



## **Parental Rights: Maryland Procedural Safeguards Notice Summary Updated July, 2021**

### **Procedural Safeguards Notice**

The procedural safeguards notice includes a full explanation of parental rights in an easily understandable manner and in a parent's native language. This procedural safeguards notice applies to children and families receiving services through an Individualized Family Service Plan (IFSP) and to children and youth with disabilities receiving services through an Individualized Education Program (IEP).

### **Native Language**

Parents have the right to receive information in the language they understand.

### **Electronic Mail**

Parents may choose to receive notices electronically if this option is available.

### **Prior Written Notice**

Parents have the right to receive written information about the public agency's actions concerning their child's early intervention services or special education and related services.

### **Consent**

A public agency must get parental consent to assess a child for early intervention and special education and related services, and before providing early intervention and special education and related services. Parents have the right to withdraw consent at any time. There are some exceptions to consent for evaluation.

In addition to the actions for which the IDEA requires parental consent (initial evaluation, initial provision of services, and reevaluation), Maryland law requires that an IEP team must obtain the written consent of a parent if the team proposes to:

- Enroll the child in an alternative education program that does not issue or provide credits towards a Maryland High School Diploma;
- Identify the child for the alternative education assessment aligned with the State's alternative curriculum; or
- Include restraint or seclusion in the IEP to address the child's behavior as described in COMAR 13A.08.04.05.

If the parent does not provide written consent to any of the proposed actions listed above, the

IEP team must send the parent written notice of their consent rights no later than five (5) business days after the IEP team meeting informing them that:

- The parent has the right to either consent to or refuse to consent to the action proposed; and
- If the parent does not provide written consent or a written refusal within fifteen (15) business days of the IEP team meeting, the IEP team may implement the proposed action.

If the parent refuses to consent to any of the proposed actions listed above, the IEP team may use the dispute resolution options listed in Education Article §8-413 (mediation or due process) to resolve the matter.

### **Surrogate Parents**

The local lead agency, the local school system, or in some instances a judge, may assign a surrogate parent to represent an eligible child if:

- The parent cannot be identified;
- The public agency after reasonable efforts cannot find the child's parent; or
- The child is a ward of the State of Maryland.
- The lead agency must take reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a parent surrogate

### **Independent Education Evaluation**

If a parent disagrees with an evaluation completed by the public agency, the parent has the right to have the child evaluated by someone who does not work for the public agency. Only parents of a child with a disability under Part B are entitled to an independent evaluation.

- The local school system has 30 days to approve or deny the request via written response;
- If the request is approved, the local school system must advise the parent of the process for arranging the evaluation; and
- If the request is denied, the local school system must file a due process complaint within 30 days of denial.

Parents have the right to only one independent educational evaluation at public expense each time the public agency conducts an evaluation if:

- The parents disagree with an evaluation obtained by the public agency; or
- The parents submit to the public agency a written request for an educational evaluation conducted by the public agency and the public agency:
  - Does not respond to the request within 30 days; or
  - Approves the request but the educational evaluation meeting does not occur, through no fault of the parent, within:
    - Sixty days after the date on which the request was received by the public agency; or

- If the State is under a State of Emergency proclaimed by the Governor, ninety days after the date on which the request was received by the public agency.

### **Confidentiality of Information**

Parents have the right to review their child's records and ask the public agency to correct their child's record if they think the record is not correct. Parents have the right to consent to release information about their child, yet consent is not required in some circumstances. Parents have the right to expect the public agency to keep their child's early intervention or educational records confidential and ask the public agency to destroy their child's educational information when it is no longer needed.

### **Discipline of Children with Disabilities**

Parents have the right to specific procedures and protections if the public agency takes certain disciplinary actions towards their child. A public agency must provide a child educational services, after the child's removal for more than 10 days in a school year for a violation(s) of a student code of conduct. This applies to children with disabilities, ages 3 through 21, receiving services through an Extended IFSP or an IEP.

