

## Special Education – Procedural Safeguards

1. Procedural Safeguards
  - a. The district 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 whose rights have transferred (called “eligible students”).
  - b. The district gives parents a copy of the *Notice of Procedural Safeguards*:
    - (1) Once a year;
    - (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.
  - c. The *Notice of Procedural Safeguards* is:
    - (1). Written in the native language of the parents (unless it is clearly not feasible to do so) and 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 district shall take steps to ensure:
      - (i) That the notice is translated orally or by other means to the parent in his/her native language or other mode of communication;
      - (ii) That the parent understands the content of the notice; and
      - (iii) That there is written evidence that the district 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 the Oregon Department of Education.

### 3. Parent or Eligible Student Meeting Participation

- a. The district provides parents or eligible students an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the student, and the provision of a free appropriate public education to the student.
- b. The district provides parents or eligible 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 eligible students may invite other individuals who they believe have knowledge or special expertise regarding the student;
  - (3) Advises that the team may proceed with the meeting even if they are not in attendance;
  - (4) Advises 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 district shall take 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 district will use other methods to ensure participation, including, but not limited to, individual or conference phone calls or home visits.
- e. The district may conduct an IEP or placement meeting without the parent or eligible student if the district is unable to convince the parent that he/she should participate.

Attempts to convince the parent to participate will be considered sufficient if the district:

- (1) Communicates directly with the parent to arrange a mutually agreeable time and place and written notice was sent 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.
- f. If the district proceeds with an IEP meeting without a parent, the district 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.
- g. The district takes whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.
- h. The right to parent participation transfers to an adult student under OAR 581-015-0101.
- i. After the transfer of rights to an adult student, the district shall provide written notice of meetings to the adult student and parent, if the parent can be reasonably located. A parent

receiving notice of an IEP meeting is not entitled to attend the meeting unless invited by the adult student or the district.

j. An IEP meeting does not include:

- (1) Informal or unscheduled conversations involving school district 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 district 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 district ensures that the rights of a student with a disability, or suspected of having a disability, are protected 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 student and there is reasonable cause to believe that the student has a disability; or
- (3) The parent or eligible student requests the appointment of a surrogate parent.

b. The district secures nominations of persons to serve as surrogates.

c. The district ensures that each person approved to serve as a surrogate:

- (1) Is not an employee of the district or the Oregon Department of Education;
- (2) Is not an employee of any other agency involved in the education or care of the student except an employee of a nonpublic agency that only provides noneducation care for the student;
- (3) Is free of any conflict of interest that would interfere with representing the student's special education interests; and
- (4) Has knowledge and skills that ensure adequate representation of the student in special education decisions. The district will provide training, as necessary, to ensure that surrogate parents have the requisite knowledge.

d. The district provides all special education rights and procedural safeguards to appointed surrogate parents.

e. A surrogate will not be considered an employee of the district 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 a free appropriate public education 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.
  - (2) The surrogate, alone, shall be responsible for all matters relating to the special education of the student unless 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;
  - (4) In the case of a child who is a ward of the court and who has been placed in foster care, the foster parent can serve as a parent. The district need not appoint a surrogate parent.
- h. A student to whom rights have transferred at age of majority may give written consent for a surrogate to be appointed. When a 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 unless the student revokes consent for the surrogate's appointment. If a student gives written consent for a surrogate to be appointed, the student may revoke consent at any time by providing a written request to revoke the surrogate's appointment.
- i. The district 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 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 school district; or
  - (9) The student is no longer a ward of the state.
- j. The district 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. Consent

- a. The district obtains informed written consent from the parent or eligible student before:
- (1) Conducting an initial evaluation;
  - (2) The initial placement of a student with a disability in a program providing special education and related services;
  - (3) Conducting reevaluations; and
  - (4) The administration of individual intelligence tests and all tests of personality.

