Know Your Rights: Procedural Safeguards

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Today's Agenda

Part B of the IDEA relating to Procedural Safeguards	How Procedural Safeguards protect parents and students	Procedural Safeguards Notice	Parent Participation	Confidentiality of Information and Access to Records
Prior Written Notice (PWN)	Understandable Language	Parental Consent (Informed Consent	Independent Educational Evaluation (IEE)	Dispute Resolution Options
	Educational Placement and "Stay Put"	Protections for students not yet eligible for special education services	Private (Nonpublic) Schools	

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Who is Considered a Parent Under the IDEA

The IDEA defines a “parent” as:

- A biological or adoptive parent
- A guardian
- A person acting as a parent, such as a such as a grandparent or stepparent, who is authorized to make educational decisions for the child.
- A surrogate parent who has been appointed by the student’s local education agency
- A person appointed by a judge’s order

There are protections in IDEA that ensures the rights of students who are eligible or suspected to be eligible for special education services when a:

- parent can’t be identified
- the school cannot locate the parent
- the child is a ward of the state
- the child is an unaccompanied homeless youth

When a student turns 18, all parental rights transfer to the student unless a legal guardian has been appointed through court proceedings.

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Procedural Safeguards

Federal law – Individuals with Disabilities Education Act (IDEA)

Prior Written Notice (PWN)	34 CFR §300.503
Native Language	34 CFR §300.29
Parental Consent (Informed Consent)	34 CFR §300.9 and 34 CFR §300.300
Independent Educational Evaluation (IEE)	34 CFR §300.502
Confidentiality of Information	34 CFR §300.611
Access Rights	34 CFR §300.612
Mediation	34 CFR §300.506
Filing a State Complaint	34 CFR §300.153
Due Process Complaint	34 CFR §300.507 and 34 CFR §300.508
Parental Rights at Due Process Hearings	34 CFR §300.512
Educational Placement During Appeals	34 CFR §300.533
Protections for children not yet eligible for special education services	34 CFR §300.534

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What are Procedural Safeguards?

The IDEA includes rights for parents and protections for parents and students

Rights and protections are found in the Procedural Safeguards Notice

The school must provide you with a written explanation of your rights under the IDEA and Michigan Administrative Rules for Special Education (MARSE)

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How do the Procedural Safeguards protect parents and students?

Schools must…

Keep parents informed-give parents written notice before certain actions are taken, including appropriate notice of Individualized Education Program (IEP) meetings to ensure parent participation

Keep student's personal information confidential

Allow access and review of student's educational records

Follow procedures if changing a student's educational placement

Parents have the right to…

Participate in meetings and give input into decisions related to their child

Request an Independent Educational Evaluation (IEE)

Disagree with a school decision and use dispute resolution options

There are protections for children not yet eligible for special education and related services

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Procedural Safeguards Notice

Federal law requires schools to provide parents with a notice containing a full explanation of the procedural safeguards under the IDEA.

A copy of the notice must be given to parents/students annually. In addition,

- upon initial referral or parent request for evaluation
- upon receipt of the first state complaint and the first due process complaint in a school year
- when a decision is made to take disciplinary action that is considered a change of placement for violation of the school code of student conduct.
- When a copy is requested by a parent

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Parental Right to Participate in Meetings

Parents are members of any group that makes educational decision regarding their child and have the right to participate in meetings regarding:

- Their determination of whether their child is a child with a disability, and for that reason, is eligible to receive special education services
- Their child's evaluation
- The development, review, or revision of their child's IEP
- Their child's educational placement, and
- The provision of a free appropriate public education (FAPE) to their child

Schools must ensure that meaningful participation of parents in the IEP meeting, taking whatever action is necessary to ensure the parent understands the proceedings of the IEP team meeting.

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Confidentiality of Information

Each school district must protect the confidentiality of personally identifiable information of your child.

Personally identifiable information includes:

- Your child's name, your name as the parent, or the name of another family member
- Your child's address
- A personal identifier, such as your child's social security number or student number
- A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty

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Access to records

The school district must

- allow you to inspect and review any records relating to your child that are collected, maintained, or used by the district.

- comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing, (including a resolution meeting or hearing regarding discipline), in no more than **45 calendar days** after your request.

At age 18, the rights of parents under Part B of IDEA, in general, and regarding education records are transferred to the student.

