



**NOTICE OF PROCEDURAL SAFEGUARDS  
PARENTAL RIGHTS FOR PUBLIC SCHOOL SPECIAL EDUCATION STUDENTS**

Division of Compliance and Assistance  
June 2009

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**INTRODUCTION**

This brochure provides an overview of parental special education rights, sometimes called procedural safeguards. These same procedural safeguards are also available for students with disabilities who have reached the age of 18.

This Notice of Procedural Safeguards must be given to you at least one time per year. It must also be given to you:

1. The first time your child is referred for a special education evaluation or if you request an evaluation;
2. The first time you file a complaint with the Minnesota Department of Education;
3. If you or the district requests a due process hearing;
4. On the date the district decides to change the placement of your student by removing the student from school for a violation of the district discipline policy; or
5. Upon your request.

**PRIOR WRITTEN NOTICE**

The district must provide you with prior written notice each time it proposes to initiate or change, or refuses to initiate or change the identification, evaluation and education placement of your child or the provision of a free and appropriate public education (FAPE) to the child or when you revoke consent for

services in writing. This written notice must include:

1. A description of the action proposed or refused;
2. An explanation of why the district proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record or report the district used as a basis for its proposal or refusal;
4. A statement that your child has protection under these procedural safeguards and information about how you can get a copy of the brochure;
5. Sources for you to contact to obtain assistance in understanding these procedural safeguards;
6. A description of any other options the district considered and the reasons why those options were rejected; and,
7. A description of any other factors relevant to the district's proposal or refusal.

**FOR MORE INFORMATION**

If you need help in understanding any of your procedural rights or anything about your child's education, please contact the principal, the special education director or the person listed below. This notice must be provided in your native language or other mode of communication you may be using. If your mode of communication is not a written language, the district must take steps to translate this notice orally or by other means. The district must ensure that you understand the content of this

notice and maintain written evidence that this notice was provided to you in an understandable mode of communication and that you understood the content of this notice.

If you have any questions or would like further information, please contact:

Name Gary O. Jones

Phone 866-687-2732

For further information, you may contact one of the following organizations:

ARC Minnesota (advocacy for persons with developmental disabilities)  
www.thearcofminnesota.org  
651-523-0823  
1-800-582-5256

Minnesota Association for Children's Mental Health  
www.macmh.org  
651-644-7333  
1-800-528-4511

Minnesota Disability Law Center  
www.mndlc.org  
612-332-5970 (Twin Cities Metro)  
1-800-292-4150 (Greater Minnesota)  
612-332-4668 (TTY)

PACER (Parent Advocacy Coalition for Educational Rights)  
www.pacer.org  
952-838-9000  
1-800-53-PACER,  
952-838-0190 (TTY)

Minnesota Department of Education  
www.education.state.mn.us  
651-582-8689  
651-582-8201 (TTY)

## PARENTAL CONSENT

### Definition of Consent

Consent means that you have been fully informed of the information relevant to the activity for which your written permission is sought. In order to consent you must understand and agree in writing to the carrying out of the activity for which your consent is sought. This written consent must include the records (if any) that will be released and to whom. Consent is voluntary and may be revoked in writing at any time. However, revocation is not retroactive, meaning revocation of consent does not negate an action that has occurred after the consent was given and before the consent was revoked. In addition, a revocation of consent for a behavior intervention plan requires the district to immediately stop using the plan.

### When the District Must Obtain Your Consent

The district must obtain your consent before conducting its initial evaluation of your child. The district must also obtain your consent before the first time it provides special education and related services to your child. Consent for an initial evaluation is not consent for the initial provision of special education and related services. If you refuse consent to the initial provision of services to your child, the district may not override your refusal. In that case, the district will not be considered in violation for a failure to provide your child with special education and related services for which the district requested consent.

Your consent is required before a district conducts a reevaluation of your child. The reevaluation may occur without your consent if the district has taken reasonable steps to get your consent and you have failed to respond.

Your consent is not required for the district to review existing data on your child or to administer a test or other evaluation that is given to all children, unless consent is required from parents of all children.

### **Parent's Right to Object**

You have a right to object in writing to any action the district proposes within 14 calendar days of your receipt of proposal. Upon receipt of your written objection, the district will ask you to attend a conciliation conference. You and the district may also agree to use mediation, or a facilitated individualized education program (IEP) team meeting to resolve your disagreement. The district must continue to provide an appropriate education to your child during the proceeding of a due process hearing.

### **Accessing Private Insurance**

Your consent is required before the district may access your private insurance to pay for services to ensure FAPE. Your refusal to provide this consent does not release the district from ensuring all required services are provided at no cost to you.

