

Study Guide

———— An Overview of Procedural Safeguards ————

Section 1

In order to request your child's educational records, write a letter to the school and request a complete copy of your child's entire cumulative file and confidential file, omitting nothing. You want copies of all evaluations, records, correspondence, and other documents the school has about your child. Use a word processor for your letter. Expect to pay a reasonable photocopying fee. Send one letter to the principal of your child's school and one letter to the director of special education. If you do not know the director's name and address, call the main office of the school district and request this information. If your child does not attend a public school, send the letter to the principal of the last public school your child attended. Before you mail these letters, sign them and make copies of the signed letters for yourself. If the child is served by other programs (bilingual, vocational, gifted and talented) or individuals (counselors, nurse, related service, etc.), you should request any files that they have.

Section 2

Develop your own document management system so you will have a clearer understanding of your child's disability and educational needs. Organize your child's file so you will have all the information about your child in one place. This will enable you to track your child's educational history and quickly locate any document in your child's file at the next school meeting and you will gain a sense of control. Develop a list of all individuals and agencies that may have information or records about your child i.e. medical or mental health treatment services, including doctors, therapists, etc. Maintain your list by category of service rendered, e.g., medical, educational, and psychological evaluations. After requesting and receiving your child's educational records, organize the master file in chronological order.

Section 3

Schools must comply with a parent's request to inspect and review records without unnecessary delay before any meeting – regarding an IEP, a hearing or resolution session, and in no case more than 45 days after the request has been made. Schools must respond to reasonable requests for explanations and interpretations of the records. Schools can charge a fee for copies of records made for a parent, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. Schools may not charge a fee for searching for, or retrieving, a child's records for parents.

Section 4

Identification: If you are a parent, the most important definition is likely to be "child with a disability." Your child's classification as a "child with a disability" determines whether your child is eligible for special education and related services under the law. A child with a disability is *not* automatically eligible for special education and related services under IDEA. The key phrase is "who, by reason thereof, *needs special education and related services.*"

Does the child's disability adversely affect educational performance? To be eligible for a free, appropriate public education under the IDEA, the child must meet both criteria.

If a child has a disability but does not need "special education and related services," the child will not be eligible under IDEA but may be eligible for protection under Section 504 of the Rehabilitation Act.

It is important for parents to remember that "good grades" does not automatically mean that the child's educational performance is not "adversely affected". Also, needs in the area of social skills and inappropriate behavior can require specially designed instruction/special education and related services.

Evaluation: The FIE report must be completed no later than **45 school days** from the day the school receives the parent's written consent for the initial evaluation. If the student is absent for 3 or more school days during this period, the timeline is extended by that number of days. The extension for absences does not apply for: children under 5, not enrolled in school, or enrolled in a private or home school setting.

The school must obtain parental consent before conducting the initial evaluation. Parental consent for an evaluation is not consent for the child to receive special education services. The school must obtain informed parental consent before providing special education services.

If the written consent is received at least 35, but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report provided to the parent by June 30. The ARD meeting must be held by the 15th school day of the following year to consider the evaluation. If the consent is received less than 35 school days before the last instructional day, the timeline would end during the first part of the following school year. If the consent is received between the 35th and the 45th school day before the last instructional day, the timeline could end during the first part of the following school year if the student is absent too many days.

Section 5

Parent participation: Families, most particularly parents, are vital participants in early intervention programming, both at an organizational level determining policies and scope and at the individual level where they are intimately involved in determining the EI services that their own child will receive. Organizational and individual levels of involvement drive directly to the effectiveness of the Special Education system overall and for individual children.

Section 6

IDEA and its regulations bring public agencies a new option for providing notices to parents where both parties agree to its use; e-mail. Parents may elect to receive more than just the prior written notice via email (if the public agency makes the option available). Subject to the availability of the option, parents may also agree to receive via email; the procedural safeguards notice, and the notification of a due process complaint. Nothing in the Act or regulations requires that a parent's election of this option be in writing. As the Department observed:

"It would be an unnecessary paperwork burden to require a parent who elects to receive notices by electronic

mail to do so in writing, particularly when there are other methods available to document such a request, for example, by the LEA making a notation of the parent’s verbal request. We believe public agencies should have the flexibility to determine whether and how to document that a parent elects to receive these notices by electronic mail.” (71 Fed. Reg. at 46694) 300.505

Schools can also post the procedural safeguards document on the district website, but must give the parent a paper copy, if that is what the parents want.