### **Parental Unilateral Placement of Children in Private Schools at Public Expense**

IDEA does not require a public agency to pay for the cost of education, including early intervention or special education and related services, of a child with a disability at a private school if the public agency made a free appropriate public education (FAPE) available and the parent chose to place their child in a private school.

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

In Maryland, parental rights do not transfer to children with disabilities on reaching the age of majority (18 years of age), except under limited circumstances.

### **Resolving Disagreements**

The following procedures describe the processes available to parents and public agencies for resolving disagreements regarding a child's early intervention or special education program and related services. These options include mediation, State complaint, and due process complaint.

#### **Mediation**

Mediation is a process that may be used to resolve disagreements between the parents of a child with a disability and the public agency responsible for the education of the child. If during an IEP team meeting a parent disagrees with a child's IEP or the special education services provided to the child, the IEP team shall provide the parent, in plain language:

- An oral and written explanation of the parent's right to request mediation;
- Contact information, including a telephone number, that a parent may use to receive more information about the mediation process; and

- Information regarding pro bono representation and other free or low-cost legal and related services available in the area.

Parents may request the information about mediation to be translated into the parents' native language. If the native language spoken by the parents is spoken by more than 1 percent of the student population in the local school system, the IEP team shall provide the parent with the translated document within 30 days after the date of the request. An employee of the Office of Administrative Hearings (OAH) who is qualified and trained in effective mediation technique will conduct the mediation.

### **State Compliant**

An organization or individual, including one from another state, has the right to file a state complaint with the Maryland State Department of Education (MSDE). In order for the state to conduct an investigation, the written complaint must meet specific criteria as required in the IDEA regulations. MSDE is responsible for disseminated widely distinct complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, Independent Living centers, and other appropriate entities.

### **Due Process Complaint**

The parent, early intervention services provider, local lead agency, or a public agency May file a due process complaint on any matter relating to the identification, evaluation, or placement of a child, or the provision of early intervention services or educational placement, or the provision of a free appropriate public education (FAPE) to the child.

### **Attorney Fees**

In any action or proceeding brought under IDEA, the court may award reasonable attorneys' fees to the parent/guardian(s), public agency, MSDE, or any prevailing party.

### **IDEA Dispute Resolution Process Comparison Chart**

The chart outlines the IDEA Dispute Resolution Process in a visual format- located on page 28 of the Procedural Safeguards manual.

### **Age of Majority:**

*Family Educational Rights & Privacy Act (FERPA):* Students reaching the age of 18 years old have the right to access educational records.

*Individuals with Disabilities Act (IDEA):* Under Maryland law, in certain limited circumstances, all rights accorded to the parents under IDEA shall transfer to a child with a disability. This transfer occurs when the child reaches the age of 18 years, if the child has not been adjudged incompetent under State law and there is documentation that:

- The parents are unavailable or unknown, and the child requests that the parental rights

- be transferred to the child rather than have a parent surrogate appointed;
- The parents have not participated in the special education decision making process for the child after repeated attempts by the public agency to involve the parents over the previous year;
  - The parents have affirmatively rejected participation in the special education decision making process;
  - The parents cannot participate in the special education decision making process due to prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of the parents and the parents have consented to the transfer of rights to the child;
  - The parents cannot participate in the special education decision making process due to extraordinary circumstances beyond their control, and the parents have consented to the transfer of rights to the child; or
  - The child is living outside of the parents' home and is not in the care or custody of another public agency.

If the parents of a child with a disability, with whom the child resides, do not consent to the transfer of rights to the child at the age of 18, and the child has not been adjudged incompetent under State law, either party may file a due process complaint to determine whether the rights should be transferred.

If a child with a disability has been represented by a parent surrogate in accordance with federal and State laws and regulations, the public agency shall provide any written notice required under federal and State laws and regulations to both the child and parent surrogate. All other rights afforded the parent surrogate under IDEA shall transfer to the child if the child has not been adjudged incompetent under State law and the child requests that the rights transfer.