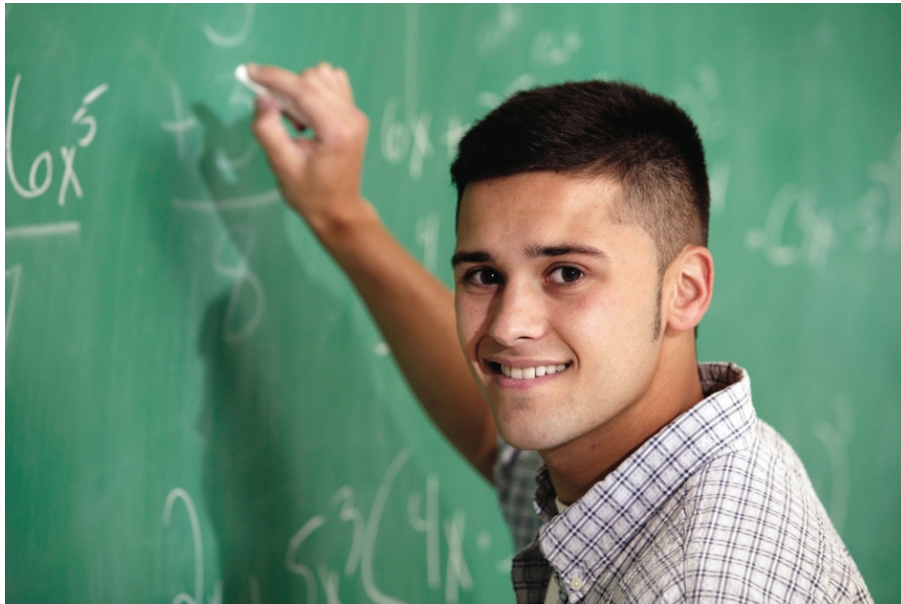


PROCEDURAL SAFEGUARDS NOTICE

STUDENT RIGHTS FOR SPECIAL EDUCATION (18-21)

MAY 2010

OREGON DEPARTMENT OF EDUCATION
OFFICE OF STUDENT LEARNING & PARTNERSHIPS
255 CAPITOL STREET NE
SALEM, OREGON 97310



NOTE: This version of the Notice of Procedural Safeguards replaces the October 2007 version and is based upon the requirements set forth in the final Part B regulations including those published in the *Federal Register* August 14, 2006 (71 FR 46753) and December 1, 2008 (73 FR 73006) and state statutes and administrative rules implementing IDEA 2004.

Additional information about special education and these procedural safeguards is available by contacting your local school district special education administrator or school principal, the Oregon Department of Education's Office of Student Learning & Partnerships, or the Oregon Parent Training and Information Center.

This document conforms to the U.S. Department of Education's Model Procedural Safeguards Notice (June 2009) with specific information about Oregon where necessary.

Questions or comments about this document may be directed to:

Office of Student Learning & Partnerships
Oregon Department of Education
255 Capitol Street
Salem, OR 97310
(503) 947-5782

This document is available electronically at:
<http://www.ode.state.or.us/search/results/?id=261>.

It is the policy of the State Board of Education and a priority of the Oregon Department of Education that there will be no discrimination or harassment on the grounds of race, color, sex, marital status, religion, national origin, age or disability in any educational programs, activities, or employment. Persons having questions about equal opportunity and nondiscrimination should contact the State Superintendent of Public Instruction at the Oregon Department of Education, 255 Capitol Street NE, Salem, Oregon 97310; phone 503-947-5740; fax 503-378-4772.

STUDENTS WITH DISABILITIES UNDER SECTION 504

Some students may have a disability that affects a major life activity but do not meet the eligibility requirement for one of the categories of disability under the Individuals with Disabilities Education Act (IDEA). These students may be protected by a different federal law, Section 504 of the Rehabilitation Act of 1973. The rights of "504 only" students are in some ways similar and in some ways different from the procedural safeguards described in this booklet. For more information about Section 504, contact your school district's 504 coordinator.

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INTRODUCTION

Who is this booklet for?

If you are a student with a disability who is 18 years old or older and you are on an Individual Education Program (IEP) or eligible for an IEP, this booklet is for you. This booklet explains your rights under the federal special education law called the Individuals with Disabilities Education Act (IDEA). These rights are called procedural safeguards. Procedural safeguards are steps your school district must follow to protect your right to special education.

What will this booklet tell me?

This booklet will tell you about your rights in special education. This booklet will not give you detailed information about IEPs, transition services, classes, or testing. You may get more information about these topics by talking to your teachers, parents or from the Oregon Department of Education (ODE) web site and other resources listed in the back of this booklet.

Why do I need to know what is in this booklet?

Before you were 18, you probably came to your IEP meetings and people talked about you and asked you questions. When it was time to sign paperwork had to be signed or the school needed consent, your IEP team asked your parent or someone else acting as your parent at the meeting to do that. When you turn 18, your IEP team will look to you to participate in that role. You need to understand your special education rights because they will help you get the education services you need.

