

## PROCEDURAL SAFEGUARDS

### CONFIDENTIALITY

Students with disabilities are protected by special education law and by Family Educational Rights to Privacy Act (FERPA). School district personnel must respect these rights by maintaining confidentiality. Discussions of programs and behaviors should be restricted to settings where only persons with the need to know are present. Discussions in the hallways, in the teacher's room, and particularly in the community should not occur. Only the parent, guardian or surrogate parent has the right to knowledge about the child's performance at school.

### PARENTS RIGHTS FOR SPECIAL EDUCATION

**Procedural Safeguards "Parents Rights for Special Education"** are made available to parents:

- Upon initial referral or parent request for evaluation.
  - Documentation on the **Prior Notice of Evaluation/Consent for Evaluation**.
- When students transfer into the district with established IDEA eligibility but without documented evidence in their file that procedural safeguards were made available to the parents at the time of initial referral.
  - Documentation – team notes or other means to ensure there is evidence that the parents have received a copy of the procedural safeguards.
- Annually at the student's IEP meeting.
  - Documentation **IEP Meeting Agenda**.
- A year before the child's 18<sup>th</sup> birthday (relating to transfer of rights)
  - Documentation **IEP**.
- Upon filing of a complaint or initiation of a due process.
  - Documentation in the form of a letter with attachment from the Special Education Director.
- Upon request by a parent.
  - Documentation – team notes or other means to ensure there is evidence that the parents have received a copy of the procedural safeguards.

### EXPANDED DEFINITION OF A "PARENT"

Parent means one or more of the following persons:

- A biological or adoptive, parent of a child;
- A foster parent of the child;
- A legal guardian, other than a state agency;
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the student lives, or an individual who is legally responsible for the child's welfare; or
- A surrogate parent who has been appointed by the district.

### SURROGATE PARENT

The district must appoint a surrogate parent to ensure that the rights of the child are protected when:

- No parent can be identified or located after reasonable efforts;
- The child is a ward of the state;
- The child is an unaccompanied homeless youth (as defined in McKinney-Vento Homeless Assistance Act); and
- There is reasonable cause to believe that the child may have a disability.

### Process for Appointing a Surrogate Parent

1. Check the criteria above to determine if the appointment of a surrogate parent is appropriate.
2. Contact the District Special Education Director.
3. The District Special Education Director will appoint a surrogate parent, complete all necessary forms, training and send out a letter to the school and all parties involved with the child informing of the person appointed as surrogate.

### Rights of a Surrogate Parent

An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent.

### **PARENT PARTICIPATION – GENERAL**

The school district must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.

#### **Meeting Notice:**

The district must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend. The written notice must be provided using the **Notice of Team Meeting**. The notice must:

- State the purpose, time and place of the meeting and who will attend;
- Inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child;
- Inform the parent that the team may proceed with the meeting even if the parent is not in attendance; and
- Inform the parent of whom to contact before the meeting to provide information if they are unable to attend.

The school district must take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

#### **Exclusions to “Meeting” Notice:**

A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

#### **Parent Nonattendance at Meetings:**

If a parent is unable to attend a meeting for eligibility, IEP or other necessary meeting, make every effort to ensure their participation through e-mail, telephone, or written response. Document attempts to arrange a mutually agreed upon time and place with the parent.

Sufficient attempt is defined as:

1. Written notice was provided sufficiently in advance to ensure an opportunity for the parent to attend;
2. Communicating directly with the parent and arranging a mutually agreeable time and place; and
3. Sending written notice and stating in the notice that parent may request a different time and place, and confirming that the parent received the notice.

Documentation of attempts should be recorded on the **Contact Log**. Keep documentation of direct communication with the parent in each student's educational record (e.g., detailed records of telephone calls made or emails sent or attempted and results of these calls or emails; copies of correspondence sent to the parents and any responses received, and written notice or confirmation).

**Conducting a meeting without a parent in attendance:**

A meeting may be conducted without a parent in attendance if the school district has given the parent adequate notice.

**Transfer of Rights:**

The right to parent participation transfers to an adult student on their 18<sup>th</sup> birthday.

