)(3)]

(7) PARENTAL TRAINING AND AWARENESS

(a) Parents may be provided assistance:

(i) To understand the special needs of their child and information about child development; and

(ii) To acquire the necessary skills to support the implementation of their child's IEP if determined by the IEP Team as a related service. [34 C.F.R. § 300.34(c)(8)(i) – (iii)]

Authority O.C.G.A. § 20-2-152; 20-2-240; 20-2-720.

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