

# TEXAS SCHOOL FOR THE DEAF

## SPECIAL EDUCATION PROCEDURAL REQUIREMENTS

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### PROCEDURAL SAFEGUARDS

TSD shall establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). *20 U.S.C. 1415(a)-(b)*

These procedures shall include:

### EXAMINATION OF RECORDS AND PARTICIPATION IN MEETINGS

1. An opportunity for the parents to review all education records and to participate in meetings relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child. *34 C.F.R. 300.501*

### INDEPENDENT EDUCATIONAL EVALUATION

2. An opportunity for the parents to obtain an independent educational evaluation of the child. *34 C.F.R. 300.502*

### ASSIGNMENT OF SURROGATE PARENT

3. Protecting the rights of the child when no parent cannot be identified, TSD cannot locate the parents, or the child is a ward of the state, which may include the assignment of an individual to act as a surrogate parent. *34 C.F.R. 300.519*

### PRIOR WRITTEN NOTICE

4. Prior written notice to the parents whenever TSD proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the free appropriate public education of the child. [See PRIOR NOTICE AND CONSENT, below]

### MEDIATION

5. Procedures to allow parties to resolve disputes through a mediation process. *34 C.F.R. 300.506*

### COMPLAINTS

6. An opportunity for any party to file a due process complaint on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. [See DISPUTE RESOLUTION, below] *34 C.F.R. 300.507*

### DUE PROCESS COMPLAINT

7. Procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which shall remain confidential). *34 C.F.R. 300.508*

Consent means that:

### CONSENT

1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
2. The parent understands and agrees in writing to the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. A

revocation of consent is not retroactive.

If the parent revokes consent in writing for his or her child's receipt of services after the child is initially provided special education and related services, the district is not required to amend the child's education records to remove any references to the child's receipt of services because of the revocation of consent.

*34 C.F.R. 300.9*

LANGUAGE OF NOTICES

The procedural safeguards and prior notices described below must be written in language understandable to the general public. The notice must be 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. *34 C.F.R. 300.503(c), .504(d)*

ELECTRONIC DELIVERY OF NOTICES

A parent may elect to receive the procedural safeguards notice, prior notice, or notice of due process complaint by electronic mail if a district makes that option available. *34 C.F.R. 300.505*

PROCEDURAL SAFEGUARDS NOTICE

The School shall provide a copy of the procedural safeguards to parents only one time a year, except that a copy also shall be given to the parents:

1. Upon initial referral or parental request for evaluation;
2. Upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year,
3. On the date of a decision to make a disciplinary removal that is a change in placement; and
3. Upon request by a parent.

The School shall place a current copy of the procedural safeguards notice on its website.

CONTENTS OF NOTICE

The notice shall include a full explanation of the procedural safeguards relating to:

1. Independent educational evaluation;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;
5. The opportunity to present and resolve complaints, including:
  - a. The time period in which to make a complaint,
  - b. The opportunity for the School to resolve the complaint, and
  - c. The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional time lines, and relevant procedures.
6. The availability of mediation;
7. The child's placement during pendency of due process proceedings;
8. ; Procedures for students who are subject to placement in an interim alternative educational setting;

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9. ; Requirements for unilateral placement by parents of children in private schools at public expense
10. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
11. Civil actions, including the time period in which to file such actions; and
12. Attorneys' fees.

*20 U.S.C. 1415(a)-(b), (d); 34 C.F.R. 300.504*

**PRIOR NOTICE AND  
CONSENT**

The School shall provide prior written notice to the parents a reasonable time before the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child or the provision of FAPE to the child.  
*34 C.F.R. 300.503(a)*

Notice must be provided to the parent in the parent's native language or other mode of communication at least five school days before the School proposes or refuses the action unless the parent agrees to a shorter time frame. *19 TAC 89.1050(h)*

**CONTENTS OF NOTICE**

The notice must include:

4. A description of the action proposed or refused by the School;
5. An explanation of why the School proposes or refuses to take the action;
6. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
7. A statement that the parents have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained;
8. Sources for parents to contact to obtain assistance in understanding the IDEA rules;
9. A description of other options the ARD committee [see EHBAB] considered and the reasons why those options were rejected; and
10. A description of other factors that are relevant to the School's proposal or refusal.

*34 C.F.R. 300.503(b)*

**CONSENT TO INITIAL  
EVALUATION**

Before the School conducts an initial evaluation, it shall provide prior written notice, including a description of any evaluation the School proposes to conduct, and obtain informed consent for the evaluation from the parents.

