



POLICY AND PROCEDURES FOR SPECIAL EDUCATION: 2007-2008

SECTION 7

PROCEDURAL SAFEGUARDS

I. Procedural Safeguards - General

- A. The district ensures that students with disabilities and their families are afforded their procedural safeguards related to:
1. Access to students' educational records;
 2. Parent and adult student participation in special education decisions;
 3. Transfer of rights to students who have reached the age of majority;
 4. Prior written notice of proposed District actions;
 5. Consent for evaluation and for initial placement in special education;
 6. Independent educational evaluation;
 7. Dispute resolution through mediation, state complaint investigation, resolution sessions, and due process hearings;
 8. Discipline procedures and protections for students with disabilities, including placements related to discipline;
 9. Placement of students during the pendency of due process hearings;
 10. Placement of students by their parents in private schools;
 11. Civil actions; and
 12. Attorney's fees.

Citations:

OAR 581-015-2315 *Notice of Procedural Safeguards*

II. Procedural Safeguards Notice

- A. The District provides to parents a copy of the Procedural Safeguards Notice, published by the Oregon Department of Education, at least once per year and upon initial referral or parent request for special education evaluation and upon any other parent request. The District also gives a copy to the student at least a year before the student's 18th birthday or upon learning that the student is considered emancipated.

- B. The District provides the Procedural Safeguards Notice in the parent's native language or other mode of communication unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the District takes steps to ensure that the notice is translated orally or by other means understandable to the parent and that the parent understands the content of the notice. The District maintains written evidence that it meets these requirements.

Citations:

OAR 581-015-2315 *Notice of Procedural Safeguards*

III. Parent or Adult Student Meeting Participation

- A. The district provides parents or adult 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 adult students written notice of any meeting sufficiently in advance to ensure an opportunity to attend. The written notice:
 - 1. States the purpose, time, and place of the meeting and who is invited to attend;
 - 2. Advises that parents or adult students may invite other individuals who they believe have knowledge or special expertise regarding the student;
 - 3. Advises that the team may proceed with the meeting even if the parents are not in attendance;
 - 4. Advises the parents or adult students who to contact before the meeting to provide information if they are unable to attend; and,
 - 5. Indicates if one of the meeting's purposes is to consider transition services or transition services needs. If so:
 - a. Indicates that the student will be invited; and,
 - b. If considering transition services, Identifies any agencies invited to send a representative (with parent or adult student consent).
- C. The district takes steps to ensure that one or both parents of a child 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 upon time and place.
- D. If neither parent can attend, 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 evaluation planning or eligibility meeting without the parent or adult student if the district provided meeting notice to the parent or adult student sufficiently in advance to ensure an opportunity to attend.

- F. The district may conduct an IEP or placement meeting without the parent or adult student if the district is unable to convince the parents or adult student that they should attend. Attempts to convince the parent or adult student to attend can be considered sufficient if the district:
 - 1. Communicates directly with the parent or adult student and arranges a mutually agreeable time and place and sends written notice to confirm the arrangement; or,
 - 2. Proposes a time and place in the written notice, stating that a different time and place might be requested, and confirms that the notice was received.
- G. If the district proceeds with an IEP or placement meeting without a parent or adult student, 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 parent's home or place of employment and the results of those visits.
- H. The district will take whatever action is necessary to ensure that the parent or adult student understands the proceedings at a meeting, including arranging for an interpreter for parents or adult students who are deaf or whose language is other than English.
- I. After the transfer of rights to an adult student, the district provides written notice of meetings to the adult student and parent, if the parent can be reasonably located. (This provision does not apply to parents of incarcerated youth.) 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. A 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 personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Citations:

OAR 581-015-2190 Parent Participation General

OAR 581-015-2195 Additional Parent Participation Requirements for IEP and Placement Meetings

IV. Surrogate Parents

- A. The district protects the rights of a student with a disability, or suspected of having a disability, by appointing a surrogate parent when:
 - 1. The parent cannot be identified or located after reasonable efforts;
 - 2. The student is a ward of the state or an unaccompanied homeless youth, and there is reasonable cause to believe that the student has a disability, and there is no foster parent or other person available who can act as the parent of the student; or,

