

## Parent and Child Rights In Special Education

### ***Dear Parents and Student:***

This document briefly explains your rights to a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA). IDEA 1997 is a federal law that governs publicly funded special education programs for children ages 3-21. It is important that you understand your rights in special education relating to your child. We are available on request to provide you with any further explanation. We will provide oral or written translation or an interpreter to help assure that you understand. A part of providing these rights is to satisfy that the school is meeting its prior notice responsibilities. All references noted below are taken from the Code of Federal Regulations, Part 300 of the IDEA. In New Mexico, children who have been evaluated and found eligible as gifted and who have been determined to need special education gifted services are protected under these rights. To get a copy of your entire rights, contact your school district.

### **PRIOR WRITTEN NOTICE (PWN)**

#### **What is a PWN?**

A PWN is a notice given to you in writing before the school district takes or refuses to take any action about your child's identification, evaluation and eligibility, and special education and related services. This PWN will include a full explanation of your rights under IDEA and the name of the person you can contact to have them further explained so that you understand them. Your notice will describe the options considered by your child's team members and the reasons for their decisions. Each type of test, evaluation procedure, school records, and information used in making the decisions about your child will also be stated on your notice.

#### **When will you receive a PWN?**

You will get a notice when the school plans to or refuses to

- evaluate or reevaluate your child as part of the special education process;
- change your child's eligibility for special education and related services;
- review or change your child's Individualized Education Program (IEP);
- change your child's educational placement;
- files a due process complaint;
- or if you request any of these actions.

#### **Do you understand your notice?**

Your written notice will be explained to you in a form that you understand. This may be in your native language or in the way that you communicate, unless the school is clearly unable to do so. If you do not communicate in a written language, the public agency shall take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or means of communication.

### **CONSENT**

#### **What does it mean to give consent and be informed?**

It is important for you to know and understand the information about the school district plans to or does not plan to do and why. The school will explain your options and the information so that you can participate and make decisions about your child. By signing your name, it means that you understand, give permission and agree to what the school plans to do or does not plan to do. Your permission is voluntary and you can change your decision at any time.

#### **When does the school need your consent?**

Your permission is required before the school plans to:

- evaluate your child for the first time for special education services;
- give your child any new test after the first time he or she was evaluated; and
- begin special education and related services for the first time.

#### **What if you do not give your consent?**

If you do not give permission for any of the activities above, the district can request that a due process hearing officer make the decision because the school believes that your child needs special education and related services.

### **EVALUATION**

#### **What is an evaluation?**

Evaluation is how the school decides if your child has a disability and if your child needs special education and related services.

#### **Why and when does your child need an evaluation?**

Evaluations give you and the school a picture of your child's abilities and gives information that will be used to plan for your child's education. Your child will need an evaluation when you or the school, for the first time, believes that your child has a disability. If your child already receives special education services, a reevaluation will be completed at least every three years or earlier if necessary.

#### **What do you need to know about evaluations?**

The school will explain how your child will be evaluated. You will also contribute information in the evaluation of your child.

- The tests and procedures will be designed to meet your child's sensory, physical or speaking abilities and will not discriminate against him or her racially, culturally or because of a disability.
- The evaluation will be in your child's primary language or in the way that he or she communicates, unless the school clearly is unable to do so.
- Evaluations will give information about your child's specific abilities, not just one score or test.

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- The evaluation will be in all areas related to the disability.
- You will get a copy of the written evaluation report and you can discuss it with any of the evaluators.

### **What happens after the evaluation is completed?**

Within 30 school days, the school will schedule a team meeting with you to discuss the evaluation, your child's strengths and needs, and if he or she has a disability and needs special education and related services (eligibility). This team may want to develop an IEP for your child.

### **INDEPENDENT EDUCATIONAL EVALUATION (IEE)**

#### **What is an IEE?**

An IEE is an evaluation that is done by a person who does not work for the school district, but is qualified as an evaluator by the New Mexico State Department of Education.

#### **Does the parent have the right to evaluation at public expense?**

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.

