

# Notice of Procedural Safeguards

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[framework.esc18.net](http://framework.esc18.net)



## **Notice of Procedural Safeguards** **Rights of Parents of Children with Disabilities**

The Individuals with Disabilities Education Act (**IDEA**), as amended in 2004, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under IDEA and its implementing regulations. This document, produced by the Texas Education Agency (**TEA**), is intended to meet this notice requirement and help parents of children with disabilities understand their rights under IDEA.

### **■ Procedural Safeguards in Special Education**

Under IDEA, the term *parent* means a biological parent, an adoptive parent, a foster parent who meets state requirements, a guardian, an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, an individual who is legally responsible for the child's welfare, or a surrogate parent. The term *native language* when used with someone who has limited English proficiency means the language normally used by that person; when used for people who are deaf or hard of hearing, native language is the mode of communication normally used by the person.

The school is required to give you this *Notice of Procedural Safeguards* only one time a school year, except that the school must give you another copy of the document: upon initial referral or your request for evaluation; upon receipt of the first special education complaint filed with the TEA; upon receipt of the first due process hearing complaint in a school year; when a decision is made to take disciplinary action that constitutes a change of placement; or upon your request.

You and the school make decisions about your child's educational program through an admission, review, and dismissal (**ARD**) committee. The ARD committee determines whether your child qualifies for special education and related services. The ARD committee develops, reviews, and revises your child's individualized educational program (**IEP**), and determines your child's educational placement. Additional information regarding the role of the ARD committee and IDEA is available from your school in a companion document *Parent's Guide to the Admission, Review, and Dismissal Process*. You can also locate it at <http://framework.escl8.net/>.

### **■ Foster Parent as Parent**

If you are a foster parent for a child with a disability, you may serve as the parent if you agree to participate in making special education decisions and if you complete the required training program before the child's next ARD committee meeting, but not later than the 90th day after you begin acting as the parent for the purpose of making special education decisions for the child. Once you have completed an approved training program, you do not have to retake a training program to act as a parent for the same child or to serve as a parent or as a surrogate parent for another child. If the school decides not to appoint you as a parent for the purposes of special education decision-making, it must give you written notice within seven calendar days after the date on which the decision is made. The notice must explain the LEA's reasons for its decision and must inform you that you may file a special education complaint with the TEA.

explanation of how to get a copy of this *Notice of Procedural Safeguards*; contact information for individuals or organizations that can help you in understanding IDEA; a description of other choices that your child's ARD committee considered and the reasons why those choices were rejected; and a description of other reasons why the school proposes or refuses the action.

The school must give you prior written notice at least five school days before it proposes or refuses the action unless you agree to a shorter timeframe.

The notice must be written in language understandable to the general public and must be translated into your native language or other mode of communication, unless it clearly is not feasible to do so.

If your native language or other mode of communication is not a written language, the school must translate the notice orally or by other means in your native language or other mode of communication so that you understand it. The school must have written evidence that this has been done.

If, at any time after the school begins providing special education and related services to your child, you revoke your consent for services, the school must discontinue providing special education and related services to your child. Before discontinuing services, however, the school must give you prior written notice.

A parent of a child with a disability may elect to receive written notices by electronic mail, if the school makes such an option available.

### ■ **Parental Consent**

The school must obtain your informed consent before it may do certain things. Your

*informed consent* means that: you have been given all the information related to the action for which your permission is sought in your native language, or other mode of communication; you understand and agree in writing to the activity for which your permission is sought, and the written consent describes the activity and lists any records that will be released and to whom; and you understand that the granting of your consent is voluntary and may be withdrawn at any time. If you wish to revoke your consent for the continued provision of special education and related services, you must do so in writing. If you give consent and then revoke it, your revocation will not be retroactive.

The school must maintain documentation of reasonable efforts to obtain parental consent. The documentation must include a record of a school's attempts to obtain consent, such as detailed telephone records, copies of correspondence and detailed records of visits made to your home or place of employment.

◆ **Initial Evaluation** Before conducting an initial evaluation of your child to determine if your child qualifies as a child with a disability under IDEA, the school must give you prior written notice of the proposed evaluation and get your informed consent. The school must make reasonable efforts to obtain your consent for an initial evaluation. Your consent for initial evaluation does not mean that you have also given your consent for the school to start providing special education services to your child. If your child is a ward of the state and is not residing with you, the school is not required to obtain your consent if they cannot find you or if your parental rights have been terminated or assigned to someone else by a court order.

criteria described above, a school may not impose conditions or timelines related to obtaining an IEE at public expense.

