

UNDERSTANDING THE IEP PROCESS & PARENT RIGHTS



WJUSD Parent Night

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OVERVIEW

- Parent and Student Rights Related to IEP Process
- Parent Participation in IEP Meetings
- Prior Written Notice and Required Documentation
- Parent Consent
- Access to Student Records
- Dispute Resolution & Due Process Hearings
- Q and A

QUESTION

- What are some of your or your child's procedural and educational rights related to the IEP development process?



PARENTAL RIGHTS UNDER IDEA

The Individuals with Disabilities Education Act (IDEA) requires that the District provide you and your student with the following rights:

- Right to Participation
- Right to Receive Prior Written Notice
- Right to Give Consent
- Appointment of Surrogate Parents
- Rights for Students Who Turn 18
- Right to an Evaluation to Determine Eligibility
- Right to an Independent Educational Evaluation (IEE)
- Right to Access Educational Records
- Right to Dispute Resolution
- Rights Regarding School Discipline Procedures
- Rights Regarding Students Attending Private School

RECEIVING NOTICE OF “PROCEDURAL SAFEGUARDS”

- You should receive a copy of the safeguards at least once a year.
- You should receive a copy at the beginning of an Individualized Education Program (IEP) Team meeting, if you file a complaint, if you request an initial evaluation, and if you make a request to receive a copy.
- You should also receive a copy prior to any significant change in placement.

WHY SHOULD YOU KNOW YOUR PARENT RIGHTS?

- The District is required to provide a free, appropriate public education (FAPE) to your student.
- The Procedural Safeguards represent guarantees that you and your student have under the law, and ways to resolve disagreements regarding your student's special education and related services (even for students not yet eligible).
- The Procedural Safeguards provide rights that ensure your participation in the special education process and your student's right to a FAPE.

PARENT INPUT AT IEP MEETINGS

- Parents have a right to request an IEP meeting for their child, which must be held within **30 days**, not counting school breaks of more than **5 schooldays**.
- Parents have a right to invite to an IEP meeting anyone who has special knowledge of the child.
- Parents have a right to audio-record IEP meetings with written notice at least 24 hours in advance.
- Parents may participate in IEP meetings via telephone, video-conference, or via a designated representative speaking on their behalf.
- Parents may provide verbal or written input of their concerns and requests before, at, or after an IEP meeting.

PARENT PARTICIPATION HYPO:

- Parent is the parent of a child with special needs. It is time for the Annual IEP Team meeting.
- Parent receives an IEP invitation for the meeting, scheduled in **three days**, and realizes that she is not available on the meeting date.
- Parent contacts the case manager or designee on the Notice of Meeting and explains the situation. **The case manager states that the IEP Team can hold the meeting without the Parent and follow up with the Parent over the phone after the meeting is over.**
- *What are Parent A's rights? What potential concerns are triggered by this scenario?*

HYP0: *And the Answer Is...*

- Parent has the right to participate in the IEP Team meeting because Parent is a mandatory member of the Team.
- The School must give Parent a reasonable and sufficient opportunity to participate in any IEP meeting, absent certain limited exceptions for holding IEP meetings without parents.
- Parent has the right to be informed of the availability of a FAPE (free, appropriate public education) – including a clear written offer of the placement/services sufficient for the parent to provide informed consent.
- The District should schedule the meeting at a mutually agreed time to ensure meaningful parent participation.

PRIOR WRITTEN NOTICE (PWN)

- Parent attended the IEP Team meeting for her child.
- During the meeting, Parent A requested related services in the area of occupational therapy (OT) and speech and language (SLP) therapy where the child has never had such services.
- *Must the District respond?*
- *If so, how?*



PWN: *And the Answer Is...*

- Yes. Parent is entitled to Prior Written Notice (PWN) any time the District proposes or refuses an action regarding the identification, evaluation, educational placement or provision of a FAPE to a student.
- The PWN must include:
 - 1) A description of the actions that are proposed or refused;
 - 2) An explanation of why;
 - 3) A description of other options that were considered and why those options were rejected;
 - 4) A description of the assessment or report used to propose or refuse the action;
 - 5) Any other relevant factors;
 - 6) A statement that parents have procedural safeguards/rights, and
 - 7) Sources to contact to obtain help with understanding their rights.

Note, it is possible for the IEP document to meet these requirements.

PARENT CONSENT

- Parents have the right to give informed, written consent before the District can assess your student for eligibility for special education services, with certain limited exceptions.
- Parents have the right to give informed, written consent before the District can provide initial special education services or revise those services.
- Districts may initiate a due process hearing to override a parent's lack of consent to assessment or the IEP, except in limited circumstances.
- Parental can consent to an IEP in-full, in-part, or no consent.
- Parents may revoke their consent to an IEP in writing.

PARENT CONSENT

- Under California law, school districts are required to file for a due process hearing against a parent who does not consent to all or part of an IEP the District believes is necessary for a child to receive a FAPE.
- Similarly, parents have a right to file for a due process hearing if they believe the District is not offering/providing their student a FAPE.

ASSESSMENT: Question....