When must I get a copy of this booklet?

You must get a copy of this booklet:

- Once a year;
- When you ask for one;
- The first time you are referred for special education testing (this is called “evaluation”) to see if you are eligible for special education services;
- Close to your 17th birthday;
- If you request a due process hearing or file a written complaint with ODE; and,
- If the school decides to take disciplinary action and there is a change in placement for you.

Where do the rights in this booklet come from?

These rights are from a federal special education law, called the Individuals with Disabilities Education Act (IDEA). This law says school districts must give students with disabilities a “free appropriate public education.”

What is a free appropriate public education?

A free appropriate public education means special education and related services, including service to help you move from school to post-secondary education, training, work or community living. These services are provided free to you by your school district. A team that includes you, your teachers, and

others design these services after they decide whether you have a disability and meet the criteria for special education. This team decides what special education services you need and writes this in an Individualized Education Program (IEP). The team also decides what type of class, school, or program you need and writes this into your IEP.

Your team must place you in the “least restrictive environment.” This means you must be placed in the most typical kind of program that will meet your needs and help you reach your post-secondary goals. The placement must be based on your IEP.

What is an IEP?

The IEP describes what special education and related services will be provided to you. The IEP team develops your plan. The team includes you, your teachers, and others. Your IEP outlines goals that you will work on during the school year and your post-secondary goals.

Where can I get more information?

Start with your local school district. You may want to talk to a teacher, school counselor, or the principal. You may also talk to the special education teacher or transition specialist for your school district or education service district (ESD). Your parents may also have additional information for you. Other resources are listed at the end of this booklet.

PARTICIPATION IN MEETINGS

Do I have the right to participate in meetings about my special education services and program?

Yes, you have the right to participate in meetings about your special education needs, program, and placement. It is important that you participate because you will be asked about your educational needs, special education services, educational placement, and other educational matters, such as your transition from high school to your community. Participation includes going to meetings to develop your IEP.

TRANSFER OF RIGHTS AT AGE OF MAJORITY

What is age of majority?

Under Oregon law, persons reach the age of majority and become legal adults on their 18th birthday. Students who have reached the age of majority are responsible for making decisions about their own education. Under Oregon law, rights also transfer to younger students who marry or become legally emancipated. (“Emancipated” means you are granted the rights of an adult by a court.) The special education rights in this booklet will transfer to you at the age of majority unless you have a court-appointed legal guardian or court-appointed surrogate parent.

What special education rights transfer to me?

You have the right to be a member of the team that makes decisions about your special education. This includes decisions about:

- Your eligibility;
- Your IEP; and,
- Your placement (the type of class, school, or program you need).

You also have the right to give consent or refuse consent for your evaluation or re-evaluation. You have the right to give consent or to refuse consent for placement if this is your first placement in a special education program or services.

What if I want my parent or someone else to act for me in making these decisions?

You may ask your school district to have someone act for you if you want someone else to make decisions. This person is called a “surrogate parent.” The surrogate parent may be your parent or another adult who knows about special education rights and can represent your needs, preferences and interests. You must give written consent to have a surrogate parent appointed for you.

Do these rights transfer to me if I have a court-appointed guardian?

No. If you have a court-appointed guardian, the guardian acts as your parent at IEP meetings and makes decisions for you.

How will I know when rights transfer to me?

At the IEP meeting closest to your 17th birthday, your school district will give you a copy of this Notice of Procedural Safeguards and tell you and your parents that special education rights will transfer to you when you turn 18.

You will get a written notice when you turn 18 that rights have transferred to you. After rights transfer to you at age 18, your parents will still get written information about meetings and other written notices. Your parents may attend the meetings if you or your school district invite them.

You may get more information about the transfer of rights by contacting one of the resources listed at the end of this booklet.

CONSENT

What is consent?

Consent means:

1. You have been fully informed in your language of all information important to the giving of your consent.
2. You understand and agree in writing to give consent.
3. You understand that the consent is voluntary and you may not undo an action that has occurred after you gave your consent and before you

withdrew it. If you consent to an evaluation, you cannot revoke or take away that consent after the evaluation is done.

You may change your mind and take away your consent only for the tests that are not yet completed. You cannot take away your consent for any tests that are already completed.

Your school district must make reasonable efforts to get your informed consent when consent is needed.

When is my consent needed?

Before your first evaluation: Your school district must give you written notice and get your written consent before testing you for special education. The district must tell you about the tests they will use.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to you.

Before any intelligence or personality test: State law requires your consent before your district gives you an intelligence or personality test.

Before reevaluation: Your school district must have your written informed consent before retesting you for special education unless your school district tried to get your consent and you did not respond.

Before you receive special education services for the first time: You must give your written consent before your school district can provide special education services to you for the first time.

May I refuse consent for special education testing?

Yes. You should tell your school in writing if you want to refuse testing for special education. Your school district may ask for a due process hearing to test you if they think you need the testing. There is more information about due process hearings in this booklet. You and your school district may decide what to do next through a meeting called mediation.

May I refuse consent for special education services?

