



**INFANT AND TODDLER INTERVENTION  
PROCEDURAL SAFEGUARDS NOTICE**

Division of Compliance and Assistance  
June 2009

---

**INTRODUCTION**

This brochure provides an overview of parental special education rights for early childhood special education students. These rights are sometimes called procedural safeguards. This Notice of Procedural Safeguards must be given to you the first time you or the district requests a due process hearing in a school year.

**PRIOR WRITTEN NOTICE**

The district must provide you with prior written notice within a reasonable time frame before each time it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, and education placement of your child or the provision of appropriate early intervention services to your child and the child's family. This written notice must include sufficient detail to inform you of:

1. A description of the action proposed or refused;
2. An explanation of why the district proposes or refuses to take the action;
3. All procedural safeguards that are available under the Part C federal regulations, including consent, right to decline service, a child's right to a surrogate parent, mediation, due process procedures, and confidentiality; and,
4. The state complaint procedures, including a description of how to file a complaint and a timeline for those procedures.

The notice must be in a language understandable to the general public and provided in the native language of the parent unless it is not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication; and that there is written evidence that these requirements have been met. If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (ex, sign language, Braille, or oral communication).

**FOR MORE INFORMATION**

If you need help in understanding any of your procedural rights or anything about your child's education, please contact your child's early childhood special education coordinator, the school district's special education director or the person listed below. This notice must be provided in your native language or other mode of communication you may be using.

If you have any questions or would like further information, please contact:

Name Kathryn Hagen

Phone 952.848.4223

For further information, you may contact one of the following organizations:

ARC Minnesota (advocacy for persons with developmental disabilities)  
www.thearcofminnesota.org  
651-523-0823, 1-800-582-5256

Minnesota Association for Children's Mental Health  
www.macmh.org  
651-644-7333, 1-800-528-4511

Minnesota Disability Law Center  
www.mndlc.org  
612-332-1441, 1-800-292-4150,  
612-332-4668 (TTY)

PACER (Parent Advocacy Coalition for Educational Rights)  
www.pacer.org  
952-838-9000, 1-800-53-PACER,  
952-838-0190 (TTY)

Minnesota Department of Education  
www.education.state.mn.us  
651-582-8689, 651-582-8201 (TTY)

## **PARENTAL CONSENT**

### **Definition of Consent**

Consent means that you have been fully informed in your native language (meaning the language or mode of communication normally used by the parent, or other mode of communication), of all information relevant to the activity for which your written permission is sought and that you fully understand and agree in writing with carrying out the activity for which consent is sought. The consent must describe the activity and list records that will be released, and to whom. Consent is voluntary and may be revoked at any time.

### **When District Must Obtain Your Consent**

The district must obtain your consent before conducting its initial evaluation and assessment of your child and before the first time it

provides early intervention services to your child.

Your consent is required before the initial provision of special education and related services and placement. If you refuse consent to the initial provision of services to your child, the district may not override your refusal.

### **Parent's Right to Object**

You have a right to object in writing to any action the district proposes within 14 calendar days upon receipt of proposal. Upon receipt of your written objection, the district will ask you to attend a conciliation conference. You and the district may also agree to use mediation, or a facilitated Individual Family Service Plan (IFSP) team meeting to resolve your disagreement.

### **Parent's Right to Decline Consent**

If you decline consent, the district must make reasonable efforts to ensure that you are fully aware of the nature of the evaluation and assessment or the early intervention services that would be available and that you understand that your child will not be able to receive an evaluation and assessment or receive early intervention services unless you do consent.

### **Personally Identifiable Information**

Personally identifiable information is information that includes your child's name, your name (parent's name) or other family member's name, your child's address, a personal identifier, such as your child's or your Social Security number, or a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Your consent is required before a district may disclose personally identifiable information about you or share such data with anyone other than officials of participating agencies collecting or using the information under the Individuals with Disabilities Education Act (IDEA) or for any purpose other than meeting a requirement of that law. Please refer to 34

C.F.R. Part 99 for additional information on consent requirements concerning data privacy under federal law.

### **Accessing Private Insurance**

Your consent is required before the district may access your private insurance to pay for services. Your refusal to provide this consent does not release the district from ensuring all required services are provided at no cost to you. If you refuse to provide consent for the district to access your private health care coverage, the district must still provide appropriate early intervention services.

### **PARENTAL RIGHT TO DECLINE SERVICES**

You can decide whether or not to accept or decline any early intervention service. You can decline a service after first accepting it without jeopardizing other early intervention services your child may receive.

### **CHILD'S RIGHT TO A SURROGATE PARENT**

A child with a disability whose parent cannot be identified or located using reasonable efforts, or who is a ward of the state, has the right to have a surrogate parent assigned to them.

