

# Parent and Child Rights in Special Education

## Procedural Safeguards Notice

An Explanation of Procedural Safeguards Available Under Provisions of the Individuals with Disabilities Education Act (IDEA) and the Colorado Rules for the Administration of the Exceptional Children's Educational Act (ECEA)

### General Information

#### **PRIOR WRITTEN NOTICE**

34 CFR §300.503

#### **Notice**

The Administrative Unit or State Operated Program must give you written notice (provide you certain information in writing), whenever it:

1. Proposes to initiate or to 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 to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

#### **Content of notice**

The written notice must:

1. Describe the action that the administrative unit proposes or refuses to take;
2. Explain why the administrative unit is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report the administrative unit used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of the Individuals with Disabilities Education Act (IDEA);
5. Tell you how you can obtain a description of the procedural safeguards if the action that the administrative unit is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of the IDEA; 7. Describe any other choices that your child's individualized education program (IEP)

Team

considered and the reasons why those choices were rejected; **and** 8. Provide a description of other reasons why the administrative unit proposed or refused the action.

#### **Notice in understandable language**

The notice must be:

1. Written in language understandable to the general public; **and**
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, the administrative unit must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that 1 and 2 have been met.

## **NATIVE LANGUAGE**

34 CFR §300.29

**Native language**, when used with an individual who has limited English proficiency, means the following: 1. The language normally used by that person, or, in the case of a child, the language normally used

by the child's parents;

2. 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 (such as sign language, Braille, or oral communication).

## **ELECTRONIC MAIL**

34 CFR §300.505

If the administrative unit offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Prior written notice; 2. Procedural safeguards notice; **and** 3. Notices related to a due process complaint.

## **PARENTAL CONSENT - DEFINITION**

34 CFR §300.9

**Consent** means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.

2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**

3. You understand that your consent is voluntary, you may revoke (withdraw) your consent at anytime, but your revocation of consent does not negate (undo) an action that has occurred after you gave your consent and before you revoked it.

4. If you revoke consent in writing to your child's receipt of special education services *after* the child has begun receiving special education and related services, the administrative unit is not required to amend the child's education records to remove any references to the child's receipt of the special education and related services.

## **PARENTAL CONSENT**

34 CFR §300.300

### **Consent for initial evaluation**

The administrative unit cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described under the heading **Parental Consent**.

The administrative unit must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the administrative unit to start providing special education and related services to your child. If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, the administrative unit may, but is not required to, seek to conduct an initial evaluation of your child by utilizing IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures (unless required to do so or prohibited from doing so under State law). The administrative unit will

not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances, unless State law requires it to pursue the evaluation.

#### **Special rules for initial evaluation of wards of the State**

If a child is a ward of the State and is not living with his/her parent —

The administrative unit does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. 2. 3.

Ward lives,

1. 2. 3.

Ward

Despite reasonable efforts to do so, the administrative unit cannot find the child's parent; The rights of the parents have been terminated in accordance with State law; **or**

A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

of the State, as used in the IDEA, means a child who, as determined by the State where the child is:

A foster child; Considered a ward of the State under State law; **or** In the custody of a public child welfare agency.

of the State does not include a foster child who has a foster parent.

#### **Parental consent for services**

The administrative unit must obtain your informed consent before providing special education and related services to your child for the first time.

The administrative unit must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the *first time*, or if you refuse to give such consent, the administrative unit cannot use the procedural safeguards (including mediation procedures and due process procedures) in order to obtain agreement or a ruling that the special education or related services (recommended by the IEP Team) may be provided to your child without your consent. Additionally, if you do not respond or refuse to give consent for your child to receive special education and related services for the first time, the administrative unit:

1. Is not in violation of the requirement to make a FAPE available to your child because of the failure to provide your child with special education and related services; and
2. Is not required to convene an IEP Team meeting or develop an IEP for your child for the special education or related services.

If, at any time *after* special education and related services are first provided to your child, you revoke your consent in writing for the continued provision of special education and related services, the administrative unit:

1. Cannot continue to provide special education and related services to your child, but must provide prior written notice<sup>4</sup> to you before stopping the provision of special education and related services;
2. Cannot use the procedural safeguards (including mediation procedures or due process procedures) in order to obtain agreement or a ruling that the special education or related services (recommended by the IEP Team) may be provided to your child without your consent;
3. Will not be in violation of the requirement to make a FAPE available to your child because of the failure to provide your child with special education and related services; and
4. Is not required to have an IEP Team meeting or develop an IEP for your child for the special education or related services.

### **Parental consent for reevaluations**

The administrative unit must obtain your informed consent before it reevaluates your child, unless the administrative unit can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. You did not respond.

If you refuse to consent to your child's reevaluation, the administrative unit may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, the administrative unit does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

### **Documentation of reasonable efforts to obtain parental consent**

The administrative unit must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the administrative unit's attempts in these areas, such as:

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

### **Other consent requirements**

Your consent is not required before the administrative unit may:

1. Review existing data as part of your child's evaluation or a reevaluation; or
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

The administrative unit may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the administrative unit may not use its consent override procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

## **INDEPENDENT EDUCATIONAL EVALUATIONS**

34 CFR §300.502

### **General**

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by the administrative unit.

If you request an independent educational evaluation, the administrative unit must provide you with information about where you may obtain an independent educational evaluation and about the administrative unit's criteria that apply to independent educational evaluations.

**Definitions Independent educational evaluation** means an evaluation conducted by a qualified examiner who

is not employed by the administrative unit responsible for the education of your child.

**Public expense** means that the administrative unit either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of the IDEA, which allow each State to use whatever State, local, Federal and private sources of support are available in the State to meet the

requirements of Part B of the Act.

### **Parent right to evaluation at public expense**

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by the administrative unit, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, the administrative unit must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the administrative unit demonstrates in a hearing that the evaluation of your child that you obtained did not meet the administrative unit's criteria.
2. If the administrative unit requests a hearing and the final decision is that the administrative unit's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the administrative unit may ask why you object to the evaluation of your child obtained by the administrative unit. However, the administrative unit may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the administrative unit's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time the administrative unit conducts an evaluation of your child with which you disagree.

### **Parent-initiated evaluations**

If you obtain an independent educational evaluation of your child at public expense or you share with the administrative unit an evaluation of your child that you obtained at private expense:

1. The administrative unit must consider the results of the evaluation of your child, if it meets the administrative unit's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
2. You or the administrative unit may present the evaluation as evidence at a due process hearing regarding your child.

### **Requests for evaluations by hearing officers**

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

### **Administrative Unit criteria**

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the administrative unit uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, an administrative unit may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.