Yes. You should tell your school in writing if you want to refuse consent for special education services. Even if you have already given consent to receive special education services, you may withdraw (revoke) your consent. If you refuse to consent or withdraw your consent to receive special education services, your school district may not ask for a due process hearing in order to require you to receive those services.

Records of efforts to get your consent: Your school must keep records of reasonable efforts to get your consent when consent is needed. The records may include:

1. Records of telephone calls and the results of those calls;

2. Copies of letters sent to you and any replies; and
3. Records of visits made to your home or work place.

Other consent requirements:

Your consent is not required before your school district may:

1. Look at existing data as part of your evaluation or reevaluation;
2. Give you a test or other evaluation that is given to all students unless, before that test or evaluation, consent is required for all students;
3. Conduct testing that is listed on your IEP as a measure of progress toward IEP goals; or,
4. Conduct a screening by a teacher or specialist for instruction.

Your school district may not use your refusal to consent to or withdrawal of consent for one service or activity to deny you any other service, benefit, or activity.

PRIOR WRITTEN NOTICE

What is prior written notice?

Prior written notice is a notice that is given to you in writing about special education decisions. You must be told in writing after decisions are made that affect your special education. These are usually decisions made by your IEP team. Before those decisions are put into place, your district must tell you in writing what those decisions are. These include decisions to:

- Identify you as a student with a disability;
- Change your disability from one category to another;
- Evaluate or re-evaluate you;
- Give you a free appropriate public education;
- Change part of your free appropriate public education;
- Place you in a special education program; or,
- Change your special education placement.

You also must be told in writing when your school district refuses a request you make about any of these items.

What information must the written notice include?

This notice must:

- Describe the action your school district decides to take or refuses to take;
- Say the reason for this action or refusal;
- List any other choices and the reasons why those choices were not taken;

- List each procedure, test, record, or report used as a basis for this action or refusal;
- Tell you anything else you should know that is related to this action or refusal;
- Include a statement that students with a disability are protected by the procedural safeguards described in this booklet;
- Tell you how to get a copy of this *Notice of Procedural Safeguards* booklet; and,
- Include places and people you can contact for help in understanding these procedural safeguards.

Prior written notice must be given to you in the language you use unless it is clearly not possible to do so.

REEVALUATION

What is reevaluation?

Reevaluation is testing to help identify your special education or related services needs to improve your academic achievement or functional performance. You or your teacher may request a reevaluation at any time.

How often will I be reevaluated?

- You must be reevaluated at least once every 3 years, unless you and the district agree in writing that reevaluation is not necessary.
- You may not be reevaluated more than once a year, unless you and the district agree otherwise.
- If your IEP team decides that no more testing is needed to decide whether you still need special education, your school district must tell you about that decision and the reasons for it. You still have the right to ask for testing to determine your eligibility and special education needs. Your school district is not required to do any more testing for this reevaluation unless you ask for it.

INDEPENDENT EDUCATIONAL EVALUATION

What is an independent educational evaluation (IEE)?

An IEE is an evaluation by a qualified tester (called an “examiner”) who does not work for your school district. A “qualified examiner” is someone who is specially trained to test a person’s abilities in specific areas. You may have an IEE at public expense if you disagree with the evaluation that your district has already done for you. “Public expense” means that you do not have to pay for this evaluation.

How do I ask for an IEE?

Tell your school district in writing, if possible, that you want an IEE. They may ask why you disagree with their evaluation. You may, but do not have to, say why you disagree with their evaluation. Your school district must give you a list of where you can get an IEE. They must give you the rules for IEE.

What happens after I ask for an IEE?

If you ask for an IEE, or ask to be paid back for an IEE that you received, your school district must answer your request without unnecessary delay. The district must either ask for a due process hearing to show that their evaluation is appropriate for you, or pay for the IEE.

If your school district goes forward with a due process hearing and the final decision is that the district's evaluation was appropriate, the district will not have to pay for an IEE for you.

If you get an IEE, your IEP team must consider the results when making a decision related to your free appropriate public education. The results of the evaluation may be presented as evidence at a due process hearing.

You get only one IEE at public expense each time your school district conducts an evaluation with which you disagree.

What are the school district's rules for an IEE?

If an IEE is at public expense, the rules must be the same as the school district's rules for its own evaluations, including where it will be, who will do it, and what it will cost. The school district must provide you, on request, with a chance to show that you need an IEE that does not meet the district's rules.

EDUCATION RECORDS

Can I look at my education records?

Yes. Two laws, the Family Educational Rights and Privacy Act (FERPA) and the IDEA, give you the right to look at all your educational records. If you want to look at your records, ask your teacher, principal, or the special education administrator for your school district.

If you ask to look at your records, your school district must arrange for this:

- Without unnecessary delay;
- Before an IEP meeting;
- Before a resolution session or due process hearing; and, in any case,
- Within 45 days of the time you asked to look at your records.

Your right to inspect and review education records includes:

1. Your right to a response from the school district to your questions about the records;
2. Your right to ask that the school district give you copies of the records if you cannot effectively look at the records unless you receive those copies; **and,**
3. Your right to have your representative look at the records.