#### **What if the school district believes its evaluation is appropriate?**

The school district can request a due process hearing to show that their evaluation is correct and complete. The hearing officer decides if the district's evaluation is appropriate. If the final decision is that the district's evaluation is appropriate, you can still get an IEE at your cost. If you pay for an IEE, it will be considered in planning your child's educational program. The IEE can be used in a due process hearing as evidence.

### **THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

#### **How is your child's program and placement decided?**

A team makes decisions about your child's IEP. You are a member of each and every team that makes decisions about the identification, evaluation, educational placement, or a FAPE for your child.

#### **Who will participate in your child's team meetings?**

You, your child (if appropriate), a general education teacher, a special education service provider (must attend), a district representative who is qualified to provide or supervise special education services, knows the resources available in the district, and knows about general education (must attend). You or the school can invite other people who have information about your child or special knowledge that would be important in planning an educational program. The team's members may change as your child's needs change.

#### **When is a team meeting necessary?**

Your child's team will meet if there are plans to:

- make decisions about his or her eligibility for special education services and related services;
- review or change his or her IEP;
- review or change his or her educational placement; or
- evaluate or reevaluate your child.

#### **How is a team meeting scheduled?**

The meeting will be at a time, date, and place that both you and the district agree to. The school will let you know about team meetings, in writing and in enough time for you to make plans to attend. You will meet to review your child's IEP at least once every year; but you or the school can ask for other team meetings during the school year.

#### **What will be on your IEP meeting notice?**

Your meeting notice will be explained to you in the way that you understand so that you can make plans to participate in the team meeting.

- The date, time and location of the meeting.
- The reason for the meeting.
- The positions of people who have been invited.
- The opportunity to bring people who have information about your child.
- The school's responsibility to get a translator or interpreter if one is needed.
- A full explanation of your rights.

#### **What happens if you can not attend an IEP Team meeting?**

If you let the school know that you can not attend a meeting or you do not respond to your notice, the school will try to involve you in other ways. For example, the school can include your participation by setting another time or date, having telephone conferences, giving you a draft of the IEP to review, or making home visits. After the school has tried several ways to include you, the school can have the IEP team meeting without you and mail you a PWN of the school's plans and your child's IEP. This PWN is given to you so that you can review the IEP before the program starts and let the school know if you disagree with the school's plans or your child's IEP.

#### **What will be discussed at your child's IEP Team meeting?**

It is important for you to know about how your child's IEP is developed. The IEP may include information about:

- the school's and your observations and concerns
- your child's skills, abilities, and strengths
- your child's needs, including behavioral and communication needs

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- the skills that your child could probably complete during one year and activities that will help him or her reach each of those skills
- the special education or related services which will help your child complete the activities and skills
- the changes or supports your child will need in the general education programs (lessons, environments, or procedures) to help him or her be able to participate in these programs
- testing or other ways to measure what he or she knows if he or she will not be participating in the testing
- the need for extended school year (ESY) services during the summer
- the need for assistive technology evaluation, devices, or services

Your child may need **Transition Services**. These are planned activities to help move your child from one setting to another because there will be differences in the services and the people who provide them. Transition services may be needed for:

- early intervention services to preschool special education services;
- preschool special education services to school-age services;
- school-age special education services to community life.
- beginning at age 14, transition activities are required and they include planning a course of study using information about your child's career interests, preferences and abilities.
- no later than age 16 (or earlier if needed), transition services includes connecting with other agencies, and if appropriate, a statement of the interagency responsibilities or any needed linkages.
- what the Least Restrictive Environment (LRE) is for your child.

### **The team will decide:**

- when each service will start and end;
- how often your child will receive each service;
- where each service will be delivered;
- how often you will receive a progress report on your child's IEP goals and objectives; and
- educational placement.