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Right to inspect and review records

Your right to inspect and review records includes:

- Your right to a response from the school district to your reasonable request for an explanation or interpretation of the records;
- Your right to request that the school district provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies;
- Your right to have your representative inspect and review the records.

If any education record includes information on more than one child, the parents of those children have the right to review only the information relating to their child or be informed of that specific information.

The school may charge a fee for copies of records.

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Amendment of records at parent's request

If you believe information in your child's education records is inaccurate, misleading, or violates the privacy or rights of your child, you may request the school district change the information.

The school district must decide whether to change the information within a reasonable time of receipt of your request.

If the school district refuses to change the information, it must inform you of the refusal and advise you of the right to a hearing to challenge information in your child's records.

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Prior Written Notice (PWN)

PWN is written information given to parents by the school to explain decisions about your child's education and the reasons for those decisions.

School must provide you written notice whenever it wants to (or refuses to):

- evaluate your child
- change your child's disability identification
- change your child's educational placement
- Change the way in which your child is provided with a free appropriate public education (FAPE)

PWN is required before the school requests parental consent to evaluate your child and the first time your child will receive special education and related services.

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Written notice must…

Describe the action that the school proposes or refuses to take;

Explain why the school is proposing or refusing to take the action;

Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;

Explain where parents can go to get help in understanding IDEA's provisions;

Tell you how you can get a copy of the procedural safeguards;

Include resources to help you understand the procedural safeguards;

Describe any other options that your child's Individualized Education Program (IEP) Team considered and why those options were rejected;

Provide a description of other reasons why the school proposed or refused the action.

IEP may be used as part of PWN if the document the parent/student receives meets all the above requirements

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Notice for Provision of Services and Programs - Model Form

Notice for Provision of Services and Programs

Michigan Department of Education Office of Special Education
August 2022

The *Individuals with Disabilities Education Act* (IDEA) mandates public agencies to provide prior written notice to a parent a reasonable time before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student.

You are receiving this notice, in your native language, for:

(student name)

Purpose

A description of the action proposed or refused:

The district ☐proposes ☐refuses the following, regarding the request or action (*rationale*):

Describe the evaluation procedures, assessment, record, or reports the district used to make the data-based proposal or refusal described above:

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Notice must be in understandable language

Must be provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

Notice must be written in a language understandable to the general public.

If native language or other mode of communication is not a written language, school must ensure that:

- Notice is translated for you orally or by other means in your native language or other mode of communication.
- You understand the content of the notice.
- There is written evidence that the above requirements have been met.

If your school offers the option, you can receive the procedural safeguards notice by email.

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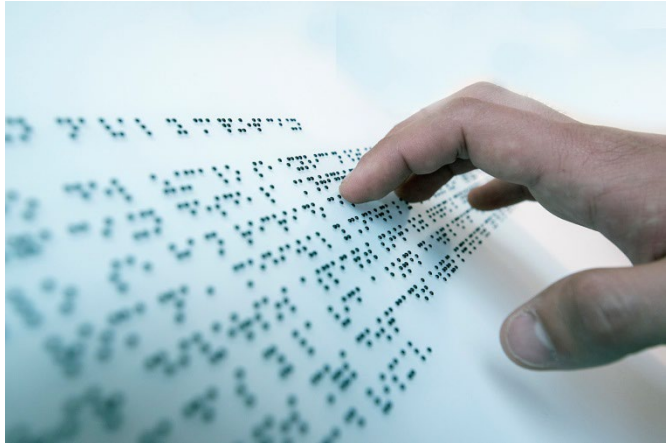
Native Language

Native language, when used with an individual who has limited English proficiency, means:

- The language normally used by the person or the child's parents
- In all direct contact with the child (including evaluation of the child), the language normally used by the child in their home or learning environment



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Parental Consent (informed Consent)

Consent means that you

- have been fully informed in your native language or other mode of communication of all information about the action in which you are giving consent
- understand and agree in writing to the action, and the consent describes the action and lists records (if any) that will be released to whom; and
- understand that the consent is voluntary, and you may withdraw consent at any time

Withdrawal of your consent does not undo an action that took place after you gave your consent and before you withdrew it.

