

SPECIAL EDUCATION
PROCEDURAL REQUIREMENTS

EHBAE
(LEGAL)

The District shall establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education. These procedures shall include:

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| OPPORTUNITIES FOR PARENTS | 1. An opportunity for the parents of a child with a disability to examine all records relating to the child, or participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child; and to obtain an independent educational evaluation of the child. |
| ASSIGNMENT OF SURROGATE PARENT | 2. Procedures to protect the rights of the child whenever the parents of the child are not known, the District cannot locate the parents after reasonable efforts to do so, or the child is a ward of the state. These procedures shall include assigning an individual to act as a surrogate for the parents. This individual shall not be an employee of TEA, the District, or any other agency that is involved in the education or care of the child. |
| PRIOR WRITTEN NOTICE | 3. Prior written notice to the parents whenever the District proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the free appropriate public education of the child. [See PRIOR NOTICE AND CONSENT, below]

The written notice to parents shall be provided at least five school days before the proposed action is taken, unless the parents agree otherwise. |
| PARENTS' NATIVE LANGUAGE | 4. Procedures designed to ensure that the prior written notice is in the native language of the parents, unless it is clearly not feasible to do so. The notice must include the elements set forth at 34 CFR 300.503(b). |
| MEDIATION | 5. An opportunity for mediation. |
| COMPLAINT PROCEDURES | 6. An opportunity for any party to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. [See COMPLAINT PROCEDURES, below] |
| NOTICE OF COMPLAINT | 7. Procedures that require either party, or the attorney representing a party, to provide a due process complaint notice (which shall remain confidential) to the other party. |

20 U.S.C. 1415(a)-(b); 19 TAC 89.1015

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PROCEDURAL
SAFEGUARDS NOTICE

The District shall provide a copy of the procedural safeguards to parents only one time a year, except that a copy also shall be given to the parents:

1. Upon initial referral or parental request for evaluation;
2. Upon the first occurrence of the filing of a complaint; and
3. Upon request by a parent.

The District may place a current copy of the procedural safeguards notice on its Internet Web site, if it has one.

CONTENTS OF
NOTICE

The procedural safeguards notice shall be written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner. The notice shall include a full explanation of the procedural safeguards relating to:

1. Independent educational evaluation;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;
5. The opportunity to present and resolve complaints, including:
 - a. The time period in which to make a complaint,
 - b. The opportunity for the agency to resolve the complaint, and
 - c. The availability of mediation;
6. The child's placement during pendency of due process proceedings;
7. Procedures for students who are subject to placement in an interim alternative educational setting;
8. Requirements for unilateral placement by parents of children in private schools at public expense;
9. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
10. State-level appeals;
11. Civil actions, including the time period in which to file such actions; and
12. Attorneys' fees.

20 U.S.C. 1415(a)-(b), (d)

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PRIOR NOTICE AND
CONSENT

CONSENT TO
SERVICES

Before initially placing a student in the District's special education program, the District shall seek informed consent from the student's parent by:

1. Giving the child's parent prior written notice, which includes a full explanation of all procedural safeguards and describes evaluation procedures the District proposes to conduct; and
2. Obtaining parental consent for the evaluation.

If the parent refuses to consent to services or fails to respond to a request to provide consent, the District shall not provide special education and related services to the child and the District shall not be considered to be in violation of the requirement to make available a free and appropriate public education to the child. The District is not required to convene an individualized education program (IEP) meeting or develop an IEP for the services for which the District requested consent.

20 U.S.C. 1414(a)(1)(D); 34 CFR 300.500(b)(1); 300.505; 300.531

CONSENT TO
INITIAL
ASSESSMENT

Before the District conducts an initial assessment, it shall obtain parental consent for the evaluation. *20 U.S.C. 1414(a)(1)(D), (E); 34 CFR 300.500(b)(1); 300.505; 300.531*

If the District determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent, the District shall provide the information described above to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.

PSYCHOLOGICAL
EXAMINATIONS
AND TESTS

On request of a child's parent, before obtaining the parent's consent for the administration of any psychological examination or test to the child as part of the evaluation of the child's need for special education, the District shall provide to the child's parent:

1. The name and type of the examination or test; and
2. An explanation of how the examination or test will be used to develop an appropriate IEP for the child.

Education Code 29.0041

COMPLAINT
PROCEDURES

Whenever a complaint has been received by the District, the parent shall have an opportunity for an impartial due process hearing, which shall be conducted by TEA.

TIME LIMIT

Such complaint must set forth an alleged violation that occurred not more than two years before the date the parent or District knew or should have known about the alleged action that forms the basis

of the complaint or, if the state has an explicit time limitation for presenting such a complaint, in such time as state law allows.

Under Texas regulations, the parent or District must request a due process hearing within one year of the date the complainant knew or should have known of the alleged action that serves as the basis for the hearing request.

20 U.S.C. 1415(f)(1)(A); 19 TAC 89.1151

EXCEPTION

This timeline shall not apply if the parent was prevented from requesting a hearing due to:

1. A specific misrepresentation by the District that it had resolved the problem forming the basis of the complaint; or
2. The District's withholding of information from the parent that the District was required by the IDEA to provide.

20 U.S.C. 1415(b)(6)–(7)

'STAY PUT'

During the pendency of any proceeding conducted under IDEA part B (regarding the District's obligation to provide FAPE), unless the District and the parent agree otherwise, the student involved in the complaint shall remain in the then-current educational placement. If the student is applying for initial admission to a public school, the student shall, with the consent of the parents, be placed in the public school program until all proceedings have been completed. *20 U.S.C. 1415(j)*

EXCEPTION

When an appeal has been requested by a parent or District the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the student's assignment to the alternative setting, whichever occurs first, unless the parent and District agree otherwise.

20 U.S.C. 1415(k)(3)(B), 1415(k)(7); 34 CFR 300.526 [See FOF]

TRANSFER OF RIGHTS
TO ADULT STUDENTS

When the student reaches the age of 18, the District shall notify the student and the parents of the transfer of rights, as described in the following paragraph. This notice is separate and distinct from the requirement that the student's IEP include a statement regarding transfer of parental rights.

A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability. All other rights accorded to parents under Chapter 29, Subchapter A of the Education Code or 20 U.S.C. 1415 transfer to the student.

34 CFR 300.517; Education Code 29.017(a)–(b); 19 TAC 89.1049(c)