

## Special Education - Procedural Safeguards\*\*

### 1. Procedural Safeguards

#### a. The ESD provides procedural safeguards to:

- (1) Parents, guardians (unless the guardian is a state agency) or persons in parental relationship to the student;
- (2) Surrogate parents; and
- (3) Students who have reached the age of 18, the age of majority, or are considered emancipated under Oregon law and to whom rights have transferred by statute, identified as adult students (called “eligible students”).

#### b. The ESD gives parents a copy of the *Notice of Procedural Safeguards*, published by the Oregon Department of Education (ODE):

- (1) At least once a year; and
- (2) At the first referral or parental request for evaluation to determine eligibility for special education services;
- (3) When the parent (or adult student) requests a copy;
- (4) To the parent and the student one year before the student’s 18th birthday or upon learning that the student is considered emancipated.

#### c. The *Notice of Procedural Safeguards* is:

- (1) Provided written in the native language or other communication of the parents (unless it is clearly not feasible to do so) and in language clearly understandable to the public.
- (2) If the native language or other mode of communication of the parent is not a written language, the ESD takes steps to ensure that:
  - (a) The notice is translated orally or by other means to the parent in his/her native language or other mode of communication;
  - (b) The parent understands the content of the notice; and
  - (c) There is written evidence that the ESD has met these requirements.

### 2. Content of Procedural Safeguards Notice

The procedural safeguards notice includes all of the content provided in the *Notice of Procedural Safeguards* published by ODE.

### 3. Parent or Adult Student Meeting Participation

- a. The ESD provides parents or adult students an opportunity to participate in meetings with respect to the identification, evaluation, individualized education program (IEP) and educational placement of the student, and the provision of a free appropriate public education (FAPE) to the student.
- b. The ESD provides parents or adult students written notice of any meeting sufficiently in advance to ensure an opportunity to attend. The written notice:
  - (1) States the purpose, time and place of the meeting and who is invited to attend;
  - (2) Advises that parents or adult students may invite other individuals who they believe have knowledge or special expertise regarding the student;
  - (3) Advises the parents or adult student that the team may proceed with the meeting even if they are not in attendance;
  - (4) Advises the parent or adult students who to contact before the meeting to provide information if they are unable to attend; and
  - (5) Indicates if one of the meeting's purposes is to consider transition services or transition service needs. If so:
    - (a) Indicates that the student will be invited; and
    - (b) Identifies any agencies invited to send a representative.
- c. The ESD takes steps to ensure that one or both of the parents of a student with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including:
  - (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
  - (2) Scheduling the meeting at a mutually agreed on time and place.
- d. If neither parent can participate, the ESD will use other methods to ensure participation, including, but not limited to, individual or conference phone calls or home visits.
- e. The ESD may conduct an evaluation planning or eligibility meeting without the parent or adult student if the ESD provided meeting notice to the parent or adult student sufficiently in advance to ensure an opportunity to attend.
- f. The ESD may conduct an IEP or placement meeting without the parent or adult student if the ESD is unable to convince the parents or adult students that they should participate. Attempts to convince the parent to participate will be considered sufficient if the ESD:
  - (1) Communicates directly with the parent or adult student and arranges a mutually agreeable time and place and sends written notice to confirm the arrangement; or
  - (2) Proposes a time and place in the written notice stating that a different time and place might be requested and confirms that the notice was received.

- g. If the ESD proceeds with an IEP meeting without a parent or adult student, the ESD must have a record of its attempts to arrange a mutually agreed upon time and place 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 parents' home or place of employment and the results of those visits.
- h. The ESD takes whatever action is necessary to ensure that the parent or adult student understands the proceedings at a meeting, including arranging for an interpreter for parents or adult students who are deaf or whose native language is other than English.
- i. After the transfer of rights to an adult student at the age of majority, the ESD provides written notice of meetings to the adult student and parent, if the parent can be reasonably located. After the transfer of rights to an adult student at the age of majority, a parent receiving notice of an IEP meeting is not entitled to attend the meeting unless invited by the adult student or the ESD.
- j. An IEP meeting does not include:
  - (1) Informal or unscheduled conversations involving ESD personnel;
  - (2) Conversations on issues such as teaching methodology, lesson plans or coordination of service provision if those issues are not addressed in the student's IEP; or
  - (3) Preparatory activities that ESD or public personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