The school district may charge a fee for copies of records that are made for you if the fee does not keep you from looking at those records. A school district may not charge a fee to look for or to get information under the IDEA.

Your school district has more information in writing about school records. You may ask a teacher or principal for a copy of this information.

Are my educational records private?

Yes, FERPA and IDEA also protect the privacy of your education records. You must give written consent for other people to look at your education records.

Your records may be released without your consent to:

- Teachers and other school staff who have a “legitimate educational interest”;
- Another school district or educational agency if you are transferring to or getting services from that district or agency; and,
- Your parents, if you are a tax dependent of your parents.

Your records may also be released without your consent to comply with a court order, in a health or safety emergency, and in a few other circumstances. You may ask your school district for a copy of your district’s complete records policy.

Some information, like your name, address, and activities, may be released as directory information if you have not signed a paper refusing the release of directory information.

Each school district must keep a record of the people who have looked at your education records including the person’s name, the date, and the purpose. This rule does not apply to you or your teachers or other school staff.

Each school district must keep a current list of the names and positions of teachers and other school district staff who may look at educational records.

If any education record includes information on another student, you only have the right to look at the information relating to you.

On request, the school district must provide you with a list of the types and locations of education records collected, maintained, or used by the district.

Your school district must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to you. The information must be destroyed at your request. However, a permanent record of your name, address, and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. A district may destroy file information physically (like shredding) or by taking out your name or other identifying information.

What can I do if I think my records need to be corrected?

If you think that the information in the education records maintained is wrong, misleading, or violates your privacy or other rights, you may ask the school district that maintains the information to change the information. The school district must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request. If the school district refuses to change the information as you requested, it must inform you of the refusal and your right to a hearing.

If, after the hearing, the school district decides that the information is not wrong, you have the right to place a statement in your records telling why you think the information is wrong.

Your explanation must:

1. Be kept by the school district as part of your records as long as the record is kept by the school district; **and**,
2. If the school district gives the records to anyone, your explanation must also be given to that person.

SCHOOL DISCIPLINE AND PLACEMENT IN INTERIM ALTERNATIVE EDUCATIONAL SETTINGS

May I be suspended from school?

Yes, you may be suspended for up to 10 school days in a row for behavior if students without disabilities would be suspended for that behavior.

May I be suspended for more than 10 school days in a school year?

It depends. You may be suspended for more than 10 school days in a school year if there is not a “pattern” to the suspensions. A “pattern” means:

1. Your behavior is for the most part, similar to your past behavior that ended in removal from school; and,
2. The length of each removal, the total amount of time of removal and the closeness of the removals to one another.

Whether there is a pattern is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

If there is a “pattern” to the suspensions, your school may only suspend you if your IEP team decides that your behavior was not a “manifestation” of your disability. A “manifestation” means your behavior happened because of your disability. If your behavior happened because of your disability, then your team has to decide if your special education services or teaching strategies need to be changed. If your behavior did not happen because of your disability, you may be suspended.

You may be removed for more than 10 school days in a row if your IEP team decides that your behavior was not a “manifestation” of your disability. This is usually called an “expulsion.” The school may only suspend or expel you for behavior if students without disabilities may be suspended or expelled for the same behavior.

School staff may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement is appropriate for you when you break a school rule.

On the date the school district makes the decision to make a removal that is a change of placement because of a violation of a code of student conduct, the school district must notify you of that decision, and provide you with Notice of Procedural Safeguards.

If I am suspended for more than 10 school days in a school year, does my school still have to provide me with an education?

Yes. Your school must give you the services that you need to continue to participate in the general education curriculum, although in a different place, and to progress toward your IEP goals, while you are suspended. These services may be provided in a different setting, called an “interim alternative educational setting.” Your IEP team will decide your interim alternative educational setting.

May I be expelled from school for the rest of the school year?

Yes, but only if your IEP team decides that your behavior was not a “manifestation” of your disability. If so, your setting must still provide you with an education, but it can be in a different school or at different times than you would otherwise go to school. Your school must give you the services that you need to continue to participate in the general education curriculum, although in a different place, and to progress toward your IEP goals, during the time you are expelled. These services may be provided in a different setting, called an “interim alternative educational setting.” Your IEP team will decide your interim alternative educational setting.

May my IEP team decide to move me to a different school or program even if I am not suspended or expelled?

Yes. You are part of the IEP team that makes this decision. The decision needs to be based on your IEP and what you need to be successful in school. Your IEP team can also consider the impact of your behavior on teachers and other students.

How does my IEP team decide if behavior is a “manifestation” of my disability?

Your IEP team looks at all the information about you, including test results, information from you and your parents (if they are involved), observations of you, and your IEP and placement.

Your IEP team must determine that your behavior was a manifestation of your disability if:

- Your behavior was caused by or directly related to your disability; or,
- Your behavior was the direct result of the school district's failure to implement your IEP.

