

PARENTAL
RIGHTS
IN
SPECIAL
EDUCATION

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Nebraska Department of Education
Special Populations Office
301 Centennial Mall South
P.O. Box 94987
Lincoln, NE 68509-4987

PARENTAL RIGHTS IN SPECIAL EDUCATION

As the parent of a child who may have a disability, you have certain rights which are guaranteed by state and federal law. These rights are listed in this brochure. If you would like a full explanation of them, please contact your local school district superintendent or director of special education or the Nebraska Department of Education, 301 Centennial Mall South, P.O. Box 94987, Lincoln, Nebraska 402-471-2471.

Both you and the school district share in the education of your child with a disability. If you or the school have concerns about the education of your child, you and your child's special education teacher should hold early and open discussions about the issues. You are urged to become actively involved in your child's education process.

EVALUATION

Evaluation means procedures used in accordance with 92 NAC 51-006 (Rule 51) to determine whether a child has a disability and the nature and extent of the special education and related services needed. A special education evaluation includes information provided by the parents.

PRIOR WRITTEN NOTICE

1. You have the right to receive a written notice a reasonable time before the school district **PROPOSES** or **REFUSES** to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child. The notice shall include:
 - (a) a description of the action proposed or refused by the school district;
 - (b) an explanation of why the action is proposed or refused;
 - (c) a description of any other options the school district considered and the reasons why those options were rejected;
 - (d) a description of each evaluation procedure, test, record, or report used as basis for the action proposed or refused;
 - (e) a description of any other factors relevant to the school district's decision;
 - (f) a statement that you have protection under the procedural safeguards set forth in the federal law, and the means by which you may obtain a copy of a description of those procedural safeguards; and
 - (g) sources for you to contact to obtain assistance in understanding your rights.

A copy of the procedural safeguards must be given to you, at a minimum:

- (i) upon initial referral for evaluation;
 - (ii) upon each notification of an individualized education program meeting;
 - (iii) upon reevaluation of the child; and
 - (iv) upon filing for a due process hearing.
2. This notice must be written in language understandable to the general public and provided in your native language or other principal method of communication unless it is clearly not feasible to do so. If your method of communication is not a written language, you have the right to be notified orally or by other means. The school district must take steps to ensure that you understand the information provided in this notice.

CONSENT

Consent means: (a) that you have been fully informed in your native language or other mode of communication of all information relevant to the activity for which consent is sought; (b) that you understand and agree in writing to the activity for which consent is sought; (c) there is a description of the

activity and lists of records (if any) which will be released and to whom; and (d) that written consent is voluntary and may be revoked at any time.

You must give written consent before a school district conducts an initial evaluation or reevaluation for your child and before the district makes an initial placement in a special education program. Your consent for an evaluation will not be construed as consent for initial placement. You may refuse, withdraw or revoke consent at any time. If you revoke consent, that revocation is not retroactive which means that your revocation of consent does not negate an action that has occurred after your consent was given but before your consent was revoked. If you refuse consent, the school district must take appropriate action which may include the initiation of a due process hearing to determine if your child may be evaluated, reevaluated or initially placed in a special education program without your consent. A hearing officer may order an initial evaluation, reevaluation or initial placement in a special education subject to your right to appeal the hearing officer's decision.

Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is given to all children unless, before giving the test or evaluation, consent is required of parents of all children. If a school district has attempted to obtain your consent for a reevaluation and you have not responded to their requests for consent, the district may conduct the evaluation without your consent, provided that the school district can demonstrate that it had taken reasonable efforts to obtain your consent and you failed to respond to their requests. A school district may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the school district, except as required in Rule 51.