- Parent strongly believes that her child needs services in the area of physical therapy. She requests that the District assess her student.
- The District agrees to the assessment.
- *What must the District do now and by when?*



ASSESSMENT: *And the Answer Is...*

- With some limited exceptions, the District is required to provide Parent with a written assessment plan within **15 days** from the date of the request for assessment.
- Parent then has **15 days** to review the assessment plan and give written consent to the assessment.
- Once the District receives the signed assessment plan, the District has **60 days** to complete the assessment and hold an IEP Team meeting, not including school breaks of more than **5 school days**.
- Important: The District timelines are extended if there are school breaks that are in excess of **5 school days**.

REASSESSMENT

- The District must reevaluate your child at least once every 3 years to determine if your student continues to qualify for special education services.
- However, the IEP team including you can determine it does not need any additional information to determine whether your child continues to be eligible for special education services and what services your child needs.
- You can make a written request for an assessment more frequently than every 3 years if you feel it is necessary.
- The District is required to assess in all areas of suspected disability.

ACCESS TO STUDENT RECORDS

- A “parent” has the right to request a review of all of your child’s records, for example, before an IEP Team meeting and before a due process hearing.
- “Parent” is specifically defined in Education Code and in the IDEA. Regardless of one’s status (foster parent, step-parent) a “parent” or other authorized person must possess the required educational rights in order to receive access to confidential information.
- If you request a copy of your student’s records, the District must provide them within **5 business days**.

DISCIPLINE: Question

- The Principal determines that Student should be suspended for more than 10 school days during the school year. This was not the first time Student threatened another student and the Principal has already given Student multiple warnings and in-school suspensions.
- Can the Principal automatically suspend Student for more than 10 school days in a school year and exclude Student from school?



DISCIPLINE: *And the Answer Is...*

- For a special education student – generally, a district cannot suspend students for more than 10 school days in a school year without holding a **manifestation determination meeting** before removing the Student again.
- At the Manifestation Determination Meeting the team asks 2 questions:
 1. Was the conduct in question caused by or directly and substantially relationship to the Student's disability, or
 2. Was the conduct in question caused by the District's failure to implement Student's IEP.

DISCIPLINE: *And the Answer Is...*

- If the team determines the conduct **is a manifestation** of Student's disability, Student generally cannot be removed from school.
- If the Team determines the conduct **is not a manifestation**, Student may be suspended/expelled like any other student.
- Parents have a right to request an expedited due process hearing if they disagree with the District's decision.
- The Office of Administrative Hearings presides over expedited hearings.
- Expedited hearings are held within 20 school days of the complaint being filed, and a decision is rendered within 10 school days of the hearing being completed.

DISCIPLINE: *And the Answer Is...*

- **Regardless** of whether the conduct in question was a manifestation of the student's disability, the District can remove a student from his or her current placement to an interim alternative educational setting (IAES) for up to 45 days without parent consent if the student:
 - Carries a weapon to or possesses a weapon at school, on school premises, or to a school function;
 - Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; and/or
 - Inflicts serious bodily injury upon another person while at school, on school premises, or at a school function
- The student still has the right to access the curriculum and receive services that allow Student to progress toward his or her IEP goals in the IAES.

COMPLAINTS/DISPUTE RESOLUTION

- Parents who disagree with decisions made by the District have formal and informal options for resolution.
- Options include:
 - Requesting an IEP meeting if that has not already occurred
 - Requesting alternative dispute resolution (ADR) with the Director of Special Education
 - Filing a state complaint with the California Department of Education
 - Requesting Mediation Only with the Office of Administrative Hearings (“OAH”)
 - Requesting a Due Process Hearing with OAH

COMPLAINTS/DISPUTE RESOLUTION

- **California Department of Education (CDE) Complaint**
 - Parents can file State Complaint with the CDE
 - Parent explains the problem and provides any information they want CDE to consider
 - CDE sends a Notice of Complaint and Request for Information the District
 - CDE issues findings regarding the issues raised in the Complaint.
- **Alternative Dispute Resolution**
 - Is a voluntary, informal process
 - Allows the Parents and District representative (usually director of Special Education) an opportunity to meet prior to more formal steps being taken by Parents to see if a resolution is possible
 - Can result in a settlement agreement

COMPLAINTS/DISPUTE RESOLUTION

- **Mediation Only**

- Is a voluntary process
- Parent files a Request for Mediation Only with OAH
- Does not involve attorneys unless both parties agree
- OAH provides a mediator free of charge to assist the parties in resolving the dispute
- Can result in a settlement agreement that resolves the issues

DISPUTE RESOLUTION



- **Due Process Hearing with OAH**

- Includes an early resolution meeting between just the District and Parents (attorneys cannot participate unless both parties have counsel)
- Parents and District also can agree to participate in mediation (it is voluntary). OAH provides a mediator free of charge. Mediation can include attorneys.
- During mediation, parents and a District representative discuss the issues with a neutral facilitator. The facilitator is someone who is trained to help parties resolve issues and is not an employee of the District.
- If an agreement with the District is not reached after filing for a due process hearing, the hearing can proceed.

RIGHTS DURING & AFTER THE DUE PROCESS HEARING

- Your student has a right to remain in his or her current educational placement unless you and the District agree on another placement (“stay put”).
- You have the right to be represented by an attorney at the hearing at your own expense.
- The hearing decision is final and binding, and you have a right to appeal within 90 days.
- The “prevailing party” in the hearing is entitled to an award of attorney’s fees.
- The parties may agree to resolve a hearing even after it begins.



Q & A

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