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Procedural Safeguards/Parent Rights Made Simple

What Is Special about Special Education?

Special education is instruction designed specifically to meet the unique needs of children with exceptionalities, including gifted, as defined by federal and state law. It is important to note that not all students who have a disability, or who are struggling qualify for special education services. To be eligible for special education services, the child must meet two requirements. First, the child must be found to have a disability as defined by the IDEA. Second, the disability must affect the child's ability to learn and progress in the same educational program or setting provided for all students. The purpose of special education services is to help a child with a qualifying disability to learn the information and skills that all children are learning.

What Are Procedural Safeguards/Parent Rights?

Every child has a right to a Free Appropriate Public Education (FAPE). A federal law called the Individuals with Disabilities Education Act, or IDEA, ensures that all children with qualifying disabilities have the opportunity to receive publicly funded special education and/or related services. Under IDEA, the child's and the parent's rights are spelled out and safeguarded.

Who Speaks for Children Under the IDEA?

IDEA requires that every child who is below the legal age of adulthood (18 in New Mexico) must have an adult available to make educational decisions and protect the child's legal rights. Usually that person is a natural or adoptive parent, but is not limited to those individuals. If no parent is available, the adult decision-maker may be any of the following:

- A person acting in the place of a parent, such as a grandparent
- A step-parent, or other relative that the child lives with
- A legal guardian (but not the state, if the child is in state custody) · A foster parent who is willing to make educational decisions required of parents under the IDEA
- If none of the above is available, a surrogate parent who is appointed by the district to make educational decisions and protect the child's educational rights

All of the above are included in the IDEA's broad definition of a "parent."

In New Mexico, children become legal adults at the age of 18. Under IDEA they are entitled to make their own educational decisions and protect their own rights unless the courts have declared them incompetent and appointed guardians for them. Unless this is completed before the child's 18th birthday, the child will automatically have all rights and responsibilities of adulthood when he or she reaches 18 years of age, this includes making educational decisions.

An Overview of the Special Education Process

School districts are responsible for providing a Free Appropriate Public Education (FAPE) to every child

through a general education curriculum. Districts must therefore provide special education services to children with disabilities, who need these services in order to learn and reach the same goals as their non-disabled peers. Decisions about a child's program are the responsibility of a team, which includes parents/guardians and the child if he or she has reached 14 years of age.

Step 1: TIER I AND TIER II INTERVENTIONS: WHCS must provide screening and interventions through a Student Assistance Team (SAT) process before referring a child for a full special education evaluation, unless a student has an obvious disability or a serious and urgent problem.

Step 2: Initial Evaluation - With written parental consent the child is evaluated. A special education initial evaluation must be conducted within 60 days of the parent(s) giving consent for evaluation.

Step 3: Determine if Eligible - The parent along with a group of qualified individuals review the testing as a team in order to determine if the child qualifies to receive services. A child may be found eligible if there is a defined disability which is affecting learning and functional performance.

Step 4: IEP Development - If the child is found eligible for services a team is assembled to develop an Individualized Education Program (IEP). The district must invite the parent(s) to the meeting, and provide opportunities for parent(s) to participate as members of the IEP team.

Step 5: IEP Implementation - With written parental consent the IEP is implemented.

Step 6: IEP Review/Revision - The IEP must be formally reviewed at least once a year, more often if parent or school deems necessary.

Step 7: Reevaluation - A child must be reevaluated at least every three years unless the parent and school agree it is not necessary.

Step 8: Determine if Eligible - The IEP team must reexamine and determine if the child continues to be eligible for services after a reevaluation.

Step 9: Exit from Services or Continue Services - If the child is eligible, the IEP team begins again at step four. If the child is not eligible, he or she exits the program. A child must be reevaluated before it is determined that he/she no longer has a disability.

What is Prior Written Notice of Proposed Actions?

Prior Written Notice (PWN) is a written notice that the IDEA requires the district to give to the parent(s) either in hard copy or electronically. This notice must be provided before the district takes or refuses to take any action regarding:

- Identifying your child as a child with a disability; or
- evaluating your child to determine eligibility for special education services; or
- initiating and/or changing the special education services provided for your child, including IEP development or changes.