After the transfer of rights to an adult student the school district must provide written notice of meetings to **both the adult student and parent**, if the parent can be reasonably located.

Note: A parent receiving notice of a meeting under this subsection is not entitled to attend the meeting unless invited by the adult student or by the school district.

**PRIOR WRITTEN NOTICE**

Prior written notice must be given:

- To the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.
- After a decision is made and a reasonable time before that decision is implemented.

The content of the prior written notice must include:

- A description of the action proposed or refused by the school district;
- An explanation of why the district proposes or refuses to take the action;
- A description of any other options that the IEP team considered and reasons why those options were rejected;
- A description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action;
- A description of any other factors that are relevant to the school district's proposal or refusal; and
- A statement that the parents of a child with a disability have procedural safeguards, and if it is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;
- Sources for parents to contact to obtain assistance in understanding their procedural safeguards.

The prior written notice must be:

- Written in language understandable to the general public; and
- 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.

If the native language or other mode of communication of the parent is not a written language, the school district must 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;
- The parent understands the content of the notice; and
- There is written evidence that the requirements of this rule has been met.

If the proposed action requires prior written notice and written consent, the district may give notice at the same time it requests consent.

## **REQUIRED CONSENT**

### **Authorization to Use and/or Disclose Educational and Protected Health Information**

Prior to exchanging confidential information with other agencies or individuals concerning the student you must obtain consent from the parent. Consent form must identify the records that are to be released, and to whom.

### **Prior Notice About Evaluation/Consent for Evaluation**

The consent for evaluation form must list the specific evaluation procedures, assessments or tests the team plans to use. The assessment name and a brief description of the assessment may be provided through the **Guide to Educational Assessment**. If this is the case, the pamphlet should be described on the consent form.

Consent must be given for all of the following:

- Before an initial evaluation;
- Before a reevaluation;
- Before conducting intelligence or personality tests;
- Before evaluation of students transferring from out-of-state, when previously established eligibility does not meet Oregon criteria; and
- When an IEP team decides not to conduct an evaluation;

### **Prior Notice for the Initial Provision of Special Education**

Consent for initial provision of special education must be obtained prior to the provision of services using the **Prior Notice for Initial Provision of Special Education Services**.

Must be given for all of the following:

- When an eligibility Team initially determines the child is eligible;
- Before initial placement; and
- During ECSE transition to kindergarten;

### **Consent is not required for:**

- Placement annually or upon completion of a triennial reevaluation;
- Assessments used to determine present levels of performance for an IEP annual review meeting;
- Reevaluation, when all attempts to secure parental consent have been unsuccessful;
- An IEP (parent signature does not indicate consent but only participation in the development of the IEP);
- Authorized district staff or ODE staff to review special education records (a record must be maintained of those persons having access to confidential information).

### **Written Agreements**

The **Written Agreements Between Parents and the District** form requires parent signatures and is used to document written agreements between the parents and the district and to document that the staff have explained that the agreement is voluntary. This form is used to document the following agreements:

- The district will not conduct a three-year evaluation;
- That specific members of the IEP team are not required to attend an IEP meeting, in whole or in part, if the team member submits their input in writing prior to the meeting or when

the member's area of curriculum or related service is not being modified or discussed at the meeting;

- That an IEP meeting is not necessary to revise the student's IEP between annual IEP meetings; and
- For students who move into the district in the middle of an evaluation, to document agreement on a time for completion of the evaluation.

## **WRITTEN NOTICE**

### **Prior Notice of Special Education Action**

The Special Education Action form is used to notify parents before the district takes any action with regard to a student's identification, placement, IEP, or provision of FAPE. The form is required in the following situations.

- Before the team initiates a change in the IEP, that would be considered a change in the provision of FAPE to a student (e.g. adds new service, discontinues a service, or makes another significant change) or refuses to make such a change requested by the parent.
- Before team determines a new eligibility, changes eligibility categories or refuses an eligibility category requested by the parent (requires a reevaluation);
- If the team refuses an evaluation or reevaluation requested by the parent.
- If the team determines changes in placement, or refuses a placement requested by the parent.
- Before suspension of more than 10 days during the school year;
- Before expulsion; and
- Before termination of eligibility and/or services (graduation, completed school year in which student turned 21; reevaluation indicates ineligibility or no further need for services.)