- ◆ **Hearing Officer Determination** If the school requests a due process hearing and a hearing officer determines that the school's evaluation is appropriate or that the IEE you obtained does not meet the school's IEE criteria, the school does not have to pay for the IEE.
- ◆ **IEE at Private Expense** You always have the right to get an IEE at your own expense. No matter who pays for it, the school must consider the IEE in any decision about providing FAPE to your child if the IEE meets the school's criteria. You may also present an IEE as evidence in a due process hearing.
- ◆ **IEE Ordered by a Hearing Officer** If a hearing officer orders an IEE as part of a due process hearing, the school must pay for it.

#### ■ **Discipline Procedures**

If your child violates the school's code of conduct, the school must follow certain discipline procedures if it removes your child from the child's current placement and the removal constitutes a change in placement process.

- ◆ **Removal: Not a Change of Placement** If your child violates the school's code of conduct, it would not be considered a change of placement for the school to remove your child from the current placement for 10 school days or fewer in a school year, just as it does when disciplining children without disabilities. The school is not required to provide educational services during these short-term removals unless services are

provided to children without disabilities. If the school chooses to suspend your child, under state law, the suspension may not exceed three school days.

If your child is removed from his or her current placement for 10 school days in a school year, your child has additional rights during any subsequent days of removal. If the subsequent removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of your child's teachers, must determine the extent to which services are needed so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

- ◆ **Removal: Change of Placement** Your child's placement is changed if the removal is for more than 10 consecutive school days or if a series of shorter removals totaling more than 10 school days forms a pattern. When deciding if there has been a pattern of removals, the school must consider whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and factors such as the length of each removal, the total amount of time the child has been removed, and how close the removals are to one another. Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school and, if challenged, is subject to review through due process and judicial proceedings.

On the date in which the decision is made to change your child's placement because

curriculum, although in another setting, and to progress toward meeting the goals set out in the IEP. Your child must receive, as appropriate, an FBA, behavioral intervention services, and modifications that are designed to address the behavior so that it does not recur.

- ◆ **Expedited Due Process Hearing** If you disagree with any decision regarding disciplinary placement or manifestation determination, you have the right to request an expedited due process hearing. Additionally, if the school believes that maintaining your child in his or her current placement is substantially likely to result in injury to your child or to others, the school may request an expedited due process hearing. The hearing must occur within 20 school days of the date the hearing is requested. The hearing officer must make a determination within 10 school days after the hearing. Unless you and the school agree otherwise, your child must remain in an IAES until the hearing officer makes a determination or until the school's IAES placement expires, whichever occurs first.

When the school requests an expedited due process hearing, the hearing officer may order continued placement in an appropriate IAES for not more than 45 school days if maintaining your child's IEP placement is substantially likely to result in injury to your child or others. The hearing officer may order the IAES placement even if your child's behaviors are a manifestation of his or her disability. Alternatively, the hearing officer may decide to return your child to the placement from which he or she was removed.

- ◆ **Protection for Children Not Yet Determined Eligible for Special Education** If the school had knowledge that your child was a child with a disability before the behavior that resulted in the disciplinary action, then your child has all the rights and protections that a child with a disability would have under IDEA. A school is considered to have prior knowledge if: you expressed concerns in writing to an administrator or teacher that the child is in need of special education and related services; you requested an evaluation of the child in accordance with IDEA; or a teacher of the child or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the special education director or other supervisory personnel.

A school is considered not to have prior knowledge if: you have refused to consent to an IDEA evaluation; you have refused IDEA services with regard to your child; or your child has been evaluated and determined not to be eligible for special education services.

If you initially gave your consent for services and then later revoked your consent in writing for the continued provision of services after the school began providing IDEA services, you have refused IDEA services, and your child may be subjected to the disciplinary measures applied to children without disabilities and is not entitled to IDEA protections.

If you request an initial evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, your child remains in the educational placement determined by school

Your consent, or the consent of an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. If your child is attending, or is going to attend, a private school that is not located in the same school district where you reside, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

The school must keep a log of everyone (except for you and authorized school officials) who reviews your child's special education records, unless you provided consent for the disclosure. This log must include the name of the person, the date access was given, and the purpose for which the person is authorized to use the records.

One official at the school must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures regarding confidentiality under IDEA and FERPA. Each school must maintain, for public inspection, a current listing of the names and positions of those employees within the school who may have access to personally identifiable information.