RECORDS

1. You have the right to inspect and review all education records with respect to the identification, evaluation and educational placement of your child and the provision of a free appropriate public education to your child.
2. You have the right to have your request to review records met:
 - (a) without unnecessary delay;
 - (b) prior to any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of your child; and
 - (c) no later than 45 days after your request.
3. The school district must respond to reasonable requests for explanations and interpretations of the information in the records.
4. Upon your request you will be provided a list of the types and locations of education records collected, maintained or used by the school district.
5. The school district will provide you with copies of the records if failure to obtain copies would keep you from reviewing or inspecting the records. The school district may charge a fee for the copies if it doesn't keep you from reviewing the records. The school district may not charge a fee to search for or to retrieve records.
6. A representative of your choice may inspect and review the records.
7. You may give or withhold consent to disclose your child's records.
8. The school district must keep a record of persons obtaining access to your child's records which includes the name of the party, date access was given and the purpose for which the party is authorized to use the records.
9. If the record contains information about more than one child, you may inspect and review only the information relating to your child.
10. The school district may presume that you have the authority to look at records relating to your child unless the school district has other information that denies you authority under state law (guardianship, divorce).
11. You may request that the school district amend the information in the record if you believe that the information is inaccurate or misleading or violates the privacy or other rights of your child. If the school district agrees to amend the education record, the record must be amended within a reasonable period of time.
12. You may request a hearing if the school district refuses to amend the record as you requested. If you request a hearing to challenge information in your child's record, the school district must provide the hearing. If, as a result of the hearing, the school district decides that the information:

- (a) is inaccurate, misleading or a violation of privacy, the district must amend the record and inform you in writing of the amendment; or
- (b) is not inaccurate, misleading or a violation of privacy, the district must inform you of your right to place in the records a statement setting forth your reasons for disagreeing with the school district's decision. This statement must be maintained with the contested portion of the record as part of the education record as long as the record is maintained by the school district and included with any request for disclosure.

The participating agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child. The information which is no longer necessary to provide educational services to the child, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

INDEPENDENT EDUCATIONAL EVALUATION

An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the public school responsible for the child's education. You have the right to request an independent educational evaluation at public expense if you disagree with the educational evaluation provided by the school district. Public expense means that the public school either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent. The school district must provide you with information upon request as to how and where to obtain an independent evaluation and the district's criteria applicable for independent educational evaluations. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation (to the extent that those criteria are consistent with the parent's right to an independent educational evaluation). Except for the district's criteria, the district may not impose conditions or timelines related to obtaining an independent educational evaluation. If you request an independent educational evaluation, the school district may ask for the reason you object to the district's evaluation. However, your explanation may not be required and the district may not unreasonably delay either providing the independent educational evaluation or initiating a due process hearing to demonstrate the appropriateness of the district's evaluation.

The school district may initiate a due process hearing to show that its evaluation is appropriate. If a hearing officer requests an independent educational evaluation as part of the hearing, the cost of the evaluation must be at public expense. If the final decision in the hearing is that the school district's evaluation is appropriate, you still have the right to an independent educational evaluation but not at public expense. If you obtain an independent educational evaluation at your own expense, the school district must consider the results of the independent educational evaluation in any decision it makes about your child's educational program. You may present the results of an independent educational evaluation at a due process hearing.

MEDIATION

Mediation is a process in which a neutral third person who is qualified to mediate special education disputes meets with parents, school personnel, and others involved in a disagreement about any part of the special education process. The mediator asks all parties to communicate their issues, concerns, and interests to each other and manages the mediation process to achieve a mutually beneficial agreement that is acceptable to all the parties. There is no charge to school districts or parents for using the mediation option. Parents and school districts cannot be required to use this process because mediation is voluntary for all parties. Mediation may not be used to deny or delay a parent's right to a due process hearing. Discussions that occur during the mediation process are confidential and may not be used as evidence in any future due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge. If you are interested in mediation, contact a regional mediation center for information or to initiate a mediation. Addresses and phone numbers of approved mediation centers are available through your local principal, school district administrator, director of special education or the Nebraska Department of Education.

OPPORTUNITY TO PRESENT A COMPLAINT TO THE STATE DEPARTMENT OF EDUCATION

You have a right to make a written complaint to the Nebraska Department of Education if you believe that the school district is not following state or federal laws or regulations concerning the education of your child. Each complaint must be in writing and must contain a detailed explanation of the facts relating to the alleged violation. Each complaint must be signed by you.

When a written complaint is received, NDE staff will conduct an investigation and provide a written report to the person or agency making the complaint and to the school district. If the complaint is found to be justified, the report will contain corrective actions and timelines for the school district.

If a written complaint is received that is also the subject of a due process hearing under 92 NAC 55, or contains multiple issues of which one or more are part of a hearing, the Special Education Office officials shall set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limits and procedures for complaints.