*20 U.S.C. 1414(a)(1)(D), (E); 34 C.F.R. 300.304(a)*

**CONSENT TO SERVICES**

The School shall seek informed consent from the parent before providing related services to a child. [See EHBAA] *20 U.S.C. 1414(a)(1)(D)*

CONSENT TO  
REEVALUATION

The School shall obtain informed parental consent before conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the district can demonstrate that it has taken reasonable measures to obtain such consent and the parent has failed to respond. *20 U.S.C. 1414(c)(3)*

PSYCHOLOGICAL  
EXAMINATIONS AND  
TESTS

On request of a child's parent, before obtaining the parent's consent for the administration of any psychological examination or test to the child as part of the evaluation of the child's need for services, the School shall provide to the child's parent:

1. The name and type of the examination or test; and
2. An explanation of how the examination or test will be used to develop an appropriate IEP for the child.

If the School determines that an additional examination or test is required for the evaluation of a child's need for special education, the district shall provide the information above to the parent regarding the additional examination or test and shall obtain additional consent for the examination or test.

*Education Code 29.0041(a), (b)*

DISPUTE RESOLUTION

The possible options for resolving disputes that arise between a parent and a school district relating to the identification, evaluation, or educational placement of or the provision of FAPE to a student with a disability include, but are not limited to:

1. ARD committee meetings, including IEP facilitation if offered by the district, under 19 Administrative Code 89.1196;
2. Meetings or conferences with the student's teachers;
3. Meetings or conferences, subject to the School's policies, with the department principal, designated administrator, superintendent, or board;
4. Requesting state IEP facilitation in accordance with 19 Administrative Code 89.1197;
5. Requesting mediation through TEA in accordance with 19 Administrative Code 89.1193;
6. Filing a complaint with TEA in accordance with 19 Administrative Code 89.1195; or
7. Requesting a due process hearing through TEA in accordance with 19 Administrative Code 89.1151-.1191.

*19 TAC 89.1150*

DUE PROCESS COMPLAINT

Whenever a due process complaint has been received by the School, the parent shall have an opportunity for an impartial due process hearing, which

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shall be conducted by an impartial hearing officer selected by TEA. [For TEA rules on due process hearings, see 19 Administrative Code 89.1151–.1191.]

**TIME LINE**

Such due process complaint must set forth an alleged violation that occurred not more than one year before the date the parent knew or should have known about the alleged action that forms the basis of the complaint.

*20 U.S.C. 1415(f)(1)(A); 19 TAC 89.1151(c), .1170(a)*

**EXCEPTION**

This timeline shall not apply if the parent was prevented from requesting a hearing due to:

1. A specific misrepresentation by the School that it had resolved the problem forming the basis of the complaint; or
2. The School's withholding of information from the parent that the School was required by the IDEA to provide.

*20 U.S.C. 1415(f)(3)(D); 34 C.F.R. 300.511(f), 19 TAC 89.1151(d)*

**'STAY PUT'**

During the pendency of any proceeding conducted under IDEA part B (except proceedings to challenge a disciplinary change of placement or manifestation determination), unless the School and the parent agree otherwise, the student involved in the complaint shall remain in the then-current educational placement. If the student is applying for initial admission to a public school, the student shall, with the consent of the parents, be placed in the public school program until all proceedings have been completed. *20 U.S.C. 1415(j); 34 C.F.R. 300.518, .533*

**EXCEPTION**

When a due process hearing has been requested by a parent or the School concerning a disciplinary change of placement or manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the student's assignment to the alternative setting, whichever occurs first, unless the parent and the School agree otherwise. *20 U.S.C. 1415(k)(3)(A), 1415(k)(4)(A); 34 C.F.R. 300.533* [See FOF]

**RESOLUTION  
PROCESS**

Within 15 calendar days of receiving notice of a parent's due process complaint, and before initiating a due process hearing, the School shall convene a meeting with the parent and the relevant member or members of the ARD committee. The purpose of the 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 district has the opportunity to resolve the dispute.

The meeting need not be held if the parent and the School agree in writing to waive the meeting, or the parent and the School agree to use the mediation process.

If the School has not resolved the due process complaint to the satisfaction of the parent within 30 calendar days of the receipt of the complaint, the due process hearing may occur. If the School is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, the School may, at the conclusion of the 30-day period, request that a

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hearing officer dismiss the parent's request for a hearing.

*34 C.F.R. 300.510, 19 TAC 89.1183*

**TRANSFER OF RIGHTS TO  
ADULT STUDENTS**

When the student reaches the age of 18, the School shall notify the student and the parents of the transfer of rights, as described in the following paragraph. This notice is separate and distinct from the requirement that the student's IEP include a statement regarding transfer of parental rights.

A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability. All other rights accorded to parents under Chapter 29, Subchapter A of the Education Code or 20 U.S.C. 1415 transfer to the student.

*34 CFR 300.517; Education Code 29.017(a)-(b); 19 TAC 89.1049(c)*

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