The PWN must include:

- a description of the action the district proposes or refuses to take; · a description of the reasons for its decision;
- a description of other options that have been considered by the IEP team and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
- a description of other factors that are relevant to the district's proposal or refusal; · a description of the information the team used to arrive at its conclusion; · a notice of Procedural Safeguards or information about how to obtain a copy; and · sources for parents to contact to receive help in understanding their IDEA rights.

What Kind of Actions Require a Parent's Consent?

The school must obtain written parental consent before initial evaluation, reevaluation, and initial placement for special education services. Consent is also required before a district invites an outside agency, such as the Division of Vocational Rehabilitation/Tribal Vocational Rehabilitation, for the purposes of transition planning for children age 14 or above. By signing your name on the consent form, you are stating that you understand, give permission, and agree with the action for which consent is required. It is

important to let the district know if you do not understand or have questions.

At any time subsequent to the initial provision of special education and related services, you may revoke your consent for the continued provision of both special education and related services. If you as the parent(s) wish to revoke (cancel) your consent for your child to receive special education and/or related services, the revocation must be in writing. Withdrawal of consent does not undo (negate) any action that occurred before the withdrawal. It is important to consider the new role and responsibilities the district will have as a result of revoking your parental consent. The student will then be considered a general education student and therefore, the district is not required to develop an IEP or conduct an IEP meeting.

What About Records?

Student records may be used when determining eligibility for special education or related services. The parent(s), or someone who has your permission, can inspect and review all of your child's records kept by the district before any meeting involving your child's IEP or before a due process hearing. You can request to review records at other times, but the district has up to 45 days to honor your request. After reviewing your child's records you are entitled to have the district explain anything in your child's records that you do not understand. You can also request a copy of the records, but the district may charge you a reasonable fee unless the fee would prevent you from acquiring a copy. The school is responsible for keeping student records confidential.

Educational Evaluation

Though subjective data is useful there must also be an evaluation that uses objective, measurable information concerning the child's levels of performance, strengths, and weaknesses. An evaluation can offer information about a child, such as a score on a vocabulary test or a rating on a physical exam. An observation or opinion can add insight into the "how's and why's" of a child's performance. During an evaluation these are examined together, which helps paint a picture of the whole child including strengths, skills, and abilities which helps the IEP team to better address the child's needs.

Evaluation "Safeguards"

It is natural for you to be concerned about having your child evaluated the following facts may help you rest easier:

- You will be informed ahead of time what evaluations will be given to your child. · You must give written consent before testing can occur.
- The district will complete the initial evaluation within 60 days of your giving consent for the evaluation to begin.
- Your child will not be discriminated against, culturally, or because of a disability. · When testing is complete the school will set up a meeting with you to discuss findings.
- If you disagree with the results you have a right to request an independent educational evaluation, IEE, at the school district's expense. If you request an IEE, the district is required to provide you with the information regarding where you can obtain an IEE and what criteria the district will use to decide whether to accept the results and pay for the evaluation.

What is an Individualized Education Program (IEP)?

An IEP is a written statement of the educational program designed specifically for that student to meet their unique individual needs. Every child who is eligible to receive special education services must have an IEP. The IEP has two general purposes: 1) to set reasonable annual learning and/or functional goals for your child; and 2) to state the accommodations, services, and classroom setting the district will provide to help achieve the annual goals.

An IEP will state:

- Your child's present levels of academic achievement and functional performance; annual goals and how progress will be measured;
- What special education and related services will be provided, including how often and by whom;

- To what extent the child will participate with other children in the general education curriculum;
- What modifications and/or accommodations, if any, will be used for instruction and assessment and;
- Transition services (pre-planning for high school and beyond) if your child is age 14 or above, the IEP must include:
- An appropriate measurable postsecondary goals, updated annually, based on an age appropriate transition assessment; transition services; courses of study; and annual IEP goals related to the child's transition service needs.
- IEP team participants will vary depending on the needs of the child. Generally, participants will include:
- · the parent(s); at least one regular education teacher if the child is likely to be participating in the general education program and environment; at least one special education teacher or specialist; one or more qualified district representatives; your child if appropriate especially if transition services are being discussed and; · anyone else the parent or the district invites who may have special expertise or knowledge about your child.