### **LEAST RESTRICTIVE ENVIRONMENT (LRE)**

#### **What does LRE mean?**

It means that your school-age child will be educated:

- . to the maximum extent appropriate with students who are not disabled and in settings that allows for the most interaction between students with and without disabilities;
- . in other educational environments to meet unique needs only if the nature of the disability is such that education in the regular classes with the use of supplementary aids cannot be achieved satisfactorily;
- . as much as possible with nondisabled students in co-curricular, extracurricular, and nonacademic activities;
- . in the LRE with consideration of any possible harmful effect it may have on him or her or the quality of services needed.

#### **What does your signature mean on the IEP and what if you disagree?**

Your signature on the IEP means that you participated in the development of your child's educational program. It does not mean that you agree or disagree. It is important to understand that your signature is **not required** for the school to provide your child with a free appropriate public education (FAPE), unless it is the "initial" team meeting. If you disagree with the decisions, you can ask for another team meeting, mediation, or an impartial due process hearing to settle any disagreements.

### **PUBLIC PRESCHOOL SPECIAL EDUCATION**

Early intervention personnel and the school district's personnel can work together to help transition your child from early intervention services to a preschool setting.

- If your young child is receiving early intervention services and you or the people that care for your child believe that he or she might have a disability and may be able to receive preschool special education services, then the early intervention personnel must have a meeting with you at least 90 days before your child's third birthday to talk about preschool special education.
- Your permission is necessary to share information and invite the school personnel. If you give permission, then you and the participants at the meeting will review your child's records and decide whether or not your child continues to have a disability and is eligible to receive special education services from the school district.

#### **What is the Least Restrictive Environment (LRE) for your Preschool child?**

Public preschool special education programs follow IDEA-Part B regulations. Special education services are provided in different ways to make sure that your preschooler interacts with typically developing young children. Preschool classrooms provide group educational experiences to children of similar ages and developmental levels on a regular schedule and in a central location. Some ways that special education services can be delivered to meet the LRE requirements include:

- . being in the same classroom with typically developing young children;
- . enrolling typically developing young children in a special education preschool classroom so that it is an integrated classroom; or
- . scheduling time for preschoolers with disabilities to join in activities with typically developing young children.

### **RECORDS**

#### **How can you review your child's records?**

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You or someone who has your permission, can inspect and review any and all of your child's records that are kept or used by the school district. You can review your child's records (1) before any meeting involving your child's IEP or (2) before a due process hearing. Otherwise, the school has up to 45 days to honor your request to review records according to the Family Educational Rights and Privacy Act (FERPA).

### **What you should know about reviewing records?**

The school can explain and interpret the records.

- . You can get a copy of the records if you can not review them at the school. The school can charge you a fee for copying the records, but not if the cost would stop you from receiving a copy.
- . The school may permit any parent to review records unless the school has been told that certain individuals do not have the right under state law
- to see any records.
- . If any record includes the name or information of another student, you can only review information about your child.

The school will tell you the types or records they keep and where they are kept.

### **How can your child's records be changed or destroyed?**

You can ask the school district to change information in a record if you think that the information is wrong, misleading, or violates the privacy or other rights of your child. If the school district decides not to change the record, then you can request a due process hearing. The hearing officer decides if the record will be changed. If the record is not going to be changed, you can include statements about the part you disagree with and it will be kept with the record as long as the record is kept by the school district. If this record is given to any one, your statements will be included.

- . The school will let you know when records are no longer needed to provide educational services and that they will be destroyed.
- . You may ask the school district to destroy your child's records if they are no longer needed for educational purposes.

### **Who can review and receive your child's records?**

- . The school district will keep a record of when and why someone reviewed or received your child's records.
- . The school will have a list of the positions of personnel permitted to review information about your child.
- . School districts can give other school districts information that it has created without your consent because schools have an educational need to know.
- . The school district will need your consent before any information can be given to any person who is not on the school's list.

### **TRANSFER OF RIGHTS TO ADULT STUDENTS**

A student with a disability who reaches the age of majority under state law or has been legally declared an adult, will have these rights transferred to him or her, unless the student has been determined by the courts to be incompetent and unable to give informed consent or has a legal guardian. The age of majority in New Mexico is 18 years old. The school will explain to both you and your son or daughter about the transfer of these rights at least one (1) year before he or she turns 18 years old.