If an issue is raised in a complaint filed with the Nebraska Department of Education that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding, and the Nebraska Department of Education must inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision must be resolved by the Nebraska Department of Education.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is unreasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

REQUESTING A SPECIAL EDUCATION DUE PROCESS HEARING

Your child with a disability has a right to a free appropriate public education. At times, you may disagree with the school district's identification, evaluation or proposed placement of your child with a disability. Every attempt should be made to resolve these differences with the local school district as soon as they arise. If they cannot be resolved, you may request a due process hearing. To request a due process hearing, you must file a petition with the Nebraska Department of Education, 301 Centennial Mall South, P.O. Box 94987, Lincoln, NE 68509. A sample petition is contained in the back of Rule 55 (92 NAC 55) which can be obtained from the Department of Education.

The petition must contain the following information;

1. The name and address of the petitioner and shall be signed by the party filing the pleading (or when represented by an attorney, the signature of the attorney);
2. The name and address of the school district or educational agency against whom the complaint is made;
3. The name of the child whose special education is the subject of the hearing, the address of the residence of the child, and the name of the school the child is attending;
4. A description of the nature of the problem of the child relating to the proposed or refused initiation of, or change in, the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education to the child including facts relating to the problem; and
5. A proposed resolution of the problem to the extent known and available to the parents at the time.

A parent's right to a due process hearing shall not be denied or delayed for failure to provide the information in the petition.

Forms for filing a due process hearing are available from the Nebraska Department of Education, P.O. Box 94987, Lincoln, NE 68509-4987. The due process hearing will be conducted by a hearing officer appointed by the Nebraska Department of Education (NDE). NDE maintains a list, including qualifications, of persons who serve Nebraska as hearing officers.

Written copies of the findings and decision are provided to the Nebraska Special Education Advisory Council and are available to the public. The due process hearing decision is final unless one of the parties appeals the decision.

DUE PROCESS HEARING

You have the right to:

1. Initiate a due process hearing on any matter relating to the proposal or refusal of a school district to initiate or change the identification, evaluation, educational placement or free appropriate public education of your child or placement of your child in an alternative educational setting as the result of disciplinary action.
2. Have the hearing conducted by an impartial hearing officer who is not employed by a public agency involved in the education or care of your child or who may have a personal or professional conflict of interest.
3. Have the hearing scheduled at a time and place reasonably convenient to you and your child. During the hearing procedures, you have the right to:
 - (a) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to children with disabilities;
 - (b) present evidence and confront, cross-examine and compel the attendance of witnesses;
 - (c) prohibit the introduction of any evidence at the hearing that has not been shared at least five business days prior to the hearing. At least five business days before the due process hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may stop any party who fails to follow this requirement from introducing the evaluation or recommendation at the hearing without the permission of the other party.
 - (d) obtain a written or electronic verbatim record of the hearing;
 - (e) open the hearing to the public if you desire;
 - (f) have the child present during the hearing;
 - (g) obtain written or electronic findings of fact and decisions no later than 45 days after the request of the hearing unless waiver of timelines is granted by hearing officer at the request of either party.
4. Be informed of any free, low-cost legal or other relevant services if you request the information or you or the school district initiates a due process hearing.
5. Have your child remain in the present educational placement unless you agree in writing to other arrangements. If the dispute is over initial admittance to school, you have the right to have your school-aged child placed in a public school program with your consent until the hearing proceedings are over.
6. Appeal the decision to court or bring civil action. The school district also has the right to appeal. If you prevail in any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees.

CIVIL ACTION

Any party who does not agree with the findings and decisions made by the hearing officer has the right to file a court action. The action may be brought in state court or in federal district court. In any civil action, the court:

1. will receive the records of the administrative proceedings;
2. will hear additional evidence at the request of a party; and
3. basing its decision on the preponderance of the evidence, will grant such relief as the court determines is appropriate.

PLACEMENT DURING PENDENCY OF DUE PROCESS OR JUDICIAL PROCEEDINGS

During any due process or judicial proceedings, unless the school district and you otherwise agree, the child remains in the educational placement where he/she is, or if applying for initial admission to school, is placed in the public school program until such proceedings have been completed. However, a hearing officer or judge may order a different placement.

ATTORNEYS' FEES

In any action or proceeding brought under the Individuals with Disabilities Education Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party in the action. The amount that the parent will be reimbursed will be based on the prevailing rates in the community for the kind and quality of the attorney's services furnished. No bonus or multiplier may be used in calculating the attorney's fees awarded.