If at any time the parent disagrees with the change or refusal to change, the Case Manager must contact the District Special Education Director for assistance in informal resolution or due process steps. No change in placement can be made during the informal or formal resolution process without consent of the parent.

If the parent requests a change of placement in-district, the District Special Education Director should be invited to an IEP meeting to discuss this change. If the parent requests a change of placement to an out-of-district school or facility the Special Education Director must be notified immediately.

### **Notice of Team Meeting**

The Notice of Team Meeting form must be used for the following:

- To provide prior notice and to notify the parent of any meeting regarding the identification, evaluation, placement and/or provision of a free appropriate public education to their child.
- To invite the parent to any meeting regarding the identification, evaluation, placement and/or provision of a free appropriate public education to their child.
- To invite the student, if the student is 16 or older, and the purpose of the meeting is to consider the IEP and transition services.
- Document attempts to involve the parent.

### **Notice of Transfer of Rights Prior to Age of Majority**

A statement informing the student and the parent that rights will transfer at age of majority is provided at the IEP meeting at least one year before the student's 18<sup>th</sup> birthday; or at the time the team had knowledge that within a year the student would likely marry or become emancipated prior to age 18. On the IEP, the Team documents that the discussion with the student and the parent regarding the transfer of rights has occurred.

- Documentation of this discussion is indicated on the **IEP** by checking the "yes" box under transfer of rights; and indicating the date that this information was provided to the student.

### **Transfer of Procedural Rights at Age of Majority**

When a child with a disability reaches the age of majority, or is emancipated the rights accorded to the child's parents under the special education laws transfer to the child. A student for whom rights have transferred is considered an "adult student". Written notice is provided to the student and the parent when the student turns 18 using the **Notice of Transfer of Special Education Rights**.

## **TRANSLATION SERVICES**

### Interpreter

An interpreter is an individual who facilitates communication between speakers who do not speak the same language. They assist in parent/school meetings and translate test materials during the assessment process. The interpreter conveys information verbally from one language to another guided by the knowledge and familiarity of the appropriate methods of expression.

### Translator

While an interpreter is used for oral communication, a translator is used for written communication.

### Requests for Interpreter/Translator

If you need an interpreter for a meeting or information translated please request support at least two weeks prior to the meeting/deadline. You can request these services through the District Special Education Secretary (541-475-2804).

## **STUDENT SPECIAL EDUCATION RECORDS**

### Access to Student Educational Records

The school district must give parents of children with disabilities an opportunity to examine all student educational records. This includes all education records including those with respect to:

- The identification, evaluation, and educational placement of the child; and
- The provision of a free appropriate public education to the child.

### Confidential Special Education Student Records

The school district shall keep confidential any record maintained on a child with a disability. Confidential Special Education Student Records are maintained in the District Special Education Office for all active and closed special education cases. The original copies of all special education forms are to be sent to the Special Education Office for inclusion in the student's file. Working files are maintained at the building level in a secure location.

All required special education records, must include:

- Referral;
- Prior notice and consent to evaluation;
- Evaluation reports;

- Eligibility statements;
- Notices of IEP meetings;
- IEP's;
- Prior Notice of Consent for Initial Provision of Special Education Services;
- Annual Placement;
- Prior Notices of Special Education Action,
- Progress Reports; etc.

The record may also include:

- Medical Statements;
- Reports from Regional Programs;
- Early Intervention and Early Childhood Special Education Records;
- Records from other school districts.

Maintained test protocols should be stored in the working file by the Case Manager.

#### Availability of IEP's to Regular Education Teachers and Other Providers

Each student's IEP must be accessible to each regular education teacher, related services provider, or other service provider who is responsible for implementation. Each regular educator or service provider must also be informed of his/her specific responsibilities related to implementing the student's IEP and specific accommodations, modifications, and supports that must be provided.