### **Personally Identifiable Information**

Personally identifiable information is information that includes, but is not limited to, a student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's Social Security number, student number, or biometric record, another indirect identifier, such as the student's date of birth, place of birth, and their mother's maiden name, other information that, alone or in combination, is linked to or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty, or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Generally, your written consent is required before a district may disclose personally identifiable information from your child's educational record or about you or share such data with anyone other than officials of participating agencies collecting or using the

information under the Individuals with Disabilities Education Act (IDEA) or for any purpose other than meeting a requirement of that law.

Please refer to 34 C.F.R. Part 99 for additional information on consent requirements concerning data privacy under federal law.

### **Directory Information**

Directory information includes, but is not limited to, a student's address, telephone number, email address, date and place of birth, major field of study, grade level, enrollment status, dates of attendance, participation in official activities and sports, weight and height of athletic team members, degrees, honors, and awards received, the most recent educational agency or institution attended, and a student ID number, user ID, or other unique personal identifier used for accessing or communicating electronically if certain criteria are met.

Directory information does not include a student's Social Security number or a student ID number not used in connection with accessing or communicating electronically as provided under federal law.

Districts must give you the option to refuse to let the district designate any or all data about your child as directory information. This notice can be given to you by any means reasonably likely to inform you or an eligible student of this right. If you do not refuse to release the above information as directory information, that information is considered public data and can be shared without your consent.

Data about parents is private data but can be treated as directory information if the same procedures are used by a district to designate student data as directory information are followed.

## **WRITTEN ANNUAL NOTICE RELATING TO IEP HEALTH-RELATED SERVICES REIMBURSEMENT**

The district must inform you with annual written notice of:

1. Its intent to seek reimbursement from medical assistance or MinnesotaCare for IEP health-related services provided by the district;
2. Your right to request a copy of all records concerning IEP health-related services disclosed by the district to any third party; and,
3. Your right to withdraw consent for disclosure of a child's records at any time without consequence.

### **INDEPENDENT EDUCATIONAL EVALUATIONS**

An independent educational evaluation (IEE) is an evaluation by a qualified person(s) who is not an employee of your district. You may ask for an IEE at school district expense if you disagree with the district's evaluation. A hearing officer may also order an independent evaluation of your child at school district expense during a due process hearing.

Upon request for an IEE, the district must give you information regarding its criteria for selection of an independent examiner and information about where an independent education evaluation may be obtained.

If you request an IEE, the district must, without delay, ensure that it is provided at public expense or request a hearing to determine the appropriateness of its evaluation. If the district goes to hearing and the hearing officer determines the district's evaluation is appropriate, you still have the right to an independent evaluation, but not at public expense.

If you obtain an IEE, the results of the evaluation must be considered by the IEP/IIIP

(Individual Interagency Intervention Plan) Team and may be presented as evidence at a due process hearing regarding your child.

### **EDUCATION RECORDS**

#### **Your Access to Records**

If you want to look at your child's education records, the district must give you access to those records for your review. Education records include most of the information about your child that is held by the school. However, information held solely by your child's teacher for his or her own instructional use may not be included in the education records.

The district must allow you to review the records without unnecessary delay, and before any meeting regarding an IEP, or any hearing or resolution session about your child. In addition, the district must comply with your request to review your child's education records immediately, if possible, or within 10 days of the date of the request (excluding Saturdays, Sundays and legal holidays), if immediate compliance is not possible.

Your right to inspect and review records includes the right to:

1. An explanation or interpretation from the district of your child's records upon request;
2. Have your representative inspect and review the records on your behalf;
3. Request that the district provide copies of your child's educational records to you; and,
4. Review your child's records as often as you wish in accordance with state law. State law provides that if you have been shown private data and informed of its meaning, that data need not be disclosed to you for 6 months unless a dispute or action is pending or new information is created or collected.

#### **Record of Access by Others**

The district must keep a record of each request for access to, and each disclosure of, personally identifiable information in your child's education records. This record of access must

include the name of the individual who made the request or received personally identifiable information from your child's education records, the date access was given and the purpose of the disclosure or the individual's legitimate interest in the information.

### **Consent to Release Records**

Parent consent is required before personally identifiable information is released to unauthorized individuals or agencies. The consent must be in writing and must specify the individuals or agencies authorized to receive the information: the nature of the information to be disclosed; the purpose for which the information may be used; and a reasonable expiration date for the authorization to release information. Upon request, the district must provide you with a copy of records it discloses after you have given this consent.

The district may not disclose information contained in your child's IEP/IIP, including diagnosis and treatment information, to a health plan company without your signed and dated consent.

### **Fees for Searching, Retrieving and Copying Records**

The district may not charge a fee to search or retrieve records. However, if you request copies, the district may charge a reasonable fee for the copies, unless charging that fee would prevent you from exercising your right to inspect and review the education records because you cannot afford to pay it.