If the team determines that your behavior was the direct result of the school district not implementing the IEP, the school district must immediately take steps to fix the problem.

What happens if the IEP team decides that my behavior was a manifestation of my disability?

The school district must let you return to the placement you were removed from, unless you and the district agree that you will attend a different program.

Also, your IEP team must complete an evaluation of your behavior (called a "functional behavior assessment") and develop a behavior intervention plan for you. If you already have a behavior intervention plan, the IEP team must review and change the plan, if needed, to address the behavior.

The school district may request a due process hearing if it believes that maintaining your current placement is very likely to result in injury to you or to others.

What happens if the IEP team decides that my behavior was *not* a manifestation of my disability?

The school district may suspend you or expel you for the same amount of time that a student without disabilities would be suspended or expelled. If the school district decides to proceed with an expulsion, your school must make sure that your special education and disciplinary records are given to the ALJ for the expulsion.

The school district must still give you a free appropriate public education even if it is in a different place. Your IEP team must determine your specific "interim alternative educational setting." An Interim alternative educational program must:

- Allow you to continue to participate in the general education curriculum, although in a different place; and,
- Allow you to continue to receive your IEP services and modifications to help you meet your IEP goals.

The school must give you, as appropriate, a functional behavior assessment, behavior intervention services and modifications to address your behavior so it does not continue.

What can I do if I disagree with the manifestation determination or the interim alternative education setting?

You can ask for an "expedited" due process hearing by sending a letter requesting a hearing to your school district and ODE. An expedited hearing must be held within 20 school days. The administrative law judge must issue a ruling within 10 school days after the hearing. See **Due Process Hearings**.

When can the school immediately move me to another school?

You may be immediately suspended for the amount of time that a student without a disability would be subject to discipline, up to 45 school days, and your school district may move you to a different place for school (called an “interim alternative educational setting”) if you:

- Bring a weapon to school or a school event, or if you get a weapon at school;
- Knowingly have or use illegal drugs or sell or try to buy a controlled substance at school or a school function; or,
- Cause serious bodily injury to another person while at school, on school grounds, or at a school function.

What happens if an expedited due process hearing is requested?

An impartial administrative law judge (ALJ) holds the due process hearing and makes a decision. The ALJ may:

1. Return you to the placement from which you were removed if the ALJ determines that the school district did not follow the IDEA or that your behavior was a manifestation of your disability; or
2. Order a change of placement to an appropriate interim alternative educational setting for not more than 45 school days if the ALJ finds that keeping your current placement is very likely to result in injury to you or to others.

These hearing procedures may be repeated if the school district believes that returning you to the original placement is very likely to result in injury to you or to others.

An expedited hearing must be held within 20 school days of the date the hearing is requested and must result in a decision within 10 school days after the hearing.

A resolution meeting must be held within 7 calendar days of receiving notice of the due process hearing request. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process hearing request.

A party may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings.

What are the requirements for an interim alternative educational setting?

Your IEP team must determine your specific “interim alternative educational setting.” This program must:

- Allow you to continue to participate in the general education curriculum, although in a different setting;
- Allow you to continue to receive your IEP services and modifications to help you meet your IEP goals; and,
- Provide, as appropriate, a functional behavior assessment, behavior intervention services and modifications to address your behavior so it does not continue.

May I be removed from school if I am dangerous to other people or myself?

Yes. An administrative law judge may move you to an interim alternative educational setting for up to 45 school days at a time if:

- You would be substantially likely to cause injury to yourself or others in your current placement;
- Your school district has made reasonable efforts to minimize the risk of harm in your current placement; and,
- The interim alternative educational setting allows you to continue to participate in the general curriculum, to receive your IEP services, and includes services designed to address your behavior.

What is my placement once a due process hearing request has been filed?

When you or the school district file a due process hearing request related to disciplinary matters, you must (unless you and ODE or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the administrative law judge, or until the end of the disciplinary removal, whichever comes first.

May a school district report a crime by a student with a disability?

Yes. The law does not:

1. Prohibit a district from reporting a crime committed by a student with a disability to appropriate authorities; or,
2. Prevent state law enforcement and judicial authorities from taking action in response to the report.

PRIVATE SCHOOLS

Must school districts provide special education services to children with disabilities in private schools?

Yes, in general, but not to every student. Federal law allows your school district to limit the money they spend for services if you or your parents decide that you will go to a private school. If you are at a private school and need special education services, your school district may meet with you to develop a services plan describing the services you will receive.

When may my school district be required to reimburse me?

The school district is not required to pay for your private education if the school district made a free appropriate public education available to you and you or your parents decided you would go to a private school.

A court or administrative law judge (ALJ) may require your school district to reimburse you or your parents for the cost of the private school made without the school's consent or referral if:

- You received special education services from your school district before enrolling in the private school; and,
- The court or ALJ finds that your school district did not make a free appropriate public education available to you in a timely manner before you went to the private school.

An ALJ or court may find your placement to be appropriate, even if the placement does not meet the state standards that apply to education provided by ODE and school districts.

When may the court reduce or deny reimbursement to me?