◆ **Amending Records** If you believe that your child's education records are inaccurate, misleading, or violate your child's rights, you may ask the school to amend the information. Within a reasonable time the school must decide whether to amend the information. If the school refuses to amend the

information as requested, it must inform you of the refusal and of your right to a hearing to challenge the information in the records. This type of hearing is a local hearing under FERPA and is not an IDEA due process hearing held before an impartial hearing officer.

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must change the information and inform you in writing. If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, you must be informed of your right to place a statement commenting on the information in your child's records for as long as the record or contested portion is maintained by the school.

If you revoke your consent in writing for your child's receipt of special education and related services after the school initially provided services to your child, the school is not required to amend your child's education records to remove any references to your child's previous receipt of special education services. However, you still have the right to ask the school to amend your child's records if you believe the records are inaccurate, misleading, or violate your child's rights.

◆ **Safeguards and Destruction** The school must protect the confidentiality of your child's records at collection, storage, disclosure, and destruction stages. *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. The school

intent to enroll your child in a private school at public expense; or at least 10 business days, including any holidays that occur on a business day, before your removal of your child from the public school, you did not give written notice to the public school of that information; or, before your removal of your child from the public school, the public school provided prior written notice to you of its intent to evaluate your child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but you did not make the child available for the evaluation; or a court finds that your actions were unreasonable.

However, the cost of reimbursement must not be reduced or denied for failure to provide the notice if: the public school prevented you from providing the notice; you had not received notice of your responsibility to provide the notice described above; or compliance with the requirements above would likely result in physical harm to your child. At the discretion of the court or a hearing officer, the cost of reimbursement may not be reduced or denied for your failure to provide the required notice if you are not literate or cannot write in English, or compliance with the above requirement would likely result in serious emotional harm to your child.

### ■ **Transfer of Parental Rights**

All parental rights under IDEA transfer to the child when the child reaches the age of majority. The age of majority under Texas law is age 18. For most children, all of the parental rights discussed in this document will transfer to the child at 18 years of age. When parental rights transfer to your adult student, he or she has the right to make educational decisions, although the public

school must still provide you with notices of ARD committee meetings and prior written notices. You, however, may not attend meetings unless specifically invited by the adult student or the school or unless your adult student gives you that right in a supported decision-making agreement.

- ◆ **Court-appointed Guardian for an Adult Student** If a court has appointed you or another person as the adult student's legal guardian, the rights under IDEA will not transfer to the adult student. The legally appointed guardian will receive the rights.
- ◆ **Incarcerated Adult Student** If the adult student is incarcerated, all of IDEA rights will transfer to the adult student at age 18. You will not keep the right to receive prior written notices related to special education.
- ◆ **Adult Students before Age of 18** There are certain conditions described in Chapter 31 of the Texas Family Code that result in a child becoming an adult before age 18. If your child is determined to be an adult under this chapter, the rights under IDEA will transfer to your child at that time.
- ◆ **Alternatives to Guardianship** The public school must honor a valid power of attorney or a valid supported decision-making agreement that is executed by your adult student.
- ◆ **Required Notices and Information** On or before your child's 17th birthday, the public school must provide you and your child written notice describing the transfer of parental rights and include information about guardianship and alternatives to guardianship, including

- You and the school must not be concurrently involved in special education mediation.
- The issues in dispute must not be the subject of a special education complaint or a special education due process hearing.
- You and the school must not have participated in IEP facilitation concerning the same child within the same school year of the filing of the current request for IEP facilitation.

#### ■ Mediation Services

Mediation is one of the available options used for resolving disagreements about a child's identification, evaluation, educational placement, and FAPE. If both you and the school agree to participate in mediation, the TEA makes the arrangements and pays for the mediation. Mediation may not be used to delay or deny you a due process hearing or any other rights under IDEA.

The TEA automatically offers mediation services each time a due process hearing is requested. But, you may ask for mediation services any time you and the school have a disagreement about your child's special education program.

The mediators are not employees of the TEA or any school in Texas, and they cannot have any personal or professional interest that would conflict with their objectivity. The mediators are professionals who are qualified and trained in resolving disputes and who have knowledge of special education laws. The mediator's role is to be objective and not take the side of either party at the mediation. The goal of mediation is to assist you and the school in reaching an agreement that satisfies both of you.

A current list of mediators is available at <http://tea.texas.gov/index4.aspx?id=5087>.