Section 7

If the public agency initiates a hearing and the final decision of the hearing officer is that the agency’s evaluation was appropriate, then parents still have the right to an IEE but not at public expense.

Limiting an IEE at public expense for each disputed evaluation – These regulations state that a parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees.

Presenting the results of an IEE as evidence in a due process hearing – Parents should not have the “expectation of privacy regarding an evaluation that is publicly-funded or for which they seek public funding.”

Privately funded evaluations - The regulations also clarify that if a parent shares a privately-funded evaluation with the public agency, that evaluation may be presented as evidence in a due process hearing.

Section 8

Collaborating with other agencies to identify children in need of a surrogate parent – IDEA requires that public agencies have a method for determining whether a child needs a surrogate parent and for assigning one to the child. This requirement is not specifically defined. Therefore, States and, as appropriate, agencies have some discretion in more fully defining the method that will be used. In order to keep children from falling through the cracks between multiple State and local systems, collaboration with individuals and organizations, such as child welfare agencies, juvenile justice personnel, and homeless liaisons, may be an important component to be included in the methods developed to determine the need for and assigning a surrogate parent.

Maintaining the confidentiality of children’s information – Confidentiality protections must be addressed in situations where a public agency involves other parties in its method for determining whether a surrogate parent is needed and in assigning one to the child.

An exception for “wards of the State.” – IDEA’s regulations specify three criteria when the public agency is selecting a surrogate parent. A surrogate parent:

- May *not* be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child;
- May *not* have a personal or professional interest that conflicts with the interest of the child; and

- *Must* have knowledge and skills that ensure adequate representation of the child.

Unaccompanied homeless youth – Thus, a temporary surrogate parent for an unaccompanied homeless youth may include an employee of the State educational agency, or any other agency that is involved in the education or care of the child. The final regulations do not specify a time limit for a temporary surrogate parent representing the child. The Department noted that “the need for a temporary surrogate parent will vary depending on the specific circumstances and unique problems faced by each unaccompanied homeless youth”.

Since this is an overview of Procedural Safeguards, if you need more specific information, the TEA procedures regarding selecting and training surrogate and foster parents can be found in the TEA commissioner’s rules at TAC 89.1047.

Section 9

States also recognize that, despite reaching the age of majority, an individual may not have the ability or fitness to exercise such rights and responsibilities as entering into binding contracts without parental approval, executing a valid will, and voting. State law defines this as “incompetence” and a court with proper jurisdiction can judge an individual to be legally unfit to make certain types of decisions or carry out certain duties for themselves or “incompetent.” The rights and responsibilities for educational decision-making, participation in meetings, and dispute resolution may be shifted from the parents to the ‘adult’ child. The one right that must be given to both parents and the ‘adult’ child is the right to all notices required under Part B of the IDEA, such as prior written notice, the procedural safeguards notice, and notice of ARD meetings. The age of majority regulation also allows the transfer of parental rights at the age of majority to children not determined incompetent who are incarcerated in an adult or juvenile, State or local correctional institution. To ensure that both the parent and the child are informed of the transfer of rights, the public agency has specific notice requirements it must fulfill. In addition to the notice provision mentioned above, notice must be given to the student as part of the ARD process, as part of talking about transition planning designed to help prepare students with disabilities for the adult world. In brief, beginning no later than one year before the child reaches the age of majority, the IEP must include a statement that the student has been informed of the transfer of rights, if any, which will occur at the age of majority.

Although States may provide that parental rights transfer to a child at age of majority, there is nothing in the statute or regulations that requires the child to exclude his or her parents from participating in educational decisions. Continued parental participation and the extent of that participation is a decision made by the adult child.

Section 10

Overview of Dispute Resolution Options:

Discussion or Conference - The first step in avoiding and resolving disagreements is for parents and school personnel to simply sit down together and communicate. This is pure common sense and good team practice. Ask questions, listen to answers, share information, brain storm and problem solve – together, as

mutual advocates for the child – not as adversaries with opposing agendas. If informal collaborative efforts are unsuccessful, the following more formal processes of dispute resolution are available to schools and parents.