#### 4. Surrogate Parents

- a. The ESD protects the rights of a student with a disability, or suspected of having a disability, by appointing a surrogate parent when:
  - (1) The parent cannot be identified or located after reasonable efforts;
  - (2) The student is a ward of the state or an unaccompanied homeless youth and there is reasonable cause to believe that the student has a disability, and there is no foster parent or other person available who can act as the parent of the student; or
  - (3) The parent or adult student requests the appointment of a surrogate parent.
- b. The ESD secures nominations of persons to serve as surrogates. The ESD appoints surrogates within 30 days of a determination that the student needs a surrogate, unless a surrogate has already been appointed by juvenile court.
- c. The ESD will only appoint a surrogate who:
  - (1) Is not an employee of the ESD or ODE;
  - (2) Is not an employee of any other agency involved in the education or care of the student;
  - (3) Is free of any personal or professional interest that would interfere with representing the student's special education interests; and
  - (4) Has the necessary knowledge and skills that ensure adequate representation of the student in special education decisions. The ESD will provide training, as necessary, to ensure that surrogate parents have the requisite knowledge.

- d. The ESD provides all special education rights and procedural safeguards to appointed surrogate parents.
- e. A surrogate will not be considered an employee of the ESD solely on the basis that the surrogate is compensated from public funds.
- f. The duties of the surrogate parent are to:
  - (1) Protect the special education rights of the student;
  - (2) Be acquainted with the student's disability and the student's special education needs;
  - (3) Represent the student in all matters relating to the identification, evaluation, IEP and educational placement of the student; and
  - (4) Represent the student in all matters relating to the provision of FAPE to the student.
- g. A parent may give written consent for a surrogate to be appointed.
  - (1) When a parent requests that a surrogate be appointed, the parent shall retain all parental rights to receive notice and all of the information provided to the surrogate. When the ESD appoints a surrogate at parent request, the ESD will continue to provide to the parent a copy of all notices and other information provided to the surrogate.
  - (2) The surrogate, alone, shall be responsible for all matters relating to the special education of the student. The ESD will treat the surrogate as the parent unless and until the parent revokes consent for the surrogate's appointment.
  - (3) If a parent gives written consent for a surrogate to be appointed, the parent may revoke consent at any time by providing a written request to revoke the surrogate's appointment;
- h. An adult student to whom rights have transferred at age of majority may give written consent for a surrogate to be appointed. When an adult student requests that a surrogate be appointed, the student shall retain all rights to receive notice and all of the information provided to the surrogate. The surrogate, alone, shall be responsible for all matters relating to the special education of the student. The ESD will treat the surrogate as the adult student unless and until the adult student revokes consent for the surrogate's appointment. If an adult student gives written consent for a surrogate to be appointed, the adult student may revoke consent at any time by providing a written request to revoke the surrogate's appointment.
- i. The ESD may change or terminate the appointment of a surrogate when:
  - (1) The person appointed as surrogate is no longer willing to serve;
  - (2) Rights transfer to the adult student or the student graduates with a regular diploma;
  - (3) The student is no longer eligible for special education services;
  - (4) The legal guardianship of the student is transferred to a person who is able to carry out the role of the parent;
  - (5) A foster parent or other person is identified who can carry out the role of parent;
  - (6) The parent, who previously could not be identified or located, is now identified or located;
  - (7) The appointed surrogate is no longer eligible;
  - (8) The student moves to another district; or
  - (9) The student is no longer a ward of the state or unaccompanied homeless youth.
- j. The ESD will not appoint a surrogate solely because the parent or student to whom rights have transferred is uncooperative or unresponsive to the special education needs of the student.

