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Rights of Parents of Students with Disabilities

(Effective June 1, 2018)

Understanding the Procedural Safeguards Notice

Parents Have Rights

Parents of children who receive or who may be eligible for special education services have rights under a law called the Individuals with Disabilities Education Act (IDEA). This brochure provides a summary of those rights. The [*Procedural Safeguards Notice*](#) provides a more detailed explanation of those rights.

Local educational agencies (LEAs), including school districts and supervisory unions, must give parents a copy of the *Procedural Safeguards Notice* at least once each school year. Parents can also obtain a copy from their school at any time. The *Procedural Safeguards Notice* is available from the Agency of Education by request to AOE.SpecialEd@vermont.gov, and on the Agency [website](#).

Parent Participation Is Important

Parents must be given the opportunity to participate in all meetings when decisions will be made about their child's special education services. Parents have the right to participate in meetings about the identification, assessment, educational placement, and other matters related to their child's education. If you are a parent and are unable to attend a meeting, you may request to participate over the phone or to have the meeting changed.

Teacher and Administrative Involvement is Important

Many people in your child's school, Supervisory Union (SU) or School District (SD) and special education department can answer questions about your child's education and your rights as a parent. When you have a concern, it is important that you contact your child's teachers or administrators to talk about your child and any problems you see. Often, having a conversation may solve the problem and also help maintain open communication.

In Vermont, there are organizations that can help parents understand their rights, and how the special education system works. For information or help, parents are encouraged to call any of the organizations listed in this publication.

Summary of Parents' Rights

Who is entitled to parents' rights?

People responsible for the welfare of a child are considered "parents." This can be:

- A biological or adoptive parent;
- A guardian;
- A person who is acting as a parent, such as a grandparent or stepparent with whom the child lives, and who is legally responsible for the child;
- A parent who has been appointed by the Vermont Educational Surrogate Parent Program;
- A foster parent who was appointed an educational surrogate parent.

When must parents be given a copy of the Procedural Safeguards Notice?

Parents must be given the Procedural Safeguards Notice: Annually, and 1) when an initial evaluation or parent request for an evaluation of the child is made; 2) upon receipt of an administrative complaint; or 3) when the parent or the school requests a due process hearing. A copy must be provided to a parent upon request and when discipline procedures are started against a student eligible for special education services.

How can parents participate?

Parents have the right to agree or disagree in meetings about their child's identification as a child who may need special education services, evaluation for eligibility for special education, educational placement and the provision of a free and appropriate public education (FAPE) for their child.

Parents can ask for an evaluation of their child, disagree with an evaluation of their child, request an independent evaluation for each evaluation conducted by the school, disagree with the supervisory union or school district about their child's educational program, and/or the location where the child receives services.

Parents can give the IEP team information about their child (their own or from resources and professionals outside the school), and give opinions about the child's educational program and/or the location where the child receives services.

When must parents be given notification (Prior Written Notice)?

Parents must be given notice by the school whenever a supervisory union or school district asks to evaluate a child, develops an educational plan (IEP) for a child receiving special education services, changes an educational plan, or changes the child's placement; or when a supervisory union or school district *refuses* to perform an evaluation or make a change in a child's educational program upon request of the parent or another professional.

This notification is called *Prior Written Notice*.

What if a parent does not speak or read English, or does not understand the notice?

Parents *must be able to understand* the notices they are given, and the information in the notices.

It is the school district/supervisory union's responsibility to make sure parents are able to understand the notice they are given. Notices must be provided in the language that the parent understands best. In some cases, a translator or interpreter may be needed to read and explain the notice to the parent.

Is a parent's consent required?

Parents must agree (give consent) for a school to conduct an evaluation. Consent must be provided before the child is evaluated, before special education and related services start, and with some exceptions, before confidential information about the child is released.

Parents must be able to understand what they are agreeing to when giving consent. If necessary, information about evaluations or the special education program will be explained to the parent, given to them in their primary language, or read to them.