### **SURROGATE PARENTS**

#### **What is a surrogate parent?**

A surrogate parent is someone who acts in the place of a child's parent when the parent can not be identified;

- the school district cannot locate the
- parent after a reasonable efforts; or
- the child is a ward of the state.

The surrogate parent can represent a child in all educational matters and has the rights of a parent in regard to special education. A surrogate parent will represent the interests of the child and protect the confidentiality of the child's records.

#### **Who can be a surrogate parent?**

A surrogate parent will be someone who:

- has received training to represent your child adequately;
- does not work for the school district or an agency involved in the education or care of your child;
- has no conflict of interest with your child; and has the knowledge and skills to represent your child.

### **CHALLENGING DISPUTED DECISIONS INVOLVING YOUR CHILD**

The state complaint procedure and due process hearing procedure provide separate channels through which parents may challenge disputed decisions involving their children.

### **STATE-LEVEL COMPLAINT INVESTIGATION**

Any one can call or send questions, concerns, or complaints about the public education of a child with a disability to New Mexico State Department of Education. The address and phone number are listed at the end of this document.

#### **What happens with a complaint?**

Allegations of violations of the federal and state special education laws will be investigated by the NMSDE within 60 days, unless an extension is given by the State Superintendent of Public Instruction. If you want the NMSDE to investigate your concerns, your complaint must:

- \_ be in writing and signed by you or your representative;

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- \_ describe the concern and your right(s) under the law or the procedure(s) that you think the school has violated; and
- \_ describe the facts about the complaint. (You may use the sample form attached to this brochure to assist you in writing your complaint)

You may also give documentation and information orally or in writing to explain your complaint. The NMSDE will develop a written report for you and the school district within the time line. The NMSDE may require the school district to correct its actions if procedural violations are found. Complaints can be about the school district or the NMSDE. However, the state level complaint procedure is not the forum in which to dispute placement and/or concerns about the provision of services. These type of complaints may be addressed through the Due Process procedures as outlined below.

### **DUE PROCESS HEARINGS AND APPEALS**

You or the school district can request a hearing. You can request a hearing if you disagree with the school district's identification, evaluation, program, educational placement or the provision of free appropriate public education under the IDEA.

#### **How do you request a hearing?**

You or the person representing your child must request a hearing in writing to both the school district and NMSDE. The request must include:

- . the name, of your child; residence, and school the child is attending
- . a description of the problem, including facts about the problem;
- . a proposed solution for the problem as you might know or have at the time;
- . your name, address and telephone number and the child's advocate or attorney, if you have one and a written statement that states that they can represent your child;
- . your signature or your representative's signature and date of signature

It's important for you to know that if this information is not given, award of the attorneys' fees may be reduced. The NMSDE has a sample form to assist you. If you are unable to communicate in writing, your request will be put in writing by the school district and signed by you.

#### **What should you know about hearings?**

The school district will pay for the costs of the hearing. Your hearing will be held within 45 days once the request is received. The hearing officer will set a time and place for the hearing which is agreeable to the parties. The party requesting the hearing may withdraw the request any time by contacting the hearing officer and the other party. The hearing decision will state findings of fact and conclusions of law and is final and binding, unless a party requests an appeal. You can choose to have your child present at the hearing and have it open to the public. You can be advised by legal counsel or other individuals, present evidence, and have witnesses. You can also request a written or electronic word-for-word record of the hearing at no cost.

#### **When can you request an Expedited Hearing?**

You can request an expedited hearing when you disagree with the decisions of a manifestation determination team meeting or a decision about the interim alternative educational setting (IAES) or placement.

#### **When does an Expedited Hearing take place?**

An expedited hearing is one that is held and a written decision is mailed to the parties and the State Superintendent of Public Instruction within 45 days of the receipt of the request without exceptions or extensions.

#### **What happens to your child during the hearing?**

Your child's educational placement will not be changed during a hearing, unless the school and you agree. If your hearing involves initial admission to public school, then your child will be placed in the public school program until the hearing is completed.