This may include advocates who are invited by you.

An IEP Meeting

An IEP meeting is a formal gathering of a team consisting of parents/guardians and school staff in order to create annual goals for the child while determining what support they need to achieve them. An IEP meeting is needed when there are plans to do any of the following:

- make decisions about a child's initial plan for special education services · significantly change or review an existing IEP (an IEP must be reviewed at least once a year)
- change or review the child's program or placement
- evaluate or reevaluate a child whenever the parent(s) request it

What About Discipline?

To function as a safe learning community, schools have rules of conduct. Under IDEA children with disabilities may be suspended or placed in alternative settings to the same extent as children without disabilities. (Note: these rules do not apply to a student who is identified as gifted). However, certain conditions apply regarding students with identified disabilities who are receiving special education services.

- A child with a disability may be suspended for 10 days or less during a school year, without being required to give services, according to the same procedures that apply to all students.
- If a child with a disability is suspended for more than 10 days the district must provide services to the child.
- If a child with a disability is removed from his or her IEP placement for more than 10 consecutive days a meeting, known as a Manifestation Determination Review (MDR), must be held to determine possible causes of behavior and to determine if it is a direct cause of the child's disability. In addition, the IEP team must conduct a Functional Behavioral Assessment (FBA) and develop a Behavior Intervention plan (BIP).

Protecting Everyone's Rights to a Safe School

Educators and parents share concerns over the issues of drugs, guns, and other weapons in schools. IDEA has expanded the authority of school personnel regarding the removal of children with disabilities. For the protection of everyone's right to a safe school, *any* child may be removed to a temporary placement immediately for up to 45 school days.

IDEA also allows for a school district to request an Interim Alternative Placement (IAES) from a due process hearing officer if the child is a possible threat to him/herself or others.

About Educational Placement

Although it is desirable to have students with exceptional skills working with others their own age and in the regular school environment to the greatest extent possible, sometimes that placement is not the most appropriate learning environment for a particular child. Therefore the Least Restrictive Environment (LRE)

is based on the individual needs of the child.

Resolving Differences

Under federal law and state rules, both the district and the parent(s) have the right to have their opinions heard and considered. The parent has the right to disagree with the district's findings, plans, or actions regarding their child. Also, after considering the parent's opinions or requests, the district has the right to disagree as well. Federal and state laws provide several avenues for resolving differences.

Avenues to Resolve Disputes: (please refer to the complete Procedural Safeguards for a detailed description of each avenue)

Avenue 1 - Working directly with school personnel or requesting a mediation through the Special Education Bureau (SEB)

Avenue 2 - Contacting available resources for help and support or contacting a parent liaison at the Special Education Bureau (SEB)

Avenue 3 - Filing a formal state level complaint with or without an Alternative Dispute Resolution (ADR) or request for due process hearing.

Private School Placement

Parents, who choose to enroll their children with disabilities in private schools without the participation of the local district in the decision regarding special education services, are responsible for paying the private school tuition and costs. Though each district is obligated to spend a portion of its federal IDEA funds to assist students with disabilities enrolled by their parents in private schools, these students are not entitled to receive all the special education services the child would receive if enrolled in public schools. It is up to the district to decide, on an individual basis, the types of services, if any, to offer a student.

Gifted

The procedures that relate to gifted students are the same as school-aged children with disabilities, with four exceptions. The four exceptions include: 1) child find requirements; 2) disciplinary changes of placement; 3) transition planning; and 4) Free Appropriate Public Education (FAPE) as authorized by the IDEA. **Please refer to the complete Procedural Safeguards for a list of parent resources, etc. You may request a copy of the Procedural Safeguards (Parent & Child Rights in Special Education, Procedural Safeguards Notice) from your Special Education Instructional Leader (WHCS Special Education Director, WHCS Executive Director) or find them on the New Mexico Public Education Department (NMPED) Special Education Bureau (SEB) website: <http://ped.state.nm.us/SEB/index.html>**