If you and the school agree to mediate, you can agree to use a specific mediator or a mediator will be randomly assigned. In either case, the mediator will contact you promptly to schedule the mediation session at a place and time convenient to you and the school. The discussions that occur during mediation are private and cannot be used as evidence in a future due process hearing or court proceeding.

If you and the school reach agreement, you and the school's authorized representative will sign a written agreement. The agreement is legally binding and enforceable in a court that has authority under state law to hear this type of case or in a federal district court.

You can find more information about the mediation process on the TEA website at <http://tea.texas.gov/index4.aspx?id=5087>.

#### ■ Special Education Complaint Resolution Process

Another option for resolving special education disputes is the TEA's special education complaint resolution process. If you believe a public agency has violated a special education requirement, you may send a written complaint to the TEA at the address given at the end of this document. You must also send your complaint to the entity against whom the complaint is filed. Any organization or individual may file a complaint with the TEA. The complaint timeline will start the next business day after the day that the TEA receives the complaint. Your written complaint must describe a violation that occurred not more than one year before the date that the complaint is received. The complaint must include: a statement that the public agency has violated



You must request a due process hearing within one year of the date you knew or should have known about the alleged action that forms the basis of the hearing request. This one-year timeline is also referred to as a statute of limitations. This timeline does not apply to you if you were prevented from requesting the hearing because of specific misrepresentations by the school that it had resolved the problem, or because the school withheld information from you that was required to be provided to you. In some circumstances, the one-year statute of limitations to request a due process hearing may be tolled—or paused—if you are an active-duty member of the armed forces, the Commissioned Corps of the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the United States Public Health Service, and if the statute of limitations provisions of a federal law known as the Servicemembers Civil Relief Act apply to you.

If you request the due process hearing, you have the burden of proving that the school violated a special education requirement. In certain situations, the school may request a due process hearing against you. In these situations, the school has the burden of proof.

Before you sue the school in court about any of the matters listed above, you must request a due process hearing. If you have not participated in a due process hearing, your claims in court may be dismissed.

- ◆ **Requesting a Due Process Hearing** To request a hearing, you, your attorney, or your advocate must send a written request for a due process hearing or to the TEA at the address located at the end of this document.

A form to request a due process hearing is available from the TEA at [https://tea.texas.gov/About TEA/Government Relations and Legal/Special Education/Due Process Hearings/Office of Legal Services, Special Education Due Process Hearing Program/](https://tea.texas.gov/About%20TEA/Government%20Relations%20and%20Legal/Special%20Education/Due%20Process%20Hearings/Office%20of%20Legal%20Services%20Special%20Education%20Due%20Process%20Hearing%20Program/).

You do not have to use the TEA form, but your request must contain the following information: your child's name and address, or available contact information if your child is homeless; the name of your child's school; a description of the problem your child is having, including facts relating to the problem; and a resolution of the problem that you propose to the extent known and available to you at the time.

If you request the hearing, you must send a copy of your written request to the school. You may not have a hearing until you send a request that meets all of the above requirements. Within 10 calendar days of receiving your request, the school must send you a response that meets the requirements of prior written notice unless it has already done so. Within 15 calendar days of receiving your request, the school must notify the hearing officer and you if it believes you did not include all the required information. The hearing officer has five calendar days to rule on whether the information in your request is sufficient.

You may only amend—or change—your request if the school agrees or if the hearing officer gives you permission not later than five calendar days before the hearing. You may not raise issues at the hearing that were not raised in the request. If the filing party, whether you or the school, makes changes to the request, the

school must put your agreement in writing and sign it. This written agreement is enforceable in a court that has authority under state law to hear this type of case or in a federal district court unless one of the parties voids the agreement within three business days of the date it is signed.

If the school has not resolved the issues raised in your request to your satisfaction within 30 calendar days from the receipt of your request, the 45 calendar-day hearing timeline begins and the hearing may proceed.

- ◆ **Resolution Meeting in Expedited Hearings** For expedited hearings, the school must convene the resolution meeting within seven calendar days of receiving the request for an expedited due process hearing. You have a right to a hearing if the school has not resolved the issues raised in your request to your satisfaction within 15 calendar days of the school's receipt of the request for an expedited due process hearing. The hearing must be held within 20 school days of the date that the request for a due process hearing is filed. The hearing officer must issue a final decision within 10 school days after the hearing.

The TEA provides impartial hearing officers to conduct hearings. The hearing officers are not employees of the TEA or any agency involved in the education or care of your child and cannot have any personal or professional interest that would conflict with his or her objectivity in the hearing. The hearing officer must possess the necessary knowledge and skill to serve as a hearing officer.