5. Transfer of Rights at Age of Majority

- a. When a student with a disability reaches the age of majority, marries or is emancipated, rights previously accorded to the student's parents under the special education laws, transfer to the student. A student for whom rights have transferred is considered an "adult student" under OAR 581-015-2000(1).
- b. The ESD provides notice to the student and the parent that rights (accorded by statute) will transfer at the age of majority. This notice is provided at an IEP meeting and documented on the IEP:
  - (1) At least one year before the student's 18th birthday;
  - (2) More than one year before the student's 18th birthday, if the student's IEP team determines that earlier notice will aid transition; or
  - (3) Upon actual knowledge that within a year the student will likely marry or become emancipated before age 18.
- c. The ESD provides written notice to the student and to the parent at the time of the transfer.
- d. These requirements apply to all students, including students who are incarcerated in a state or local adult or juvenile correctional facility or jail.
- e. After transfer of rights to the student, the ESD provides any written prior notices and written notices of meetings required by the special education laws to the adult student and to the parent if the parent can be reasonably located.
- f. After rights have transferred to the student, receipt of notice of an IEP meeting does not entitle the parent to attend the meeting unless invited by the student or the ESD.

6. Prior Written Notice

- a. The ESD provides prior written notice to the parent of a student, or student, within a reasonable period of time, before the ESD:
  - (1) Proposes to initiate or change, the identification, evaluation or educational placement of the student, or the provision of a FAPE to the child; or
  - (2) Refuses to initiate or change the identification, evaluation or educational placement of the student, or the provision of FAPE to the child.
- b. The content of the prior written notice will include:
  - (1) A description of the action proposed or refused by the ESD;
  - (2) An explanation of why the ESD proposed or refused to take the action;
  - (3) A description of each evaluation procedure, test, assessment, record or report used as a basis for the proposal or refusal;
  - (4) A statement that the parents of a student with a disability have procedural safeguards and, if this notice is not an initial referral for evaluation, how a copy of the *Procedural Safeguards Notice* may be obtained;
  - (5) Sources for parents to contact to obtain assistance in understanding their procedural safeguards;
  - (6) A description of other options the IEP team considered and the reasons why those options were rejected; and
  - (7) A description of other factors that are relevant to the agency's proposal or refusal.

- c. The prior written notice is:
  - (1) Written in language understandable to the general public; and
  - (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;
  - (3) If the native language or other mode of communication of the parent is not a written language, the ESD shall take steps to ensure that:
    - (a) The notice is translated orally or by other means to the parent in the parent’s native language or other mode of communication;
    - (b) The parent understands the content of the notice; and
    - (c) There is written evidence that the requirements of this rule have been met.

7. Consent<sup>1</sup> – Initial Evaluation

- a. The ESD provides notice and obtains informed written consent from the parent or adult student before conducting an initial evaluation to determine whether a student has a disability (as defined by Oregon law) and needs special education. Consent for initial evaluation is not consent for the ESD to provide special education and related services.
- b. The ESD makes reasonable efforts to obtain informed consent from a parent for an initial evaluation to determine a child’s eligibility for special education services. If a parent does not provide consent for an initial evaluation or does not respond to a request for consent for an initial evaluation, the ESD may, but is not required to, pursue the initial evaluation of the child through mediation or due process hearing procedures. The ESD does not violate its child find obligations if it declines to pursue the evaluation using these procedures.

8. Consent – Initial Provision of Special Education Services

- a. The ESD provides notice and obtains informed written consent from the parent or adult student before the initial provision of special education and related services to the student.
- b. The ESD makes reasonable efforts to obtain informed consent, but if a parent or adult student does not respond or refuses consent for initial provision of special education and related services, the ESD does not convene an IEP meeting, develop an IEP or seek to provide special education and related services through mediation or due process hearing procedures. The ESD will not be considered to be in violation of the requirement to make FAPE available to the student under these circumstances. The ESD stands ready to serve the student if the parent or adult student later consents.

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<sup>1</sup>“Consent” means that the parent or adult student a) has been fully informed, in his/her native language or other mode of communication, of all information relevant to the activity for which consent is sought and b) understands and agrees in writing to the carrying out of the activity for which his/her consent is sought. Consent is voluntary on the part of the parent and meeting the requirements of consent provision for OAR 581-015-2090, IDEA and FERPA.

9. Consent – Re-evaluation

- a. The ESD obtains informed parent consent before conducting any re-evaluation of a child with a disability, except:
  - (1) The ESD does not need written consent for a re-evaluation if the parent does not respond after reasonable efforts to obtain informed consent. However, the ESD does not conduct individual intelligence tests or tests of personality without consent.
  - (2) If a parent refuses to consent to the re-evaluation, the ESD may, but is not required to, pursue the re-evaluation by using mediation or due process hearing procedures.
- b. A parent or adult student may revoke consent at any time before the completion of the activity for which they have given consent. If a parent or adult student revokes consent, that revocation is not retroactive.