3. The parent or adult student requests the appointment of a surrogate parent.
- B. The district secures nominations of persons to serve as surrogates. The district will appoint a surrogate within 30 days of a determination that the student needs a surrogate, unless a surrogate has already been appointed by juvenile court.
 - C. The district will only appoint a surrogate who:
 1. Is not an employee of the district, the Oregon Department of Education, or any other agency that is involved in the education or care of the student;
 2. Is free of any personal or professional interest that would interfere with representing the student's special education interests; and,
 3. Has the necessary knowledge and skills that ensure adequate representation of the child 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. The district may also appoint a surrogate parent at written parent request. When the district appoints a surrogate at parent request, the District will continue to provide a copy of all notices and other information provided to the surrogate to the parent. The district will treat the surrogate as the parent unless and until the parent revokes consent for the surrogate's appointment.
 - H. The district may also appoint a surrogate parent at written adult student request. When the district appoints a surrogate at adult student request, the District will continue to provide a copy of all notices and other information provided to the surrogate to the adult student. The district will treat the surrogate as the parent unless and until the adult student revokes consent for 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 or other person is identified who can carry out the role of parent;
6. The parent, who previously could not be identified or located, is now identified or located;
7. The appointed surrogate is no longer eligible; or,
8. The student moves to another school district; or,
9. The student is no longer a ward of the state or unaccompanied homeless youth.

Citations:

OAR 581-015-2320 Surrogate Parents

V. Transfer of Rights at Age of Majority

- A. When a student with a disability reaches the age of majority, marries, or is emancipated, the district will transfer the rights accorded to the student's parents under the special education laws, to the student.
- B. The district provides notice to the student and the parent that rights 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 those who are incarcerated in a state or local adult or juvenile correctional 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 adult student and to the parent if the parent can be reasonably located.
- F. After rights have transferred to the student, receipt of notice of an IEP meeting does not entitle the parent to attend the meeting unless invited by the student or the district.

Citations:

OAR 581-015-2325 Transfer of Procedural Rights at Age of Majority;

OAR 581-015-2330 Notice of Transfer of Rights at Age of Majority

VI. Prior Written Notice

- A. The district provides prior written notice to the parent of a student, or adult 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 IEP team considered and reasons why those options were rejected;
 - 4. A description of each evaluation procedure, test, record, or report that the district used as a basis for the proposed or refused action;
 - 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 it 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 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 school 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. The parent understands the content of the notice; and,
 - c. There is written evidence that the requirements of this rule have been met.

Citations:
OAR 581-015-2310 Prior Written Notice

VII. Consent

- A. Consent for initial evaluation:
 - 1. The District provides notice and obtains informed written consent from the parent or adult student
 - a. Before conducting an initial evaluation to determine whether a student has a disability (as defined by Oregon law) and needs special education. Consent for initial evaluation is not consent for the district to provide special education and related services.

- b. The district makes reasonable efforts to obtain informed consent from a parent for an initial evaluation to determine a child's eligibility for special education services. If a parent does not provide consent for an initial evaluation or does not respond to a request for consent for an initial evaluation, the school district may, but is not required to, pursue the initial evaluation of the child through mediation or due process hearing procedures. The district does not violate its child find obligations if it declines to pursue the evaluation using these procedures.

B. Consent for initial provision of services:

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

C. Consent for reevaluation:

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

D. Other consent requirements:

1. The district documents its reasonable efforts to obtain parent consent, such as phone calls, letters, and meeting notes.
2. If a parent of a student who is home schooled or enrolled by the parents in a private school does not provide consent for the initial evaluation or the reevaluation, or if the parent does not respond to a request for consent, the district:
 - a. Does not use mediation or due process hearing procedures to seek consent; and
 - b. Does not consider the child as eligible for special education services.

3. If a parent or adult student refuses consent for one service or activity, the district does not use this refusal to deny the parent or child any other service, benefit, or activity, except as specified by these rules and procedures.

E. Exceptions to consent requirements:

1. The district does not need written parent or adult student consent before:
 - a. Reviewing existing data as part of an evaluation or a reevaluation;
 - b. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all students;
 - c. Conducting evaluation tests, procedures or instruments that are identified on a child's IEP as a measure for determining progress; or
 - d. Conducting a screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.
2. The district does not need written parent consent to conduct an initial special education evaluation of a student who is a ward of the state and not living with the parent if:
 - a. Despite reasonable efforts to do so, the district has not been able to find the parent;
 - b. The parent's rights have been terminated in accordance with state law; or
 - c. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
3. The district does not need consent if an administrative law judge determines that the evaluation or reevaluation is necessary to ensure that the student receives a free appropriate public education.

Citations:

OAR 581-015-2000(5) Definition: Consent

OAR 581-015-2090 Consent

OAR 581-015-2095 Exceptions to Consent

OAR 581-015-2190 Parent Participation - General

OAR 581-015-2195 Additional Parent Participation Requirements for IEP and placement Meetings

VIII. Independent Educational Evaluations

- A. A parent of a student with a disability or a suspected disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. 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 districts criteria.
 3. A parent may be limited to one independent educational evaluation at public expense each time the district conducts an evaluation with which the parent disagrees.
- 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 if the evaluation meets district criteria in any decision made with respect to the provision of a free appropriate public education to the student.

