Understanding Your Procedural Safeguards

An Overview of Parental Rights and Responsibilities Under IDEA Part B

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Important: This document provides a **brief overview of some** of the legal protections available to parents—and to their children who receive (or may be eligible to receive) special education and related services—under the Individuals with Disabilities Education Act (IDEA) and Montana implementing law. For a full explanation of your rights please refer to the Procedural Safeguards Notice, which includes contact information for organizations that can help you understand your rights and other aspects of special education.

IDEA Definition of a Parent

Under IDEA, a child's parent is presumed to be their biological or adoptive parent unless that person no longer has the legal authority to make educational decisions for their child. A foster parent may serve as the parent if the biological parents' educational decision-making authority has been extinguished under state law, and the foster parent is willing to assume the role and has no conflict with the interests of the child. A legal guardian can also act as the parent, unless the child is a ward of the state and the guardian is a state employee. Other adults acting in place of a parent—such as grandparents, stepparents, or other relatives who care for the child—may also qualify, and in some cases, a surrogate parent may be formally appointed to make educational decisions. If a court order names a specific, eligible individual to serve as the parent, that person is considered the parent under IDEA. However, a court order naming only an agency or organization does not authorize anyone from that agency to act as the parent.

In Montana, when a child with disabilities reaches the age of 18, all parental rights under IDEA transfer to them unless an alternative legal arrangement has been enacted. (Transfer of Rights at the Age of Majority, Administrative Rules of Montana (ARM) 10.16.3502).

Parental Rights and Procedural Safeguards

One of the purposes of IDEA is to ensure the protection of the rights of children with disabilities and their parents. In doing so, the IDEA requires a procedural safeguards notice for parents, which includes a full explanation of all the protections available to them. The procedural safeguards ensure your meaningful participation in decisions concerning your child's educational program. Following is a **short summary** of those rights.

Education Rights for Children with Disabilities

If your child has a disability and requires special education, your local educational agency (LEA) or public school district is required to ensure your child has available a free appropriate public education (FAPE) in the least restrictive environment (LRE) in order to meet your child's individual needs. "Free" means that your child is entitled to special education services at public expense, without charge to you; however, you may still be responsible for general education fees that apply to all students, such as charges for extra-curricular activities or lab supplies. "Appropriate" means the school must offer special education and related services that are provided in conformity with an individualized education program (IEP). The IEP must be developed based on your child's specific needs and be reasonably calculated to enable your child to make appropriate progress in light of their unique circumstances. LRE means your child has the right to be educated alongside peers without disabilities to the maximum extent possible. This includes classroom learning, extracurricular activities, and other school events, unless their needs require a different setting to provide an appropriate education.

Right to Participation

As a parent, you have the right to provide input about your child during the evaluation process. You also have the right to be included as an IEP team member and to be afforded an opportunity to participate in any meetings where decisions are made regarding your child's identification, evaluation, educational placement, and the provision of FAPE.

Right to Notification

You have the right to be informed in a timely manner about meetings concerning your child's identification, evaluation, educational placement, and the provision of FAPE. You also have the right to be notified of any proposed changes to these areas as well as any refusal by the school to make changes you have requested. In addition, you are entitled to receive all notices in a language understandable to the general public and provided in your native language or other mode of communication used, unless it is clearly not feasible to do so.

Informed Consent

Your informed consent is required for certain actions involving your child's education. As a parent, you have the right to:

- Give or withhold consent for your child's initial evaluation for special education services, and this consent can be revoked at any time before the evaluation is completed.
- Give or withhold consent for any reevaluation of your child, with the option to revoke that consent at any point before the reevaluation is finished.
- Approve, approve with exceptions, or decline your child's initial or annual IEP.
- Revoke consent for your child to continue receiving special education and related services at any point, but this revocation must be submitted in writing.

Education Records and Access Rights

You have a right to inspect and review your child's education records that are collected, maintained, or used by the school under IDEA. The school must comply with your request without unnecessary delay, and before any meeting about your child's IEP or any impartial due process hearing, and in no case later than 45 calendar days after you make a request. Additional considerations:

- Schools are not generally required to provide copies of a child's records unless failure to provide copies would effectively prevent you from exercising your right to inspect and review the records.
- You may request that any information you believe is inaccurate, misleading, or violates the privacy or other rights of your child be changed.
- In most situations, your consent is required before the school can share these records with other individuals or agencies. However, there are specific circumstances in which the law allows disclosure of records without your consent.

Independent Educational Evaluation (IEE)

If you disagree with the evaluation done by the school, you have the right to request an IEE at public expense, conducted by a qualified examiner who is not employed by the LEA or school district. If you request an IEE, the school must either provide one at public expense or file a due process hearing to show its evaluation is appropriate. You may also obtain an IEE at your expense. If you obtain an IEE for your child, whether paid for by you or the public, and provide it to the school, the school must consider the results when making decisions about your child's FAPE as long as the evaluation meets the school's criteria, such as the location of the evaluation and the qualifications of the examiner.

Dispute Resolution

Early Assistance Program (EAP)

The Office of Public Instruction (OPI) offers an ongoing informal dispute resolution process known as the EAP. This program is available to parents, guardians, adult students, schools and other public agencies or their representatives. EAP can be requested for any issue related to a child's FAPE or for concerns involving potential violations of the IDEA or Montana implementing laws. To request support through EAP, you may contact the OPI Dispute Resolution Office at (406) 444-2046.