Notice: The court or ALJ may reduce or deny reimbursement if you or your parents did not give the district notice that you were rejecting the district's placement and intended to go to a private school at public expense. This notice must be given either:

- At your most recent IEP meeting before leaving public school; or,
- In writing to your school district at least ten business days before you leave public school.

A court or administrative law judge may not reduce or deny reimbursement if you do not give this notice because:

- You may not be able to understand or write in English;
- Giving notice would likely result in physical or serious emotional harm to you;
- Your school prevented you from giving notice; or,
- You had not received a copy of this *Notice of Procedural Safeguards* or otherwise been informed of this notice requirement.

Evaluation: The court or administrative law judge also may reduce or deny reimbursement if:

- The school district gave you written notice of special education action of its intent to evaluate or reevaluate you;
- The purpose of the evaluation as described in this notice was appropriate and reasonable;
- The school gave you this notice before you left the public school; and,
- You or your parents did not make you available for this evaluation.

Unreasonableness: Reimbursement may also be reduced or denied if a judge decides that you or your parents were unreasonable in your actions or the costs of the private program are unreasonable.

RESOLVING DISAGREEMENTS

What may I do if I disagree with the services I am getting?

If you have concerns about your special education services, the first step is to talk to your special education teacher, transition specialist, another teacher, your school counselor, or the principal. It helps to deal with concerns when they first happen. Steps may be taken right away to help the relationships among students, parents, and staff stay positive. If the concerns are not solved, you may take more steps to solve them.

You may ask your school for an IEP team meeting to review your IEP and make changes to address your concerns. You may also ask for mediation, write a complaint to ODE, or ask for a due process hearing.

MEDIATION

What is mediation?

Mediation is a special kind of meeting to help you and your school district reach an agreement about your concerns. The person who leads the process is called a mediator. A mediator is a neutral person who has special training to help solve problems. If you and your school district agree to try mediation, you and the district will choose a mediator from a list. The mediator does not work for you, the district, or the ODE. Mediation discussions are confidential and may not be used as evidence in a hearing or in court. Each mediation session will be held at a time and place that you can attend.

What happens if we reach an agreement in mediation?

You and the district will sign a written agreement that includes all of the agreements reached. This agreement is “legally binding” and enforceable in court. This means that a judge can order you or the district to follow through with the agreements made in mediation.

Do I have to try mediation?

No, mediation is voluntary. ODE encourages you to try mediation, but you can say no. You do not have to try mediation before a due process hearing or filing a complaint or to use any of the rights in this booklet.

When may I ask for mediation?

You may ask for mediation at any time if you have a disagreement about a special education problem, even if you have not filed a complaint or requested a due process hearing.

How do I request mediation?

You may contact ODE’s Mediation Coordinator at (503) 947-5705.

Who pays for mediation?

ODE pays for the mediation.

What else can I do to resolve a disagreement with the district besides mediation?

In addition to mediation you have the right to use the state complaint process or request a due process hearing to resolve disagreements with the school district. These options have different rules and procedures.

COMPLAINTS

What is a written complaint?

A written complaint is a letter that you send to ODE if you think your school district or ODE has violated the IDEA law.

What are the timelines for filing a complaint with ODE?

The complaint must be about something that happened within 1 year of the action.

How do I file a complaint with ODE?

Your complaint letter must be written and signed, and say how to contact you. Your complaint must describe the violation, and give specific information about what happened. Include your ideas for how to fix the problem. Send your written complaint to:

State Superintendent of Public Instruction
Oregon Department of Education
255 Capitol Street NE
Salem, OR 97310-0203

You may ask ODE for a sample form for filing a complaint. You should give the school district a copy of your complaint when you file it with ODE.

What are ODE's timelines for resolving a complaint?

If you send ODE a written complaint about an IDEA violation, ODE must investigate and send a written order within 60 days, unless ODE finds that more time is needed. The district will have a chance to respond to your complaint. You will have a chance to give more information to ODE about your complaint.

What is a written order?

A written order includes the facts, conclusions, and reasons. If ODE finds a violation, ODE will order the district to fix the problem. The final order does not identify you by name. The final order is a public record.

A complaint investigation order is an uncontested case under state law. If you are unhappy with the results, you may appeal within 60 days to a circuit court of proper jurisdiction. This means either in Marion County or the county court where your school district is located. The complaint order does not prevent you from asking for a due process hearing on the same violations or from trying mediation. More information about the complaint investigation process is available from ODE.

DUE PROCESS HEARING

What is a due process hearing?

A due process hearing is a formal legal proceeding run by an administrative law judge (ALJ).

At a minimum, an ALJ:

1. Must not be an employee of ODE or the school district that is involved in the education or care of the child. A person is not an employee of ODE solely because the person is paid by ODE to serve as an ALJ;
2. Must not have a personal or professional interest that conflicts with the ALJ's objectivity in the hearing;
3. Must be knowledgeable about and understand the provisions of the IDEA,

and federal and state regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts; and,

4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

ODE keeps a list of those persons who serve as ALJs and a statement of the qualifications for each one.