- b. The district advises parents or eligible students that consent may be revoked at any time before the completion of the activity or action for which they have given consent. If a parent or eligible student revokes consent, that revocation is not retroactive.
- c. If a parent refuses to grant consent for an evaluation or reevaluation, the district will follow due process procedures.
- d. If a parent refuses to grant consent for initial placement in special education, the school district may not request mediation or a due process hearing. If the parent refuses initial special education placement, the procedural safeguards do not apply.
- e. Refusal to consent to one service or activity will not be used to deny the parent or student any other service, benefit or activity of the district, except as provided in OAR 581-015-0039.

#### 6. Exceptions to Consent

- a. The district may review existing data as part of an evaluation or reevaluation without consent.
- b. The district may administer 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.
- c. The district may conduct evaluations, tests, procedures or instruments that are identified on the student's individualized education program (IEP) as a measure for determining progress without parent consent.
- d. If the district can demonstrate that it has taken reasonable measures to obtain written consent, and the parent has failed to respond, written consent need not be obtained for reevaluation, except for tests of individual intelligence and all tests of personality.
- e. If the district proceeds with a reevaluation without parent consent, the district will maintain a record of attempts to gain parental consent, 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;
  - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- f. Written parental consent is not required if an administrative law judge (ALJ) determines that the evaluation or reevaluation is necessary to ensure that the student is provided with a free appropriate public education.

#### 67. Prior Written Notice

- a. The district provides prior written notice to the parent of a student, or eligible student, within a reasonable period of time when the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation or educational placement of the student, or the provision of a free appropriate public education.
- b. The district provides prior written notice after a decision is made and a reasonable time before that decision is implemented.
- c. The content of the prior written notice will include:
  - (1) A description of the action proposed or refused by the district;
  - (2) An explanation of why the district proposed or refused to take the action;

- (3) A description of any options that the district considered and reasons why those options were rejected;
  - (4) A description of each evaluation procedure, assessment, record or report used as a basis for the proposal or refusal;
  - (5) A description of any other factors that are relevant to the district's proposal or refusal;
  - (6) 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 *Notice of Procedural Safeguards* may be obtained; and
  - (7) Sources for parents to contact to obtain assistance in understanding their procedural safeguards.
- d. 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 district 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) A reasonable effort is made to help the parent to understand the content of the notice; and
    - (c) There is written evidence that the requirements of this rule have been met.
- e. If the proposed action requires prior written notice and written consent, the district may give notice at the same time consent is requested.

## 8. Independent Educational Evaluations (IEE)

- a. If a parent requests an independent educational evaluation at public expense, the district provides information to parents about where an independent educational evaluation may be obtained, and the district criteria applicable for independent educational evaluations.
- b. If a parent requests an independent educational evaluation at public expense, the district, 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 district demonstrates in a hearing that the evaluation obtained by the parent did not meet district criteria.
- c. The district criteria for independent educational evaluations are the same as for district evaluations including, but not limited to, location, examiner qualifications and cost.
  - (1) Criteria established by the district do not preclude the parent's access to an independent educational evaluation.
  - (2) The district provides the parents the opportunity to demonstrate the unique circumstances justifying an IEE that does not meet the district's criteria.

- d. If a parent requests an independent educational evaluation, the district may ask why the parent disagrees with the public evaluation. The parent may, but is not required to, provide an explanation. The district 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 in c., impose conditions or timelines related to obtaining an IEE at public expense.
  - e. The district 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.
9. Due Process Hearings Costs:
- a. The district will reimburse the Oregon Department of Education for the ALJ costs related to conducting the hearing, including pre-hearing conferences, scheduling arrangements and other related matters;
  - b. The district will provide the parent with a written or, at the option of the parents, an electronic verbatim recording of the hearing, within a reasonable time of the closing of the hearing.
10. Discipline and placement in interim alternative setting - see JGDA/JGEA.
11. 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 581-015-0005.
  - b. The district 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 district 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 facility or jail.
  - e. After transfer of rights to the student, the district provides any written prior notices and written notices of meetings required by the special education laws to the eligible 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 district.

- g. After the rights have transferred, a student may ask the school district to appoint a surrogate parent if the student prefers not to exercise these rights and has no court-appointed guardian.