The TEA maintains a list of hearing officers that includes the qualifications of each hearing officer. This list is available on the TEA

website at <https://tea.texas.gov/index4.aspx?id=5090>. You can also request the list from the TEA Office of Legal Services, whose contact information is provided at the end of this document.

- ◆ **Child's Status during Proceedings (Stay-put)** During a due process hearing and any court appeals, your child generally must remain in the current educational placement, unless you and the school agree otherwise. Remaining in a current setting is commonly referred to as *stay-put*. If the proceeding involves discipline, see the discipline section for discussion of the child's placement during discipline disputes.

If the hearing involves an application for your child to be initially enrolled in public school, your child must be placed, if you consent, in the public school program until the completion of all the proceedings. If the child is turning three and transitioning from an Early Childhood Intervention (ECI) program, stay-put is not the ECI services. If the child qualifies for special education services and the parent consents, the services that are not in dispute must be provided.

- ◆ **Before the Hearing** At least five business days before the due process hearing, you and the school must disclose to each other any evidence that will be introduced at the hearing. Either party may contest the introduction of any evidence that has not been shared on time. The hearing officer may prohibit the introduction of evidence, including evaluations and recommendations, not disclosed within the timelines.
- ◆ **During the Hearing** You have the right to bring and be advised by your attorney and by people with special knowledge or

If you win part or all of what you are seeking in a due process hearing or in court, a judge may award you reasonable attorney's fees and related costs.

The award of attorney's fees will not include costs related to the resolution session or to ARD committee meetings, unless a hearing officer or a court ordered the ARD committee meeting.

You cannot be awarded attorney's fees or costs for work done after the time the school gave you a written settlement offer if: the school made the offer more than 10 calendar days before the due process hearing began; you did not accept the offer within 10 calendar days; and the court found that the relief you obtained from the hearing was not more favorable.

The court must reduce the amount of attorney's fees awarded to you if it finds that: you or your attorney unreasonably protracted the dispute; the attorney's fees unreasonably exceed the hourly rate charged by similar attorneys in the community for similar services; the time spent by your attorney is excessive given the nature of the proceeding; or your attorney failed to give the school the appropriate information in the complaint notice. A reduction in fees is not required if the court finds the school unreasonably protracted the proceedings or behaved improperly.

If the school wins at the hearing or court proceeding, a court may order you or your attorney to pay the school's reasonable attorney's fees if your attorney filed a request for a due process hearing or subsequent cause of action that was frivolous, unreasonable, or without foundation, or continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. You or your attorney

could also be required to pay the school's attorney's fees if your request for a due process hearing or subsequent court proceeding was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

**Contact Information**

If you have any questions about the information in this document or need someone to explain it to you, please contact:

<b>Local Contact Information</b>		
<b>School</b>	<b>Education Service Center</b>	<b>Other Resource</b>
<b>NYOS Charter School</b>	<b>Region 13</b>	<b>Texas Parent2Parent</b>
<b>Name:</b> Julie Atchley	<b>Name:</b> Ann Jenkins	<b>Name:</b>
<b>Telephone Number:</b> 512-583-6967 x404	<b>Telephone Number:</b> 512-919-5207	<b>Telephone Number:</b> 512-458-8600
<b>E-mail:</b> <a href="mailto:jatchley@nyos.org">jatchley@nyos.org</a>	<b>E-mail:</b> <a href="mailto:Ann.Jenkins@esc13.txed.net">Ann.Jenkins@esc13.txed.net</a>	<b>Website:</b> <a href="https://www.txp2p.org">https://www.txp2p.org</a>

If you need information about special education issues, you may call the Special Education Information Center at 1-855-SPEDTEX (1-855-773-3839). If you call this number and leave a message, someone will return your call during normal business hours. Individuals who are deaf or hard of hearing may call the voice number above using Relay Texas at 7-1-1.

If you have questions about a pending special education complaint, contact the TEA's Division of Special Education at 512-463-9414. If you have questions about a pending mediation or due process hearing, contact the assigned mediator or hearing officer respectively.

**When sending a written request for the TEA services, please address your letter as follows:**

Texas Education Agency  
1701 N. Congress Avenue Austin,  
TX 78701-1494

**To the attention of the following Divisions:**

Division of Special Education  
State IEP Facilitation Project

Office of Legal Services  
Special Education Mediation Coordinator