ARD Review Meeting - Parents may request a meeting to review their child's IEP at any time they feel that the services their child is receiving are inappropriate or insufficient, or if he or she is not making progress. The public agency may do the same. If the child has received an independent educational evaluation, the ARD meeting may be an appropriate time to consider the results of that evaluation. A good thorough look at the child's needs and at the resources that can be accessed may help to clarify what to do and/or reach a compromise or trial period for a new or revised approach.

ARD Meeting Facilitation - The ARD committee may also consider utilizing a facilitated approach to the IEP. Education Service Centers have and can provide training to individuals on facilitated ARD meetings. A facilitator helps keep members of the ARD committee focused on the development of the IEP while addressing conflicts and disagreements that may arise during the meeting. At the meeting, the facilitator will use communication skills that create an environment in which the ARD committee members can listen to each member's point of view and work together.

Mediation - Mediation is another means of resolving a dispute and reaching consensus that involves sitting down together, each side presenting their views of the dispute and desired resolution. Mediation can be initiated by either schools or parents, is completely voluntary, and is facilitated by a trained, qualified, impartial mediator provided by the State. Most often, mediation involves the people most directly involved in a child's education - school personnel and parents - and most often an attorney. And while it is a structured (formal) process, it is an inherently more flexible one than the legal proceedings required for a due process hearing. A successful mediation results in a legally binding, enforceable agreement between the school and parents, and perhaps best of all, the agreement is one to which both sides have committed.

Resolution Meeting - Called "Resolution Sessions" in the statute, the process is a new option available to resolve disputes. In the regulations the option is called "Resolution Meetings" and is IDEA's attempt to get the parties to resolve their differences short of going to due process, which generally is more adversarial and costly. The LEA must convene the resolution meeting within 15 days of receiving notice of the parent's due process complaint and prior to the hearing. The purpose of the meeting is for the parent of the child to discuss the due process complaint he or she has filed and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute. The LEA cannot have a lawyer present unless the parent does. This meeting is not required if the parent and the school agree in writing to waive the meeting or if they agree to use the mediation process.

Due Process Hearing - Both the parents and the public agency may request a due process hearing to resolve a dispute about the child's identification, evaluation, or educational placement, or any aspect related to the provision of FAPE to the child. The filing of a due process complaint can lead to mediations, a resolution session, and/or to a hearing.

The due process hearing moves resolution of the dispute out of the hands of the school and parents and places this authority in the hands of a hearing officer. The parties involved in a dispute process hearing present their issues and claims in a formal legal setting, utilizing evidences such as witnesses, testimony,

documents, and using legal arguments. Typically, each side is represented by an attorney and the conduct of the hearing is similar in tone and execution to a legal proceeding in a courtroom.

After all evidence and legal arguments have been presented, the hearing officer rules on each matter under dispute and issues a written decision that must include findings of fact and a decision. The decision of the hearing officer stands as the administrative decision on the issues raised at the hearing. In Texas, appeal is directly to a federal or State court. Texas now allows parents to be represented by non-attorneys.

At times, while working through the dispute resolution process, parents may decide to remove their child from the public school and place him/her in a private school that the parent believes can provide educational benefit. If the public school has failed to make FAPE available to the child, the public school may be required, if they are found to be in violation, to pay for the costs of the private school education.

State Complaint - A State complaint consists of a written communication to the SEA alleging violation under Part B of the IDEA. The State is required to investigate the complaint, allow the complainant to submit additional information, obtain a response from the LEA, and make an independent determination as to whether a violation has occurred. This includes findings of fact, conclusions, and the reasons for the SEA's final decision.

If the SEA finds a failure to provide appropriate services to a child, the SEA must address this through corrective action to address the needs of the child (such as compensatory services or monetary reimbursement) and to ensure appropriate future provision of services for all children with disabilities.

Section 11

Discipline Procedures - The 2004 Amendments to IDEA include specific provisions that address the discipline of children with disabilities who violate a school code of student conduct and in so doing, become subject to disciplinary action by the public agency. The final Part B regulations include significant improvements in discipline procedures that attempt to balance the protection of children's rights while giving school personnel the authority to maintain safety and order for the benefit of all children. The new requirements simplify the discipline process over how this was delineated under IDEA '97 and make it easier for school officials to discipline children with disabilities when discipline is appropriate and justified. At the same time, the new regulations retain provisions from the IDEA '97 regulations and revise others to ensure that the rights of children with disabilities and their families are protected.

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