IEP Meeting Facilitation

IEP facilitation is an optional dispute resolution process where an impartial facilitator assists the IEP team with communication and problem solving. Both parties must provide written consent to use this option by submitting a request form to the OPI Dispute Resolution Office. IEP facilitation keeps decision making in the hands of the parties who know the child best.

Mediation

Mediation is a voluntary process offered to assist parents and schools to resolve disagreements related to special education. An impartial mediator helps both parties work toward a legally enforceable written agreement that establishes a resolution. Mediation can be requested on its own or alongside a due process hearing or state complaint, but both parties must file a written request to begin the process.

State Complaint

Anyone who believes a public agency such as a school has violated the IDEA or implementing Montana laws may, within one year of the alleged violation, file a state complaint with the OPI and must provide a copy of the complaint to the school. After a complaint is filed, the parties have an opportunity to engage in informal resolution through the EAP to resolve the dispute. If informal resolution is waived or not successful, the Dispute Resolution Office will request a written response from the school and upon receipt of the response begin an appropriate investigation into the allegations raised in the complaint. A final non-appealable report will be issued within 60 calendar days of the complaint being

filed. The final report will address each allegation of the complaint and list findings of fact and conclusions of law along with a decision as to whether an allegation was true, and if so, order any necessary corrective actions to comply with federal or state law.

Due Process Hearing

Under IDEA and Montana implementing law, parents or public agencies can file a request for a due process hearing within two calendar years of the time the person knew or should have known that the alleged violation occurred, if they disagree about a child's identification, evaluation, educational placement, or the provision of FAPE. This is a formal legal process that begins by submitting a due process complaint to the other party and filing it with the OPI Dispute Resolution Office. After a request is filed, both parties receive a list of three impartial hearing officers and rank their preferences. The Superintendent of Public Instruction appoints a hearing officer to conduct the due process hearing. Within 15 days of receiving a parent's due process complaint, the school must hold a resolution meeting to try to resolve the issue(s) before the hearing. If the dispute isn't resolved within 30 days, the resolution period ends. The resolution meeting can be waived if both parties choose to participate in mediation. During the hearing, both parties present evidence and question witnesses. If either party disagrees with the hearing officer's decision, they may appeal by filing a civil action in state or federal court.

Expedited Due Process Hearing

An expedited due process hearing is a faster version of a regular due process hearing used **only for specific discipline-related issues** involving children with disabilities. It can be requested if a parent disagrees with a school's decision following a manifestation determination review or if the school believes keeping the child in their current placement poses a substantial safety risk to themself or others. When a parent files for an expedited due process hearing, the school must hold a resolution meeting within seven calendar days. If the dispute isn't resolved within 15 calendar days, the hearing proceeds. The resolution meeting can be waived if both parties agree in writing or if the parties agree to use mediation instead. An expedited due process hearing must be held within 20 school days of the date the complaint was filed, and the hearing officer must issue a decision within 10 school days

after the hearing ends. If either party does not agree with the hearing officer's decision, they may appeal by filing a civil action in state or federal court.

Discipline of Children with Disabilities

In most cases, children with disabilities are held to the same rules as other children. However, special procedures apply when disciplinary removals result in a change of educational placement. A change of placement happens when a child is removed for more than 10 consecutive school days, or if a series of short-term removals forms a pattern that totals more than 10 school days in a school year. Whether a pattern constitutes a change of placement is determined on a case-by-case basis.

Within 10 school days of any decision to change the placement of a child with a disability, the school, parent, and other relevant members of the IEP Team must conduct a manifestation determination to review all relevant information in the child's education file, including the child's IEP, any teacher observations, and any pertinent information provided by the parent to determine if:

- The conduct in question was caused by or had a direct and substantial relationship to the child's disability, or
- The conduct in question was the direct result of the school's failure to implement the child's IEP.

If the school, parent, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability and the IEP Team must conduct a functional behavioral assessment (FBA), unless one has previously been completed regarding the same or similar conduct, and develop and implement a behavioral intervention plan (BIP). If a BIP has already been developed, the IEP Team must review the plan and modify it as necessary to address the behavior.

If the child's IEP Team determines that the conduct in question was the direct result of the school's failure to implement the child's IEP, including a BIP if the child has one, the school must take immediate action to remedy those deficiencies.

If it is determined that the conduct that resulted in the child's suspension or expulsion was a manifestation of their disability, the school must return the child to the placement from

which they were removed, unless you and the school agree to a change of placement as part of the modification to the child's BIP.

There are special circumstances regardless of whether the child's behavior was a manifestation of their disability when school staff may place a child in an interim alternative educational setting for up to 45 school days. This may occur if the child is at school or at a school event and they carry or possess a weapon, knowingly use or sell illegal drugs, or cause serious bodily harm to another person.

Protections for Children Not Yet Eligible for Special Education and Related Services

If your child has not yet been found eligible for special education but violates a school rule, they may still receive IDEA protections if the school has knowledge that your child is a child with a disability. In such cases your child can access the same protections or procedural safeguards as a student already identified as eligible for special education and related services.

Placement by Parents of Children in Private Schools

The IDEA does not require a school to pay the cost of educating a student with a disability at a private school if the public school made FAPE available and the parent chooses to place the child in a private school. In limited circumstances when there is disagreement regarding FAPE between parents and school, a hearing officer or court may require a parent to be reimbursed for the cost of the private school placement if the hearing officer or court finds that the public school did not make FAPE available in a timely manner prior to enrollment in the private school and that the private placement was appropriate.