Can a parent refuse to give consent?

Parents do not have to allow supervisory unions or schools to evaluate their child for special education. If a parent does not provide consent to an evaluation, the school district may seek an order from a hearing officer or court to allow the evaluation. They also do not have to accept services for their child even if the IEP team wants to provide special education services.

Do parents have the right to an evaluation?

Yes. Parents have the right.....

To Be Given a Fair and Accurate Evaluation

If it is suspected that a child has a disability, parents, the supervisory union or school district, or the Vermont Agency of Education can ask for an evaluation of a child to help decide whether the child is eligible for special education services.

Your child must be given an evaluation that uses tests and procedures that reaches accurate conclusions about your child, given their disability, taking into account the child's primary language and/or ethnic background, if applicable. For example, a test (evaluation method) written in English should not be given to a child whose primary language is Spanish.

Parents have the right.....

To be Given an Independent Evaluation

If a parent thinks the evaluation was not done correctly by the school or if the parents disagree with the results of the evaluation done by the school, they can ask the school to pay for an independent educational evaluation of the child by an approved evaluator who does not work for the SU/SD.

However, if the district believes an independent evaluation is unnecessary, and requests a hearing officer to decide whether the school's evaluation was appropriate, the parent will have to pay out-of-pocket for an independent evaluation, unless the hearing officer finds that the district's evaluation was not appropriate. Generally, schools are agreeable to providing parents with an independent educational evaluation when requested after the school has already conducted an evaluation.

What if there is a disagreement between a parent and a SU/SD?

There are three ways to resolve disagreements if parents and a supervisory union or school district disagree:

Mediation

Mediation is a free, voluntary process that will be used only if both the parent and the school agree to take part. A parent can ask for mediation at any time. Even if a due process hearing is requested, a parent can request mediation. A parent can request both mediation and a due process hearing. If a parent or supervisory union/school district asks for a due process hearing, the Agency of Education will offer mediation, but a parent is not required to accept it.

In mediation, a neutral mediator (a person with knowledge, training and experience in mediation) helps parents and supervisory unions or school districts come to an agreement about a child's special education services. The trained mediator does not take sides, and does not make decisions. The mediator helps the parties to resolve the dispute/disagreement among themselves.

Agreeing to mediation will not delay or deny access to a due process hearing.

Mediation will be scheduled at a time and place convenient to the parent and the school district. A parent or the school may end mediation at any time because the mediation as a whole must be voluntary for both sides.

Administrative Complaint

Parents, a group of parents or an organization have the right to file an administrative complaint with the Secretary of Education if they believe a school district has *not followed federal or state special education laws or regulations* affecting a student or group of students.

An Administrative Complaint must be filed within a year of when the issue (violation or wrongdoing) under the complaint was known to occur.

After a complaint is filed, the Secretary of Education will appoint agency staff to investigate the complaint, and a decision must be issued within 60 days after the complaint is received, unless an extension is granted. Parents receive a copy of the decision.

To investigate the complaint, the Agency of Education may conduct an on-site review, but an on-site review is not required. The Agency will give parents an opportunity to present additional information, orally or in writing. Agency staff will review all information about the case, and make a decision about whether the supervisory union or school district did not follow federal or state special education laws or regulations. If some issues in an administrative complaint are also part of a due process hearing, the Agency will wait until the due process hearing is over before investigating the issues in the administrative complaint that are also part of the due process hearing.

Due Process

A due process complaint can be filed by a parent, a supervisory union, or a school district when there is a disagreement about special education services for a child. A parent may file a due process complaint with the Agency of Education to disagree with a decision concerning identification,

evaluation or placement of a child with disabilities, or the provision of FAPE to a child. A due process complaint must be filed within two years of when the issue (violation or wrongdoing) under the complaint was known to occur.