#### **What if you disagree with the hearing decision?**

You can ask the NMSDE for an appeal, but your request must be made within 30 calendar days after receiving the hearing officer's decision. You will not be responsible for the costs of an appeal.

### **CIVIL ACTION**

If you feel that you are unnecessarily harmed by the decisions of the appeal, you can bring civil action in a state or federal court within a period of time that is set by the court rules.

### **ATTORNEYS' FEES**

#### **When can you get attorney fees?**

You will need to pay for your own attorney and expert witness costs in a due process hearing, but if you prevail in any action or proceeding, you can request to be reimbursed for your attorney's fees and related costs by a court, if reasonable. The hearing officer can not grant attorneys' fees.

### **MEDIATION**

Mediation is an optional way for your family and the school personnel to discuss and develop other ways to settle disagreements. Mediation will not be used to deny or delay any of your rights. It is to encourage communication, focus on your child, and develop a plan that is acceptable to both you and the school. A mediator is an objective person who does not make decisions, but helps you and the school communicate so that solutions can be found. The school can arrange for mediation; it is voluntary on your part and is at no cost to you. If you request a due process hearing, the NMSDE will automatically assign a mediator to your case. Discussions in your

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mediation sessions are confidential. Mediation is highly encouraged by federal and state education agencies for settling disagreements. You may want to speak with advocates or other organizations about the benefits of mediation.

### **PRIVATE SCHOOL CHILDREN**

#### **What if you place your child in a private school and you want public school services?**

You can request special education and related services from the school district through a team meeting. But even if you do not, the school district must identify all children with disabilities living in the district and offer them a FAPE. The school district may offer limited amounts or types of services because it is only required to spend at least a proportionate amount of federal dollars for the group of children who are placed in private schools by their parents within the school district's boundaries. The school district decides where your child can receive his or her services.

#### **What if you want the school district to pay for the costs of the private school education?**

You need to let the school know that you plan to place your child in a private school either at the last IEP team meeting or 10 business days before you enroll your child in the private school. You must also tell the school that you disagree with the school's IEP and your child's school placement. You will need to let the school know that you will be asking for the school district to pay for your child's private education. If you are in a due process hearing and you do not let the school know about your plans or make your child available if the school wants to evaluate him or her, your attorney's fees may be reduced or denied.

### **DISCIPLINE AND SUSPENSION**

#### **What happens if your child is placed in another educational setting?**

- **Suspension for 10 school days or less** - The school does not have to provide special education and related services, a FAPE or take any action when your child is removed for a total of 10 school days or less during a given school year.
- **Manifestation Determination IEP meeting** - If the school wants to change the placement for more than 10 school days, an IEP team will decide if the behavior was or was not directly related to his or her disability.
  1. If it was, then he/she will not be removed, except with your permission from his/her placement (except for weapons or drugs).
  2. If it was NOT, then he/she may be disciplined as any other child would be and the school will continue to provide your child with a free appropriate public education, including special education and related services, and access to the general education curriculum during the period of discipline.
- **Discipline for Weapons or Drugs** - Your child can be placed immediately in another educational setting for up to 45 calendar days without an IEP meeting or your permission prior to this action. A hearing officer can also order another placement for not more than 45 days or you and the school can agree to another placement. Within 10 days after the placement, the school will hold an IEP meeting to review and revise behavioral plans or plan a behavioral assessment.

#### **What if your child is disciplined and is not yet eligible for special education?**

If your child has violated a rule or code of conduct of the school district and has not been identified as a child with a disability in need of special education services, the protections provided for in IDEA can apply if the school district had knowledge that your child had a disability before the behavior happened. Your child will remain in the educational placement decided by the school and you can request that your child be evaluated for special education.

### **REPORT TO LAW ENFORCEMENT**

#### **Can the school refer your child to law enforcement?**

Yes. The school can report your child for committing a crime to the appropriate authorities and give copies of his or her special education and disciplinary records to the authorities for consideration.

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