No award of attorneys' fees may be made for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative hearing, any time more than 10 days prior to the hearing;
2. The offer is not accepted within 10 days; and
3. The court finds that the relief finally obtained by the parent who is the prevailing party is not more favorable to the parents than the offer of settlement.

Notwithstanding the provisions of the above paragraph, an award of attorneys' fees may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for mediation that is conducted prior to the filing of a request for a due process hearing.

The court will reduce, accordingly the amount of attorneys' fees awarded whenever the court finds:

1. The parent during the course of the action or proceeding, unreasonably protracted the final resolution of the case;
2. The amount of the attorneys' fees otherwise authorized unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, experience and reputation;
3. The time spent and legal services furnished were excessive considering the nature of the case; or
4. The attorney representing the parent did not provide to the school district the appropriate information regarding the prior notice requirement informing the school district of the intent of the parent to file a due process petition.

The provisions of this paragraph shall not apply in any action or proceeding if the court finds that the State or local school district unreasonably protracted the final resolution of the case or there was a violation of Section 615 of the IDEA.

PLACEMENT IN AN ALTERNATIVE SETTING

School personnel may order a change in placement of a child with a disability:

1. to an appropriate temporary alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days if such actions may be applied to children without disabilities; and
2. to an appropriate temporary alternative educational setting for the same amount of time that a child without a disability is subject to discipline, but for not more than 45 days if:
 - (a) the child carries a weapon to school or to a school function; or
 - (b) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

Either before, or not later than 10 days after, taking a disciplinary action:

1. if the school district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior occurred that resulted in the suspension, the school district shall conduct a functional behavioral assessment of the child and hold an IEP meeting to develop a behavioral intervention plan to address the behavior; or

2. if the child already has a behavioral intervention plan, hold an IEP team meeting to review the plan and modify it, as necessary, to address the behavior.

A hearing officer may order a change in the placement of a child with a disability to an appropriate temporary alternative educational setting for not more than 45 days if the hearing officer:

1. determines that the school district has shown by substantial evidence that keeping the child where he/she is now is most likely to result in injury to the child or to others;
2. considers the appropriateness of the child's current placement;
3. considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
4. determines that the temporary alternative educational setting:
 - (a) was determined by the IEP team;
 - (b) was selected so as to permit the child to continue to participate in the general curriculum although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will permit the child to meet the goals set out in the IEP; and
 - (c) includes services and modifications designed to address the behavior for which the child was suspended so that it does not recur.

UNILATERAL PLACEMENT BY PARENTS OF CHILDREN INTO NONPUBLIC SCHOOLS

A school district is not required to pay for the cost of education, including special education and related services, for a child with a disability at a nonpublic school if the school district has made a free appropriate public education available to the child. However, if the parents of a child with a disability, who previously received special education and related services from a school district, enroll the child in a nonpublic school without the permission of, or a referral by, the school district, a court or hearing officer may require the school district to reimburse the parents for the cost of that enrollment, if the court or hearing officer finds that the school district had not made a free appropriate public education available to the child in a timely manner prior to the enrollment and that the nonpublic placement is appropriate.

Reimbursement to parents may be reduced or denied if:

1. at the most recent IEP meeting that the parents attended before removing the child from the public school, the parents did not inform the IEP team that they were refusing the placement proposed by the school district to provide a free appropriate public education to the child. This would include stating their concerns and their intent to enroll the child in a nonpublic school at public expense; or
2. at least 10 business days (including any holidays that occur on a business day) before removing their child from the public school, the parents did not give written notice to the school district of their concerns and their intent to enroll the child in a nonpublic school at public expense; or
3. before the parents removed the child from the public school, the school district informed the parents, by written notice, of its intent to evaluate the child, but the parents did not make the child available for the evaluation; or
4. a court finds that the actions taken by the parents were unreasonable.

However, reimbursement to parents may not be reduced or denied for failure to provide notice to the school if:

1. the parent is illiterate and cannot write in English;
2. continued placement in public school would likely result in physical or serious emotional harm to the child;
3. the school prevented the parent from providing notice; or
4. the parents had not received written notice of their responsibility to provide notice to the school district.