### **WRITTEN ANNUAL NOTICE RELATING TO IFSP HEALTH-RELATED SERVICES REIMBURSEMENT**

The district must inform you with annual written notice of:

1. Its intent to seek reimbursement from medical assistance or MinnesotaCare for IFSP health-related services provided by the district;
2. Your right to request a copy of all records concerning IFSP health-related services disclosed by the district to any third party; and,
3. Your right to withdraw consent for disclosure of a child's records at any time without consequence.

### **INDIVIDUAL FAMILY SERVICE PLANS (IFSP)**

Children with a disability between birth and age 3 have a right to receive an IFSP. An IFSP is a written plan that is developed by a team to record the family's goals for themselves and their child, list the services that will best help reach those goals, and describe when, where and how services will be delivered. The parent and other family members work with the service coordinator and other providers (if appropriate) to create the IFSP. Parents may invite anyone they wish to their IFSP meetings, including an advocate. The IFSP is reviewed at least every six months or more frequently if requested. Parents are involved in planning the time, date and place of these meetings to ensure their participation. Parents may request a review of their IFSP at any time, even if one recently took place.

### **THE RIGHT TO RECEIVE SERVICES IN NATURAL ENVIRONMENTS**

IFSP services are focused on the family's and child's daily routines and are designed to be carried out within regular activities. This helps caregivers learn strategies for teaching the child new skills that may be practiced throughout the day. When a service needs to be provided anywhere other than a natural environment the IFSP team must provide written justification on the IFSP.

### **EDUCATION RECORDS**

#### **Your Access to Records**

If you want to look at your child's education records, the district must give you access to those records for your review. Education records include most of the information about your child that is held by the school, including evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with your child, and any other records about your child and family. However, information held solely by your child's teacher

for his or her own instructional use may not be included in the education records.

The district must allow you to review the records without unnecessary delay. In addition, the district must comply with your request to review your child's education records immediately, if possible, or within 10 days of the date of the request (excluding Saturdays, Sundays and legal holidays), if immediate compliance is not possible

Your right to inspect and review records includes the right to:

1. An explanation or interpretation of your child's records upon request; and,
2. Request that the district provide copies of your child's educational records to you.

#### **Record of Access by Others**

The district must keep a record of each request for access to, and each disclosure of, personally identifiable information in your child's education records. This record of access must include the name of the individual who made the request or received personally identifiable information from your child's education records, and the purpose of the disclosure or the individual's legitimate interest in the information.

#### **Consent to Release Records**

Parent consent is required before personally identifiable information is released to unauthorized individuals or agencies. The consent must be in writing and must specify the individuals or agencies authorized to receive the information; the nature of the information to be disclosed; the purpose for which the information may be used; and a reasonable expiration date for the authorization to release information. Upon request, the district must provide you with a copy of records it discloses after you have given this consent.

The district may not disclose information contained in your child's IFSP, including

diagnosis and treatment information, to a health plan company without your signed consent.

#### **Fees for Searching, Retrieving and Copying Records**

The district may not charge a fee to search or retrieve records. However, if you request copies, it may charge a reasonable fee for the copies, unless charging that fee would prevent you from exercising your right to inspect and review the education records because you cannot afford to pay it.

#### **Amendment of Records at Parent's Request**

If you believe that information in your child's records is inaccurate, misleading, incomplete or in violation of your child's privacy or other rights, you may request that the district amend the record.

The district must decide within a reasonable time whether it will amend the records. If the district decides not to amend the records, it must inform you of its decision and inform you of your right to a hearing to challenge the district's decision.

#### **Destruction of Records**

The district shall not destroy any education records if there is an outstanding request to inspect or review the records.

### **MEDIATION**

Mediation is a voluntary process to help resolve disputes. You or your district may request mediation from the Minnesota Special Education Mediation Service (MNSEMS) at 651-582-8222 or 1-866-466-7367. Mediation uses a neutral third party trained in facilitative dispute resolution techniques. Mediation may not be used to deny or delay your right to a due process hearing. Both you and district staff must agree to try mediation before a mediator can be assigned. At any time during the mediation, you or the district may end the mediation.

## WRITTEN COMPLAINTS

Any organization or individual may file a complaint with the Minnesota Department of Education (MDE). Complaints sent to MDE must:

1. Be in writing and be signed by the individual or organization filing the complaint;
2. Allege violations of state or federal special education law or rule; and,
3. State the facts upon which the allegation is based.