When can I ask for a due process hearing?

You may ask for a due process hearing if you disagree with your school district about your identification, evaluation, educational placement, or other concerns about your free appropriate public education. You can ask for an “expedited” due process hearing as described in the **Discipline** section.

When may the school district ask for a due process hearing?

Your school district may ask for a due process hearing to:

- Get consent if you refuse consent for evaluation or reevaluation;
- Show that the district has conducted an appropriate evaluation, if the district objects to paying for your independent educational evaluation;
- Show that the district has offered you a free appropriate public education; or,
- Seek an order to move you to an interim alternative educational placement if the school believes you are substantially likely to injure yourself or someone else in your current placement.

A school district may not request a hearing to override your refusal to consent for your first placement in special education.

What is the time line for asking for a due process hearing?

A due process hearing must be requested within two years of the date you or the school district knew or should have known about the act or omission that gave rise to the hearing request.

This two year timeline does not apply if you were prevented from requesting a hearing because:

- The district misrepresented to you or your parent that it had solved the problem; or,
- The district did not give you or your parent information that the district was required to give.

How do I request a due process hearing?

You (or your attorney, if you are represented) must send a written request for a hearing to your school district and to ODE. Your hearing request must include:

- Your name and address (or contact information, if you do not have an address) and the name of the school that you are attending;
- A description of the nature of the problem related to the hearing request, including specific facts; and,
- Any suggestions you have for resolving the disagreement.

A sample form is available from ODE. See **Resources**.

What happens after a due process hearing is requested?

When you request a hearing, ODE will send you a copy of this *Notice of Procedural Safeguards*, inform you that mediation is available at no cost, and advise you of any free or low-cost legal services.

The Office of Administrative Hearings will appoint an administrative law judge (ALJ) to conduct the hearing. The ALJ will contact you to set up a pre-hearing conference.

If the district filed the hearing request, you have 15 days from receiving this request to notify the ALJ of any problems with this notice. Likewise, if you filed for the hearing, the district has 15 days to notify the ALJ of any problems with your notice. The ALJ has five days to decide whether the notice follows the rules, and must immediately notify you and the district, in writing, of this decision.

You may correct any problems with your hearing request by sending another request if:

- The district agrees in writing; or,
- The ALJ agrees and it is more than 5 days before the hearing.

Sending another request for a hearing will restart the timelines for completing a due process hearing.

The party requesting the hearing may not raise any issue in the hearing that was not stated in the hearing request unless the district agrees otherwise.

If the district has not already given you written notice of special education action related to the issues in your hearing request, the district has 10 days from receiving your hearing request to send you this notice. Otherwise, the district has 10 days from receiving your hearing request to send you a response that specifically addresses the issues in your hearing request.

You and other IEP team members must meet for a “resolution session” within 15 days of a hearing request.

What is a resolution session?

A resolution session is a meeting to solve the problem about your education. The meeting must include you, members of the IEP team who know about the problem, and a district representative who has the right to make decisions for the district. The district may not have an attorney present unless you bring an attorney. A resolution session is required unless you and the district agree in writing to waive this meeting, or you and the district agree to try mediation instead.

If you and the district reach an agreement in the resolution session, you and the district will sign a written agreement that lists all the agreements reached. Like a

mediation agreement, this agreement is “legally binding” and enforceable in court. You or the district may cancel this agreement by sending a written statement to the other party within three business days of signature.

If the school district has not solved the problem to your satisfaction within 30 days of receiving the hearing request, the timelines for the due process hearing begin. The hearing and a final order must be completed within 45 days from the end of this 30 day period. The ALJ may allow more time if you or the school district ask for more time.

When can the 30-day resolution period be changed?

If you do not participate in the resolution meeting, the timelines for the resolution process and due process hearing will be delayed until you participate, unless you and the district agree to try mediation instead or to waive the resolution session.

If the school district does not hold the resolution meeting within 15 calendar days of receiving your due process hearing request or does not participate in the resolution meeting, you may ask the ALJ to begin the 4 calendar day due process hearing timeline.

If you and the school district agree in writing to waive the resolution meeting, then the 45 calendar day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30 calendar day resolution period, if you and the school district agree in writing that no agreement is possible, then the 45 calendar day timeline for the due process hearing starts the next day.

If you and the school district agree to try mediation, at the end of the 30 calendar day resolution period, both parties can agree in writing to continue the mediation process until an agreement is reached. However, if either you or the school district ends the mediation process, then the 45 calendar day timeline for the due process hearing starts the next day.

If I request a hearing, may I stay in my current educational placement while the hearing is pending?

Yes, you have the right to “stay put.” This means that you stay in your current special education placement during the due process hearing and any appeal.

Your placement will change if:

- You and your school district agree to another placement;
- You are applying for first time admission to a public school and you consent to your placement in a public school program;
- You are suspended or expelled by your school district, and placed in an interim alternative educational setting for behavior that is not a manifestation of your disability;
- You are removed by your school district to an interim alternative educational setting for up to 45 school days for a weapon or drug violation or for causing serious bodily injury to another person; or,

- You are removed by an ALJ to an interim alternative educational setting for up to 45 days because it is likely that you may injure yourself or others.