Due process hearings are conducted by a trained, impartial hearing officer appointed by the Agency of Education. Due process hearings are similar to trials, with the hearing officer presiding and acting as a judge. An attorney will represent the educational agency. The parent may choose to be represented by an attorney, or may choose to proceed without counsel. Witnesses are questioned and cross-examined, and evidence is admitted into the record for the hearing officer's consideration. At the conclusion of the hearing, the hearing officer issues a written decision, which is a legally enforceable document setting forth the legal obligations of all the parties. The due process hearing decision is final and binding, but either party can appeal the decision by bringing a civil action in court.

Resolution Meeting

A resolution meeting is part of the due process complaint process. It is a meeting held to try to solve the disagreement/problem that the due process complaint is about. This meeting must be held within 15 days after the due process complaint is filed. After the resolution meeting, the parties have 30 days to work out an agreement and solve the issue. This is called the "resolution period."

If the problem is not resolved in the resolution meeting, then a decision must be made by a hearing officer within 45 days after the resolution period has ended.

If both parties agree, there does not have to be a resolution meeting. Parents and the supervisory union or school district may decide not to hold a resolution meeting. If this happens, the 45-day timeline for a due process decision will begin sooner. If you and the school decide not to hold a resolution meeting, the hearing officer will then ask you and the school to sign a document confirming your decision to waive the resolution meeting. After the document is signed, the hearing process will move forward.

The hearing officer could dismiss your due process complaint if you both refuse mediation and a resolution session meeting, or if you refuse to sign a waiver that you do not want to participate in a resolution session. Both parties may agree in writing to waive the resolution meeting and reject mediation, though it can be very helpful to try one or the other.

Will my child's educational program change while waiting for mediation or a hearing?

If you or your school requested a hearing--unless you and the school decide to place the child in another educational setting ("alternative interim setting")--until the disagreement is resolved, your child shall "stay put" in his or her current program if you or your school requested mediation or hearing. That means that the school cannot change the program until the mediation, hearing, and any court actions have ended.

What are the differences between mediation, due process hearings, and administrative complaints?

	Mediation	Administrative Complaint	Due Process
Outcome or result?	Signed, legally enforceable agreement.	Written decision that must include actions that have to take place to address the needs of the child or children related to the complaint.	Written decision that may order certain activities to take place, or decide legal issues raised by the complaint.
When?	Can be requested at any time or at the same time as a due process hearing to help the school district and parent resolve disagreements.	When someone thinks that a school district did not follow federal and/or state special education laws.	When there is disagreement between a school district and parents about a student's identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to a child with a disability or suspected of having a disability.
Who can file?	Parent or school district	Any person or organization	Parent or school district
Timeline for filing?	Any time, even when a due process hearing has been requested.	Must be <i>filed</i> within one (1) year of when the issue was known, or should have been known.	Must be <i>filed</i> within two (2) years of when the issue was known by the parent or school district <i>or</i> within ninety (90) days of a parent placing the child in another school and is seeking tuition from the school district for not providing FAPE.
Timeline to decision?	Must be scheduled in a timely manner.	Written decision issued 60 calendar days from the date the complaint was filed.	Written decision issued 45 calendar days from the end of the resolution period. The resolution meeting, to try to resolve the problem, must be held within 15 calendar days after the complaint is received. Parties may take up to 30 calendar days to work out a solution to the problem before the due process timeline begins.
Who makes the decision?	Participants make decisions together with the help of a mediator.	The State Educational Agency (SEA) staff makes sure the complaint is investigated and the Secretary of Education makes the decision.	A hearing officer or judge (if parties appeal a hearing officer's decision).

	Mediation	Administrative Complaint	Due Process
Cost to parent?	No cost to parent.	No cost to the parent.	Parent pays their own expenses which may include legal fees or payment of witness or expert fees.
Outcome?	The development of a signed, legally binding, written agreement.	A written decision that includes findings of facts, conclusions of law and recommendations for the decision for the Secretary of Education; the decision may include actions required by the school district to correct any violations.	A written decision that includes findings of facts, conclusions of the law, and if applicable, orders for specific actions.
Appeal?			A civil action may be filed by either party.