10. Consent – Other Requirements

- a. The ESD documents its reasonable efforts to obtain parent consent, such as phone calls, letters and meeting notes.
- b. If a parent of a student who is home schooled or enrolled by the parents in a private school does not provide consent for the initial evaluation or the re-evaluation, or if the parent does not respond to a request for consent, the ESD:
  - (1) Does not use mediation or due process hearing procedures to seek consent; and
  - (2) Does not consider the child as eligible for special education services.
- c. If a parent or adult student refuses consent for one service or activity, the ESD does not use this refusal to deny the parent or child any other service, benefit or activity, except as specified by these rules and procedures.
- d. If, at any time subsequent to the initial provision of special and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the ESD:
  - (1) May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;
  - (2) May not use mediation or due process procedures to obtain an agreement or ruling that the services may be provided to the child;
  - (3) The ESD will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
  - (4) The ESD is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education or related services.

11. Exceptions to Consent

- a. The ESD does not need written parent or adult student consent before:
  - (1) Reviewing existing data as part of an evaluation or re-evaluation;

- (2) Administering a test or other evaluation administered to all students without consent unless, before administration of that test or evaluation, consent is required of parents of all students;
  - (3) Conducting evaluations, tests, procedures or instruments that are identified on the student's individualized education program (IEP) as a measure for determining progress; or
  - (4) Conducting a screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.
- b. The ESD does not need written parent consent to conduct an initial special education evaluation of a student who is a ward of the state and not living with the parent if:
- (1) Despite reasonable efforts to do so, the ESD has not been able to find the parent;
  - (2) The parent's rights have been terminated in accordance with state law; or
  - (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.
- c. The ESD does not need written parental consent if an administrative law judge (ALJ) determines that the evaluation or re-evaluation is necessary to ensure that the student is provided with a free appropriate public education.

## 12. Independent Educational Evaluations (IEE)

- a. A parent of a student with a disability has a right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the ESD.
- b. If a parent requests an independent educational evaluation at public expense, the ESD provides information to parents about where an independent educational evaluation may be obtained, and the ESD criteria applicable for independent educational evaluations.
- c. If a parent requests an independent educational evaluation at public expense, the ESD, without unnecessary delay, either:
  - (1) Initiates a due process hearing to show that its evaluation is appropriate; or
  - (2) Ensures that an independent educational evaluation is provided at public expense unless the ESD demonstrates in a hearing that the evaluation obtained by the parent did not meet ESD criteria.
- d. The ESD criteria for independent educational evaluations are the same as for ESD evaluations including, but not limited to, location, examiner qualifications and cost.
  - (1) Criteria established by the ESD do not preclude the parent's access to an independent educational evaluation.
  - (2) The ESD provides the parents the opportunity to demonstrate the unique circumstances justifying an IEE that does not meet the ESD's criteria.
  - (3) A parent may be limited to one independent educational evaluation at public expense each time the ESD conducts an evaluation with which the parent disagrees.



- e. If a parent requests an independent educational evaluation, the ESD may ask why the parent disagrees with the public evaluation. The parent may, but is not required to provide an explanation. The ESD may not:
  - (1) Unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation;
  - (2) Except for the criteria listed above in c., impose conditions or timelines related to obtaining an IEE at public expense.
- f. The ESD considers an independent educational evaluation submitted by the parent, in any decision made with respect to the provision of a free appropriate public education to the student, if the submitted independent evaluation meets ESD criteria.