### **Amendment of Records at Parent's Request**

If you believe that information in your child's records is inaccurate, misleading, incomplete or in violation of your child's privacy or other rights, you may request in writing that the district amend or remove the information.

The district must decide within a reasonable time whether it will amend the records. If the district decides not to amend the records, it must inform you that you have the right to a hearing to challenge the district's decision. If, as a result

of that hearing, the district decides that the information is not inaccurate, misleading, incomplete or in violation of your child's privacy right, it must inform you that you have the right to include a statement of your comments and disagreements alongside the challenged information in your child's education records.

### **Destruction of Records**

The district must inform you when personally identifiable information is no longer needed in order to provide education services to your child. That information must be destroyed at your request. However, the school may retain a permanent record of your child's name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed.

The district shall not destroy any education records if there is an outstanding request to inspect or review the records.

## **MEDIATION**

Mediation is a voluntary process to help resolve disputes. You or your district may request mediation from the Minnesota Special Education Mediation Service (MNSEMS) at 651-582-8222 or 1-866-466-7367. Mediation uses a neutral third party trained in facilitative dispute resolution techniques. Mediation may not be used to deny or delay your right to a due process hearing. Both you and district staff must agree to try mediation before a mediator can be assigned. At any time during the mediation, you or the district may end the mediation.

## **WRITTEN COMPLAINTS**

Any organization or individual may file a complaint with the Minnesota Department of Education (MDE). Complaints sent to MDE must:

1. Be in writing and be signed by the individual or organization filing the complaint;

2. Allege violations of state or federal special education law or rule;
3. State the facts upon which the allegation is based;
4. Include the name, address and telephone number of the person or organization making the complaint;
5. Include the name and address of the residence of the child and the name of the school the child is attending;
6. A description of the nature of the child's problem; including facts relating to the problem;
7. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed; and,
8. Be forwarded to the public agency servicing the child at the same time the complaint is sent to MDE.

The complaint must be sent to:

Minnesota Department Education  
 Division of Compliance and Assistance  
 Due Process Supervisor  
 1500 West Highway 36  
 Roseville, MN 55113-4266  
 651.582.8689 Phone  
 651.582.8725 Fax

The complaint must be received by MDE no later than one year after the alleged violation occurred. MDE will issue a written decision within 60 days. If the parent or organization who filed the complaint disagrees with the decision, the final complaint decision may be appealed to the Minnesota Court of Appeals within 60 days of receipt of the decision.

### **IMPARTIAL DUE PROCESS HEARING**

Both you and the district have a right to request an impartial due process hearing in writing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

Any school district administrator receiving a request for a due process hearing must

immediately forward the request to the MDE commissioner. The commissioner must appoint a hearing officer within two business days of receiving the request for a due process hearing,

A due process hearing may address any matter related to the identification, evaluation, educational placement, manifestation determination or provision of a free and appropriate public education of your child. Within 15 days of receiving notice of your due process complaint, and prior to the due process hearing, the school district must arrange for a resolution meeting with you and the relevant members of the IEP Team who have knowledge of the facts alleged in the due process complaint.

The purpose of this meeting is for the parent to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district has the opportunity to resolve the dispute that is the basis for the due process complaint. The resolution meeting need not be held if you and the school district agree in writing to waive the meeting or agree to mediation. If the matter is not resolved within 30 days of receipt of the due process complaint, the hearing timelines begin.

If the school district is unable to obtain your participation in the resolution meeting or mediation after reasonable efforts have been made and the school district does not agree to waive the meeting in writing, the school district may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

### **Procedures for Initiation of a Due Process Hearing**

Upon a written request for a hearing, the district must give you a copy of this procedural safeguard notice and a copy of your rights at hearing. All written requests must include:

1. The name of your child;
2. The address of your child;

3. The name of the school your child is attending;
4. A description of the problem(s), including your view of the facts; and,
5. A proposed resolution of the problem to the extent known and available to you at the time.

MDE will appoint an impartial hearing officer to conduct the hearing. Below are a few of your rights at hearing. This is not a complete list of rights.

Both you and the district have the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront, cross-examine and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing, including evaluation data and recommendations based on that data;
4. Receive a free copy of the hearing transcript or electrical recording of findings of fact and decisions; and,
5. Obtain a written or electronic version of the findings of fact and decision.

As a parent, you, specifically, have the right to:

1. Have your child, who is the subject of the hearing, present;
2. Open the hearing to the public; and,
3. Have the record of the hearing and the findings of fact and decisions made provided to you at no cost.

A hearing decision must be issued within 45 calendar days upon the expiration of the 30-day resolution period after the due process complaint was received by the state agency. A hearing officer may not extend the time beyond the 45-day period unless requested by either party for good cause shown on the record.