Adapted from “Quick Guide to Special Education Dispute Resolution Processes for Parents of Children & Youth (Ages 3-21)” developed by the Center for Appropriate Dispute Resolution in Special Education (full document found at [CADRE](#)).

Can a Parent Review Their Child’s Educational Records and Keep Them Private?

You can see all of your child’s education records. You also have the right to prevent the supervisory union/school district from sending the records to someone else without your written permission (with some exceptions). The school must give you a free copy of your child’s IEP.

Does a parent have to be informed about change in placement for disciplinary reasons?

A child receiving special education services has special rights when it comes to school discipline.

If the school wants to change the placement of a child, or remove a child for more than 10 days because of a disciplinary problem, the IEP team must decide if the child’s disability caused the misbehavior, or if the misbehavior occurred because the SU/SD did not properly implement the IEP. This is called a *Manifestation Determination*.

If the offense involved drugs, weapons, or serious injury to self or others, the school can move the child to a different setting for no more than 45 school days without parent permission, even if the behavior was caused by the student’s disability.

If a child is removed from their setting for over 10 days in the school year, the school must provide special education services in a different setting so that the child can continue to make progress to achieve IEP goals.

If you have questions about this process, you should talk to your school or contact one of the organizations listed at the end of this brochure.

Can a parent remove a child from special education services?

You can decide to withdraw your child from special education programs and related services at any time.

You must request this in writing to your school. When you remove your child from their special education program, they will no longer receive any special education services; withdrawing your child is “all or nothing.” If you remove your child from special education services, the SU/SD cannot continue to provide selected special education or related services requested by the parent.

Can a parent send a child to an independent school?

Parents can choose to educate their child at an independent school. However, the school district/supervisory union is not required to pay tuition for a child with a disability if it is the parents’ choice to place the child in the private school.

If directed by a court or hearing decision, a school district/supervisory union *may* pay tuition at an independent school if a decision is made that the school district did not provide the child with an appropriate special education program, and the independent school program meets the child’s needs as determined by the court or hearing decision.

RESOURCES

To Request Mediation

Mediation may be requested in writing using the form provided on the Agency of Education website or by writing a letter to the Secretary of Education. If writing a letter to the Secretary, you must include all of the information required by the [mediation form](#).

Filing a Due Process Complaint

Two separate forms have been developed for filing a due process complaint; one for [parents](#) and one for [school districts](#). A hearing may be requested in writing using the form(s) provided on the Agency of Education website or by writing a letter to the Secretary of Education. If writing a letter to the Secretary, you must include all of the information required by the relevant regulations and the due process complaint form(s).

Filing an Administrative Complaint

To file an administrative complaint, an individual may download, fill in and mail a form available on the Agency of Education website, or may write a letter to the Secretary of Education. If writing a letter to the Secretary, you must include all of the information required by the relevant regulations and the [administrative complaint form](#).

Questions?

For questions or concerns about requesting mediation, filing a due process or administrative complaint, contact the Agency's legal section. If you are unable to write, you may use other means of communication to request mediation, due process or an administrative complaint.

Email address for filing forms electronically: AOE.MediationDPinfo@vermont.gov

Mailing address for filing forms by mail:

Vermont Agency of Education
Special Education Mediation Service
219 North Main Street, Suite 402
Barre, VT 05641

Your School District's Special Education Administrator: He or she has information about your rights and special education services in your community. Contact your superintendent's office to find out the name and telephone number of this individual.

For further assistance:

[Vermont Family Network](#)

600 Blair Park, Rd Ste. 240
Williston, Vermont 05495
Phone: (800) 800-4005 or (802) 876-5315

[Vermont Disability Law Project](#)

274 North Winooski Avenue Burlington, VT 05401
Phone: (800) 639-8857 or (800) 889-2047