Citations:

OAR 581-015-2305 *Independent Education Evaluation*

IX. Mediation

- A. The district or parent may request mediation for any special education matter, including before the filing of a complaint or due process hearing request.
- B. ODE offers mediation at no cost to the parties.
- C. Mediation must be voluntary of the part of the parties, must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques, and may not be used to deny or delay a parent's right to a due process hearing or filing a complaint.
- D. The parties to mediation participate in the selection of the mediator. ODE maintains a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services. Mediators may not be an employee of any school district, the Department of Corrections, the Department of Education. Mediators must not have a personal or professional interest that conflicts with their objectivity.
- E. Each mediation session must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- F. An agreement reached by the parties to the dispute in the mediation process must be set forth in a legally binding written mediation agreement that: 1) states the terms of the agreement; 2) states

that all discussions that occurred during the mediation process remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, and; 3) is signed by the parent and a representative of the school district who has the authority to bind the district to the mediation agreement.

- G. Mediation communication is not confidential if it relates to child or elder abuse and is made to a person who is required to report abuse, or threats of physical harm, or professional conduct affecting licensure.
- H. The mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

Citation

OAR 581-015-2335 Mediation

X. Complaint Investigation

- A. Any organization or person may file a signed, written complaint with the State Superintendent of Public Instruction alleging that a school district or ESD is violating or has violated the Individuals with Disabilities Education Act or associated regulations within one year before the date of the complaint. Upon receiving a parent complaint, the Oregon Department of Education (ODE) forwards the complaint to the district or ESD and along with a request for a district response to the allegations in the complaint.
- B. The District and the complainant may attempt to resolve a disagreement that led to a complaint through mediation. If they decide against mediation, or if mediation fails to produce an agreement, ODE will
- C. Upon receiving a request for response from ODE, the District responds to the allegations and furnishes any requested information or documents within ten business days. The District sends a copy of the response to the complainant. If ODE decides to conduct an on-site investigation, District personnel participate in interviews and provide additional documents as needed.
- D. If ODE substantiates some or all of the allegations in a complaint, it will order corrective action. The District satisfies its corrective action obligations in a timely manner.
- E. If the District disagrees with the findings and conclusions in a complaint final order, it may seek reconsideration by ODE or judicial review in county circuit court.

Citations:

OAR 581-015-2030 Procedures for Complaints as Required by IDEA Regulations

XI. Due Process Hearings

- A. Parent Requests for a Due Process Hearing
 - 1. Parents may request a due process hearing if they disagree with a district proposal or refusal relating to the identification, evaluation, educational placement, or provision of a free appropriate education to a student who may have a disability and be eligible for special education.
 - 2. The parent or an attorney representing the student, must provide notice to the district and to ODE when requesting a hearing. The notice includes:
 - a. The student's name and address (or contact information for a homeless student);

- b. The name of the school the student attends;
 - c. A description of the nature of the parent's disagreement with the district, including facts relating to the problem; and
 - d. A proposed resolution of the problem.
- B. District Request for a Due Process Hearing
1. The district may request a due process hearing regarding the identification, evaluation, educational placement, or provision of a free appropriate education to a student who may have a disability and be eligible for special education.
 2. When requesting a due process hearing, the district or the attorney representing the district, provides notice to the parent and to ODE.
- C. Response to a Request for a Due Process Hearing
1. The party that did not file the hearing request must, within ten days of receiving the request for hearing, send to the other party a response that specifically addresses the issues raised in the hearing request.
 2. If the parent had not yet received prior written notice of the district's proposal or refusal, the district, within ten days of receiving the hearing request for a due process hearing, sends to the parent a response that includes:
 - a. An explanation of why the district proposed or refused to take the action raised in the hearing request;
 - b. A description of other options that the district considered and the reasons why those options were rejected;
 - c. A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action; and
 - d. A description of the factors relevant to the district's proposal or refusal.
- D. Resolution session.
1. Within 15 days of receiving a due process hearing request, the district will hold a resolution session with the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request.
 - a. This meeting will include a representative of the district who has decision-making authority for the district.
 - b. The district will not include an attorney unless the parent brings an attorney.
 - c. The district will provide the parent with an opportunity for the parent to discuss the hearing request and related facts so that the district has an opportunity to resolve the dispute.
 - d. The district and parent may agree in writing to waive the resolution meeting. If so, the 45 day hearing timeline will begin the next business day, unless the district and parent agree to try mediation in lieu of the resolution session.

E. Time limitation and exception

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

F. Hearing Costs

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

Citations:

OAR 581-015-2345 *Hearing Request and Response*
OAR 581-015-2350 *Sufficiency of Hearing Request*
OAR 581-015-2355 *Resolution Process*
OAR 581-015-2385 *Hearing Costs*