The complaint must be sent to:

Minnesota Department Education  
Division of Compliance and Assistance  
Due Process Supervisor  
1500 West Highway 36  
Roseville, MN 55113-4266  
651.582.8689 Phone  
651.582.8725 Fax

The complaint must be received by MDE no later than one year after the alleged violation occurred. MDE will issue a written decision within 60 days. If the parent or organization who filed the complaint disagrees with the decision, the final complaint decision may be appealed to the Minnesota Court of Appeals within 60 days of receipt of the decision.

## IMPARTIAL DUE PROCESS HEARING

Both you and the district have a right to request in writing an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

Any school district administrator receiving a request for a due process hearing must immediately forward the request to the MDE commissioner. The commissioner must appoint a hearing officer within two business days of receiving the request for a due process hearing,

A due process hearing may address any matter related to the identification, evaluation, educational placement, manifestation determination or provision of a free, appropriate public education to your child. Within 15 days of receiving notice of your due process complaint, and prior to the due process hearing, the school district must arrange for a resolution meeting with you and the relevant members of the IFSP Team who have knowledge of the facts alleged in the due process complaint.

The purpose of this meeting is for the parent to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district has the opportunity to resolve the dispute. The resolution meeting need not be held if you and the school district agree to waive the meeting or agree to mediation. If the matter is not resolved within 30 days of the request, the hearing timelines begin.

If the school district is unable to obtain your participation in the resolution meeting or mediation after reasonable efforts have been made and the school district does not agree to waive the meeting in writing, the school district may, at the conclusion of the 30 day period, request that a hearing officer dismiss the parent's due process complaint.

## Procedures for Initiation of a Due Process Hearing

All written requests must include:

1. The name of your child;
2. The address of your child;
3. The name of the school your child is attending;
4. A description of the problem(s), including your view of the facts; and,
5. A proposed resolution of the problem to the extent known to you at the time.

MDE will appoint an impartial hearing officer to conduct the hearing. Below are a few of your rights at hearing. This is not a complete list of rights.

Both you and the district have the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront, cross-examine and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing, including evaluation data and recommendations based on that data; and,
4. Receive a free copy of the hearing transcript or electrical recording of findings of fact and decisions.

As a parent, you, specifically, have the right to:

1. Have your child, who is the subject of the hearing, present; and,
2. Open the hearing to the public.

A hearing decision must be issued within 45 calendar days upon the expiration of the 30-day resolution period after the due process complaint was received by the state agency. A hearing officer is encouraged to accelerate the timeline to 30 days for a child under the age of three whose needs change rapidly and who requires quick resolution of a dispute. A hearing officer may order an independent evaluation of your child at school district expense during a due process hearing. A hearing officer may not extend the time line beyond the 45-day period unless requested by either party for good cause shown on the record. Extensions of time must not exceed a total of 30 calendar days unless both parties and the hearing officer agree or time is needed to complete an independent educational evaluation. The hearing decision is final unless you or the district files a civil action.

#### **Disclosure of Additional Evidence Before a Hearing**

A prehearing conference must be held within 5 business days of the date the commissioner appoints a hearing officer. This conference can

be held in person, at a location within the district, or by telephone. At least 5 business days before a hearing you and the district must disclose to each other all evaluations of your child completed by that date and recommendations based on those evaluations that are intended to be used at the hearing. A hearing officer may refuse to allow you to introduce any undisclosed evaluations or recommendations at the hearing without consent of the other party.

#### **CIVIL ACTION**

When you or the district disagree with the findings or decisions made by a hearing officer, either party may file a court action. The action may be brought in federal district court or the state court of appeals. Different standards of review apply in each court. An appeal to the state court of appeals must be made within 60 days of your receipt of the decision. An appeal to federal district court must be made within 90 days of the date of the decision.

#### **PLACEMENT DURING A HEARING OR CIVIL ACTION**

During a hearing or court action, unless you and the district agree otherwise, your child will remain in the education placement where he/she is currently placed and must not be denied initial admission to school. This is commonly referred to as the "stay-put" rule.

#### **EXPEDITED HEARINGS**

Expedited hearings may occur in the following situations:

1. Whenever you request a hearing to dispute the district's determination that your child's behavior was not a result of his/her disability;
2. Whenever you request a hearing to dispute a 45-day interim alternative education placement order by school personnel; or,
3. When a district requests an expedited hearing to establish that it is dangerous for

your child to remain in the current placement.

Expedited hearings must be held and a decision issued within 10 calendar days of the expiration request for hearing. A hearing officer may extend the request for a hearing by up to five additional calendar days. If the school district is

unable to obtain your participation in the resolution meeting or mediation after reasonable efforts have been made and the school district does not agree to waive the meeting in writing, the school district may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.