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Parental Consent

The school must make reasonable efforts to obtain your informed consent and document these efforts before taking certain actions. Some of the most important times are:

- before it may conduct an initial evaluation of your child to determine your child's eligibility to receive special education and related services.
- before it may begin providing special education and related services to your child for the first time.
- before it may reevaluate your child.

Consent for an evaluation of your child **does not** mean that you have given consent for the school to provide special education and related services to your child.

School **may** seek to conduct an initial evaluation of your child if you refuse to provide consent or do not respond to a request to provide Consent, using consent override procedures.

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What else do I need to know about parental consent?

Schools cannot use consent override procedures if a parent does not want to give consent for their child to receive special education and related services for the first time.

Parental consent is needed before personally identifiable information is released to an outside agency providing or paying for transition services.

Parental consent is needed if your child is in, or going to go to, a private school not located in the district you live in, before personally identifiable information is released between schools where the private school is located and the district where your child resides.

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Revoking Parental Consent

You have the right to take back your consent, in writing, for the school to provide special education and related services to your child.

When you revoke your consent, the school:

- may not continue to provide special education and related services to your child
- must provide you with timely prior written notice (PWN) of the date when your child's eligibility and entitlement to special education and related services will end

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Revoking Parental Consent

When you revoke your consent, the school

- may not use due process procedures to obtain agreement or a ruling that the services may be provided to your child
- is not in violation of the requirement to make FAPE available to your child;
- is not required to have an IEP meeting or develop an IEP for your child
- is not required to change your child's education records to remove any reference to your child receiving special education and related services

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Independent Educational Evaluation (IEE)

Parents have the right to request an **independent educational evaluation (IEE)** if they disagree with the evaluation of their child that was conducted by the school.

An IEE is an evaluation that is conducted by a qualified examiner who is not employed by the school district responsible for educating your child.

An IEE is paid for by the school district. The district either pays the full cost of the evaluation or ensures that the evaluation is provided at no cost to the parent.

You are entitled to only one IEE, paid for by the school district, each time the school conducts an evaluation of your child in which you disagree.

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Requesting an IEE

The school district must respond to your request for an IEE within **7 calendar days** with their intent to:

- Provide the IEE at no cost to you **or**
- Provide you Notice and file a due process complaint to request a hearing to show its evaluation of your child is appropriate

The school must provide you information about where to get an IEE and the district's criteria for obtaining an IEE.

The school may ask you why you object to the evaluation that the school conducted but cannot require an explanation or delay providing the IEE at no cost to you or defending the evaluation of your child.

If a final hearing decision is that the school's evaluation of your child is appropriate,
you still have the right to an IEE, but not paid for by the school district.

A school district can set a maximum allowable cost for an IEE.

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Parent-Initiated Evaluations

If you obtain an IEE of your child that the school district pays for, or you share an evaluation with the school that you paid for yourself, the school district **MUST**

- consider the results of the IEE of your child if it meets the school district criteria for IEEs, in any decision about providing a free appropriate public education (FAPE) to your child

AND

- You or the district may present the evaluation as evidence at a due process hearing regarding your child

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Dispute Resolution Options

1. Informal Meeting
2. Facilitated Meeting
3. Mediation
4. State Complaint
5. Due Process Complaint/Hearing

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Mediation

- Mediation offers a safe, neutral environment for parties who disagree in order to resolve a specific dispute.
- Mediation does not delay a parent's right to file a state complaint or due process complaint/hearing.
- Voluntary process-parties must agree to mediation.
- A trained, neutral mediator guides parties through the mediation process, assisting in negotiation to resolve differences.
- Conversations are confidential, can't be used in other court proceedings and the agreement is a legally enforceable document.
- No cost to parent or school district.

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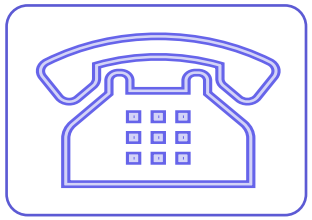
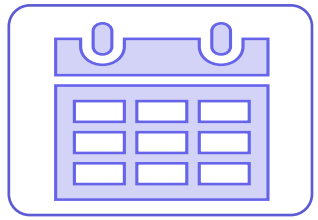
Special Education Mediation Services (SEMS)
Requesting **FREE** Service

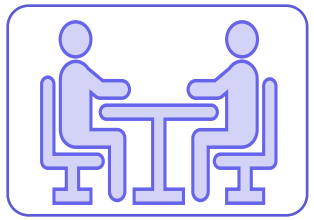


Call 833-KIDS-1ST (833-453-7178)
Mikids1st.org (fill out Request for Services form)