Extensions of time must not exceed a total of 30 calendar days unless both parties and the hearing officer agree or time is needed to complete an independent educational evaluation. The hearing decision is final unless you or the district files a civil action.

### **Disclosure of Additional Evidence Before a Hearing**

A prehearing conference must be held within 5 business days of the date the commissioner appoints a hearing officer. This conference can be held in person, at a location within the district, or by telephone. At least 5 business days before a hearing, you and the district must disclose to each other all evaluations of your child completed by that date and recommendations based on those evaluations that are intended to be used at the hearing. A hearing officer may refuse to allow you to introduce any undisclosed evaluations or recommendations at the hearing without consent of the other party.

### **CIVIL ACTION**

When you or the district disagree with the findings or decisions made by a hearing officer, either party may file a court action. The action may be brought in federal district court or the state court of appeals. Different standards of review apply in each court. An appeal to the state court of appeals must be made within 60 days of your receipt of the decision. An appeal to federal district court must be made within 90 days of the date of the decision.

### **PLACEMENT DURING A HEARING OR CIVIL ACTION**

During a hearing or court action, unless you and the district agree otherwise, your child will remain in the education placement where he/she is currently placed and must not be denied initial admission to school. This is commonly referred to as the “stay-put” rule.

Two exceptions to the “stay-put” rule exist:

1. Students may be removed from their educational setting for not more than 45 days to an interim alternative educational placement for certain weapon, drug or serious bodily injury violations; and,
2. A hearing officer's decision agreeing with the parents that a change in placement is appropriate is the "stay-put" placement during subsequent appeals.

### **EXPEDITED HEARINGS**

Expedited hearings may occur in the following situations:

1. Whenever you request a hearing to dispute the district's determination that your child's behavior was not a result of his/her disability;
2. Whenever you request a hearing to dispute a 45-day interim alternative education placement order by school personnel; or,
3. When a district requests an expedited hearing to establish that it is dangerous for your child to remain in the current placement.

Expedited hearings must be held and a decision issued within 10 calendar days of the request for a hearing. A hearing officer may extend the request for a hearing by up to five additional calendar days. The district must arrange for a resolution meeting to occur within 7 days of a request for an expedited hearing. If the school district is unable to obtain your participation in the resolution meeting or mediation after reasonable efforts have been made and the school district does not agree to waive the meeting in writing, the school district may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

#### **Placement by a Hearing Officer**

A hearing officer may decide to move your child to an interim alternative educational setting for up to 45 calendar days if the hearing officer determines your child is substantially

likely to injure him or herself or others if he/she remains in the current placement.

### **INTERIM ALTERNATIVE EDUCATIONAL PLACEMENT**

The district may change your child's educational placement for up to 45 school days, if your child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of the school district or MDE;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the school district or MDE; or,
3. Inflicts serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district or MDE.

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.

The IEP/IIP team determines the interim alternative educational setting. Even though this is a temporary change, it must allow your child:

1. To continue to participate in the general education curriculum and progress towards meeting goals set out in your child's IEP, although in a different setting; and,
2. Include services and modifications designed to prevent the behavior from recurring.

If your child is placed in an interim alternative educational setting, an IEP/IIP meeting must be convened within 10 school days of the decision. At this meeting, the team must discuss the behavior and its relationship to your child's

disability, review evaluation information regarding the behavior, and determine the appropriateness of your child's IEP/IIP and behavior plan.

### **ATTORNEY'S FEES FOR HEARINGS**

You may be able to recover attorney fees if you prevail in a due process hearing. A judge may make an award of attorney's fees based on prevailing rates in your community. The court may reduce an award of attorney's fees if it finds that you unreasonably delayed the settlement or decision in the case. If the district prevails and a court agrees that your request for a hearing was for any improper purpose, you may be required to pay the district's attorney's fees.

### **PRIVATE SCHOOL PLACEMENT**

You may be able to recover tuition expenses for a private school placement if you inform the district of your intent to enroll your child in private school at public expense. This must be

done at the most recent IEP/IIP meeting prior to removal of your child from public school or by written notice to the district at least 10 business days prior to removal of your child from public school.

Your notice must state why you disagree with the district's proposed IEP/IIP or placement. If a hearing officer or court finds that the district failed to provide or is unable to provide your child with an appropriate education and that the private placement is appropriate, you may be reimbursed for the cost of the private placement. Failure to tell the school of your intent to enroll your child in a private school at public expense, failure to make your child available for evaluation, or other unreasonable delay on your part could result in a reduction or denial of reimbursement for the private school placement.

If the district prevented you from providing this notice or you cannot write in English, the hearing officer may not reduce the reimbursement.