Regular education teachers need to be aware of a student's disability in regard to ways the disability will affect performance in their classroom. The classroom teacher needs to know what specific accommodations and modifications are needed in order for the student to be most successful. For example, if a student reads far below grade level, the classroom teacher may need to provide an alternative way for the student to receive written information. Another example would be if a student needs specific help with organizational skills, the classroom teacher may assign the student a specific place to keep assignments and/or writing utensils so those items do not leave the classroom and become lost.

Information may be shared with the classroom teacher in a variety of ways. A classroom teacher seldom needs a complete copy of the IEP. Goal pages, the Present Level of Performance Page, and pages including any necessary accommodations and modifications would be appropriate to share with a classroom teacher. Some special education teachers type up summary paragraphs giving the above stated information in a less formal way to classroom teachers.

At times, it is important to share specific information about a student with staff other than teachers. Instructional assistants working with a student, bus drivers, cafeteria workers, administrators are just a few examples of staff who may need information about a particular student.

**In all sharing of information regarding a particular student, confidentiality must be remembered. Share only information pertinent to the student's educational needs and only with staff who directly instruct or work with the student.**

#### Disclosure/Transfer of Special Education Records

All requests for copies of confidential student files should be forwarded to the District Special Education Office. Upon receipt of a request for Records Transfer or Release of Information from the school district in which a child has enrolled, the Special Education Secretary will copy and then forward the original records within 10 days. The copy is maintained by the school district. When releasing information to other agencies, the parent must sign **Permission to Obtain/Release**

**Information** form. Copies are made and the original is maintained at the District Special Education Office. Parents may have copies of Special Education records upon request and without undue delay. The district will disclose information, without consent, to the receiving school when the student has moved, upon court order, and to appropriate state and federal monitoring teams.

School District and ESD employees having access to student records must have a legitimate educational concern. The School District will keep a record of all persons having access, the date of the access, and the reason for the access except for those named on a notice and posted on the exterior of the Special Education file repository. The Record of Access must be maintained in a separate location from the confidential student file.

#### Records Destruction

Special Education records will be destroyed when a student has been out of special education for a minimum of five years and is beyond the age of eligibility for IDEA services (21 years of age).

Written attempts will be made to contact a parent or adult former student for records claiming prior to destruction.

The Special Education Director or designee will insure that records are destroyed by incineration or shredding.

#### TieNet Special Education Forms

Whenever applicable the special education staff are expected to use the Records Manager TieNet computer program for special education forms.

##### New Students

- E-mail the Special Education Secretary with student to be added. The student has been entered into PowerSchool before the Records Manager may enter the child into TieNet as all demographic information is uploaded from PowerSchool.

#### Contact Log

It is important that each specialist maintain a “**contact sheet**” in each student’s file. Documentation of parent contacts or attempted contacts, staff contacts, etc. should be made on the contact sheet.

#### Caseload Lists

Each month the Special Education Secretary will prepare and distribute caseload lists to each specialist. The lists include the name of each child currently receiving services, the IEP annual review date, and the triennial (three year) reevaluation date. Each specialist must review the list for any discrepancies and contact the special education Records Manager to clarify/and or clarify these discrepancies within one week.

#### Child Find Report

The Template is to be kept current and submitted to the Special Education Secretary each month. For each **newly** referred child complete and track the following data:

- SSID #
- Last name, First name, Middle Initial
- Date of Birth
- Initial Evaluation Consent Date
- Initial Eligibility Determination Date
- Is Child Found Eligible

- # Of Days Over 60
- Reason Timeline was not met
- Is Child Attending Private School
- Disability Code
- Ethnicity

#### Working Files

Each specialist shall maintain a working file for students on his/her caseload. This working file shall be maintained in a secure location. All rules of records disclosure apply to the working file.

#### IEP Changes

If the district makes changes to an IEP that would increase the amount of services or extend the duration of services, the district must obtain parental consent, covering the additional amount of service and/or costs to be charged the child's or parents' Medicaid benefits or public insurance.