Participate in intake process



SEMS contacts parties, arranges schedules, and processes paperwork



Parties meet

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State Complaint

Written, signed statement that alleges a public agency violated or failed to implement

- state or federal special education rules or regulations related to special education programs and services (IDEA/MARSE)
- an Intermediate School District (ISD) plan
- Michigan Revised School Code (as related to special education)
- a decision by an Administrative Law Judge (due process hearing)

Anyone can file a state complaint. Does not have to be child's parent, person does not have to live in MI

Can be an individual or systemic complaint

State complaint issues related to:

- IEP
- Evaluation
- Discipline
- Free Appropriate Public Education (FAPE)
- Records

State complaint must be filed within one year of alleged violation.

Issues previously decided in a due process complaint involving the same parties, cannot be investigated through a state complaint.

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Due Process Complaint and Hearing

Resolution Meeting

Due process complaint initiated by only

- Parent (including foster, surrogate)
- Public agency (school, ISD, etc.)

Due process complaint must be filed within 2 years of alleged violation.

Due process complaint issues related only to:

- Identification
- Eligibility
- Placement
- Free Appropriate Public Education (FAPE)
- Appeal of the district's Manifestation Determination Review (MDR) decision

In order to request a hearing, you (or your attorney) or the school district must file a due process complaint with MDE.

The school district must convene a **resolution meeting** within **15 calendar days** after the due process complaint is filed and received by the school district.

If the issue is not resolved within **30 calendar days** of Michigan Department of Education receiving your complaint, the due process hearing may occur.

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Educational Placement and “Stay Put”

Generally, your child’s placement is determined by the Individualized Education Program (IEP) team, of which you are a member.

Sometimes the school may want to make a change in your child’s IEP that you don’t agree with. The school must send you prior written notice (PWN)) if they want to make this change.
If you disagree with this change, you can invoke your child’s right to “stay put”.

“Stay put” means that your child must remain in the current educational placement pending the outcome of due process proceeding regarding a due process complaint, unless the parent and school agree otherwise.

BEFORE THE CHANGE OCCURS, as written in the PWN, you must act to show you are disputing the change, by filing a due process complaint requesting a hearing or requesting mediation.

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Exception to “Stay Put”

The school **can** move your child for up to 45 school days (even if you disagree with the move) to an interim alternative educational setting if the current placement is likely to result in injury to your child or others.

- This decision must follow certain procedures.
- The assigned interim alternative setting is an IEP team decision.

During those 45 school days, the school is required to provide services to address the child’s behavioral needs.

When a parent or the school has filed a due process complaint related to disciplinary matters, the child must remain in the interim alternative educational setting (unless parent and school district agree otherwise) pending the due process hearing decision.

Protections for children not yet eligible for special education and related services

Basis of knowledge

Child not determined eligible for special education and related services

Child violates a school code of student conduct and school took disciplinary action

School had knowledge before the behavior that brought about disciplinary action that the child was a child with a disability

Child is protected under IDEA procedural safeguards

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Children with disabilities placed by their parents in private schools

Children with disabilities who are placed by their parents in private schools, do not have the right to a free appropriate public education (FAPE) and do not have an Individualized Education Plan (IEP).

Some services may be provided through a nonpublic school service plan but may be less than what students receive in public schools. This process starts with an evaluation for eligibility for special education services.

Services are determined through a consultation process between the public school district, nonpublic school, and the parent, based on the required share of funding under IDEA and the needs of the student.

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Private (Nonpublic) schools

If your school district fails to provide your child with a free appropriate public education (FAPE), you might be able to enroll your child in a private school at the district's expense.

If you file a due process complaint, and the hearing officer agrees that the private school placement is appropriate, the school district may be required to pay the private school tuition.

If the school district made an offer of FAPE to your child and you decided to place your child in private school, the school district is not required to pay the cost of the education for your child, including special education and related services.

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Key Takeaways

Procedural Safeguards are designed to protect the rights of parents and their child with a disability.

It is important to know and understand these rights and protections so you can participate in your child's education.

Dispute resolution options are available when disagreements arise between parents and schools. Knowing these options will help you effectively advocate for what your child needs to be successful in school.

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