What are my rights in a due process hearing?

Your due process hearing rights include:

- The right to bring an attorney to give you advice;
- The right to bring one or more people who have special knowledge or training about your disability;
- The right to give written and verbal evidence, and to confront, cross-examine, and require witnesses to be at the hearing;
- The right to be informed at least 5 business days before the hearing of the evaluations completed by your district by that date and recommendations based on those evaluations that they intend to use at the hearing;
- The right to be at the hearing;
- The right to have the hearing closed or open to the public;
- The right to not allow evidence at the hearing that has not been shared with you at least five business days before the hearing. The ALJ may not allow evidence not shared five business days before the hearing without the consent of the other party;
- The right to get a written or, at your option, an electronic word for word record of the hearing at no cost; and,
- The right to get a written or, at your option, an electronic copy of the hearing decision at no cost.

The final order will be given to the State Advisory Council for Special Education. The final order does not identify you by name. It is a public record.

What is the timeline for a due process hearing?

The ALJ must send you a written final order within 45 calendar days after the end of the resolution period. An ALJ may give extra time at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you.

What will the ALJ decide?

An ALJ's decision on whether you received a free appropriate public education (FAPE) must be based on substantive grounds (what decisions were made). For procedural violations (how decisions were made), an ALJ may find that you did not receive FAPE only if the procedural violations:

1. Interfered with your right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE); or,
3. Caused a loss of an educational benefit.

This rule does not prevent an ALJ from ordering a school district to comply with the law.

If an ALJ requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

What may I do if I disagree with the hearing decision?

A decision by an ALJ is final except that a losing party may bring a civil action in court within 90 days of the final order. If you file a civil action in federal or state court, the court must:

- Receive the record of the hearing;
- Hear more evidence at the request of a party;
- Base its decision on the evidence; and,
- Grant appropriate relief.

You may have remedies available under other laws that overlap with the IDEA. To get relief under those other laws, you usually must first use the IDEA, the due process hearing procedures) before going into court.

When may a court order reimbursement for attorney fees?

A court may require the district to reimburse you for your reasonable attorney fees if you succeed in the due process hearing. Attorney fees may be denied for:

- Attorney services after you have received a written offer of a settlement that is as good as the hearing result (unless you had a good reason for rejecting the order);
- Attorney attendance at an IEP team meeting unless the meeting is ordered by an administrative proceeding or court; or,
- Attorney attendance at a mediation or resolution session.

Reimbursement for attorney fees may be reduced if:

- You or your parents unreasonably delay the final resolution;
- The amount of the attorney fees is higher than the community rate for similar services, skills and experience;
- The attorney charged for too much time; or,
- Your attorney did not give all of the appropriate information in the written request for a hearing.

A court may require your attorney to pay for the school district's attorney if your claim is "frivolous, unreasonable or without foundation." A court may require you or your attorney to pay for the school district's attorney if your claim was presented "for any improper purpose" such as to harass, or to delay or increase the cost of litigation without reason.

What are some of the differences between a complaint and a due process hearing?

Any person or group may use the state complaint process about any violation of a special education rule.

Only you or a school district may file a due process hearing request about your identification, evaluation or educational placement, or the provision of a free appropriate public education (FAPE) to you.

A state complaint must be finished in 60 calendar days unless ODE finds more time is needed. An ALJ must conduct a due process hearing and issue a written decision within 45 calendar days after the end of the resolution period unless the ALJ grants more time at your request or the school district's request.

If you file a complaint and a due process hearing at the same time, ODE must set aside the complaint, or any part of the complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the hearing must be resolved using the complaint time limit and procedures.

If an issue raised in a complaint has already been decided in a due process hearing involving you and the school district, then the due process hearing decision is binding. ODE will tell you the hearing decision is pending and the complaint will not proceed.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by ODE.

RESOURCES

These publicly funded organizations may be able to help you understand these procedural safeguards and other provisions of the IDEA.

Your local school district.

Oregon Department of Education (ODE)
Office of Student Learning & Partnerships
Salem: (503) 947-5782
Web site: <http://www.ode.state.or.us>

Oregon Parent Training & Information Center (ORPTI)
Salem: (503) 581-8156
Toll Free: (888) 505-2673
Web site: <http://orpti.org/>

Disability Rights Oregon (DRO)
Portland: (503) 243-2081
Toll Free: (800) 452-1694
Web site: <http://www.disabilityrightsoregon.org/>

National Information Center for Children
and Youth with Disabilities (NICHCY)
Toll Free: (800) 695-0285
Web site: <http://www.nichcy.org>

The **State Advisory Council for Special Education (SACSE)** meets several times each school year. Each meeting includes a time for public comment. The meeting schedule is available from ODE by calling (503) 947-5797. Information about SACSE is available at <http://www.ode.state.or.us/search/results/?id=251>.