### 13. Dispute Resolution – Mediation

- a. The ESD or parent may request mediation from ODE for any special education matter, including before the filing of a complaint or due process hearing request.
- b. The ESD acknowledges that:
  - (1) Mediation must be voluntary on the part of the parties, must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and may not be used to deny or delay a parent’s right to a due process hearing or filing a complaint.
  - (2) Each mediation session must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
  - (3) An agreement reached by the parties to the dispute in the mediation process must be set forth in a legally binding written mediation agreement that:
    - (a) States the terms of the agreement;
    - (b) States that all discussions that occurred during the mediation process remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
    - (c) Is signed by the parent and a representative of the ESD who has the authority to bind the ESD to the mediation agreement.
  - (4) Mediation communication is not confidential if it relates to child or elder abuse and is made to a person who is required to report abuse, or threats of physical harm, or professional conduct affecting licensure.
  - (5) The mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

### 14. Dispute Resolution – Complaint Investigation

- a. Any organization or person may file a signed, written complaint with the State Superintendent of Public Instruction alleging that a district or an ESD is violating or has violated the Individuals with Disabilities Education Act (IDEA) or associated regulations within one year before the date of the complaint. Upon receiving a parent complaint, the ODE forwards the complaint to the district or ESD along with a request for an ESD response to the allegations in the complaint.

- b. Upon receiving a request for response from ODE, the ESD responds to the allegations and furnishes any requested information or documents within 10 business days.
- c. The ESD sends a copy of the response to the complainant. If ODE decides to conduct an on-site investigation, ESD personnel participate in interviews and provide additional documents as needed.
- d. The ESD and the complainant may attempt to resolve a disagreement that led to a complaint through mediation. If they decide against mediation, or if mediation fails to produce an agreement, ODE will pursue the complaint investigation.
- e. If ODE substantiates some or all of the allegations in a complaint, it will order corrective action. The ESD satisfies its corrective action obligations in a timely manner.
- f. If the ESD disagrees with the findings and conclusions in a complaint final order, it may seek reconsideration by ODE or judicial review in county circuit court.

#### 15. Due Process Hearing Requests

- a. The ESD acknowledges that parents may request a due process hearing if they disagree with an ESD proposal or refusal relating to the identification, evaluation, educational placement or provision of a free appropriate education to a student who may have a disability and be eligible for special education.
- b. The ESD may request a due process hearing regarding the identification, evaluation, educational placement or provision of a free appropriate education to a student who may have a disability and be eligible for special education.
- c. When requesting a due process hearing, the ESD or the attorney representing the ESD provides notice to the parent and to ODE.
- d. The party, including the ESD, that did not file the hearing request must, within 10 days of receiving the request for a hearing, send to the other party a response that specifically addresses the issues raised in the hearing request.
- e. If the parent had not yet received prior written notice of the ESD's proposal or refusal, the ESD, within 10 days of receiving the hearing request for a due process hearing, sends to the parent a response that includes:
  - (1) An explanation of why the ESD proposed or refused to take the action raised in the hearing request;
  - (2) A description of other options that the ESD considered and the reasons why those options were rejected;
  - (3) A description of each evaluation procedure, assessment, record or report the ESD used as the basis for the proposed or refused action; and
  - (4) A description of the factors relevant to the ESD's proposal or refusal.

#### 16. Resolution Session

- a. Within 15 days of receiving a due process hearing request, the ESD will hold a resolution session with the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request.
- b. This meeting will include a representative of the ESD who has decision-making authority for the ESD.
  - (1) The ESD will not include an attorney unless the parent brings an attorney.

- (2) The ESD will provide the parent with an opportunity for the parent to discuss the hearing request and related facts so that the ESD has an opportunity to resolve the dispute.
- (3) The ESD and parent may agree in writing to waive the resolution meeting. If so, the 45-day hearing timeline will begin the next business day, unless the ESD and parent agree to try mediation in lieu of the resolution session.

17. Time Limitations and Exception

- a. A parent must request a due process hearing within two years after the date of the ESD act or omission that gives rise to the parent's hearing request.
- b. This timeline does not apply to a parent if the ESD withheld relevant information from the parent or incorrectly informed the parent that it had resolved the problem that led the parent's hearing request.

18. Hearing Costs

- a. The ESD reimburses ODE for costs related to conducting the hearing, including pre-hearing conferences, scheduling arrangement and other related matters.
- b. The ESD provides the parent with a written or, at the option of the parent, an electronic verbatim recording of the hearing, within a reasonable time of the close of the hearing
- c. The ESD does not use IDEA funds to pay attorney's fees or other hearing costs.

19. Discipline and Placement in Interim Alternative Setting

See Board policy JGDA/JGEA - Discipline of Students with Disabilities.