

## **IHBA-R**

*Category: R*

*See Policy IHBA*

### **PROCEDURAL SAFEGUARDS FOR CHILDREN WITH DISABILITIES**

**\*\* NHSBA Note, April 2010: 20 U.S.C. §1415 states, “Any State educational agency, State agency, or local educational agency that receives assistance under this chapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.”**

#### **Informal Process**

Before requesting a due process hearing, the Superintendent or designee and a parent/guardian may agree to meet informally to resolve any issue(s) relating to the identification, assessment or education and placement of the student. The Superintendent or designee shall have the authority to resolve the issue(s).

If this informal process fails to resolve the issue(s), either party may file for a state level due process hearing as described below.

#### **Due Process Hearing Procedures**

A parent/guardian, the district, and/or a student who is emancipated or a ward or dependent of the court may initiate due process hearing procedures whenever:

1. There is a proposal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student.
2. There is a refusal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student.
3. The parent/guardian refuses to consent to an assessment of his/her child.
4. There is a disagreement between a parent/guardian and the district regarding the availability of a program appropriate for the student, including the question of financial responsibility, as specified in 34 CFR §300.403(b).

Upon requesting a due process hearing, the parent/guardian or attorney representing the student shall provide notice, which shall remain confidential, to the district specifying: (20 USC §1415(b); 34 CFR §300.507)

1. The student's name;
2. The student's address;
3. The name of the school the student attends;
4. A description of the nature of the student's problem relating to the proposed or

refused initiation or change, including facts relating to the problem;

5. A proposed resolution to the problem to the extent known and available to the parents/guardians at the time;

At least five business days prior to a due process hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. (20 USC §1415(f))

**Due Process Hearing Rights** (34 CFR §300.509)

1. The right to request Alternative Dispute Resolution.
2. The right to request a mediation conference at any point during the hearing process. The mediation process shall not be used to deny or delay a parent/guardian's right to a due process hearing or to deny any other rights afforded under the Individuals with Disabilities Education Act.
3. The right to examine student records and receive copies within five days of request.
4. The right to a fair and impartial administrative hearing at the state level before a person knowledgeable and under contract in accordance with law.
5. The right to have the student who is the subject of the state hearing present at the hearing.
6. The right to open the state hearing to the public.
7. The right to call witnesses, including adverse witnesses, and to cross-examine witnesses.
8. The right to compel the attendance of witnesses, including the right to issue subpoenas.
9. The right to have witnesses excluded from the hearing.
10. The right to an interpreter, when the primary language of a party to a hearing is other than English, or other mode of communication.
11. At the hearing, the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
12. If the hearing officer conducts all or part of a hearing by electronic means, the right of each participant in the hearing to participate in and hear the entire proceeding while it is taking place and to observe exhibits.
13. The right to written or, at the option of the parent/guardian, electronic findings of facts and decisions. The district shall provide this record and findings of fact to the parent/guardian at no cost.
14. The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of the issues.
15. At least five business days prior to the hearing, the right to receive from other parties

to the hearing a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, including all completed assessments and recommendations based on those assessments.

Parents/guardians or emancipated students have the following additional due process rights:

1. The right to receive written notice of parent/guardian.
2. The right to initiate referral of a child for special education.
3. The right to obtain an independent educational assessment.
4. The right to participate in the development of the individualized education program (IEP) and be informed of the availability under state and federal law of free and appropriate public education and of all available alternative programs, both public and nonpublic.
5. The right to provide written parental consent pursuant to applicable law before any assessment of the student is conducted unless the district or Special Education Local Plan Area prevails in a due process hearing relating to such assessment. Informed parental consent need not be obtained in the case of a reassessment of the student if the district can demonstrate that reasonable measures have been taken to obtain consent and that the student's parent/guardian has failed to respond.
6. The right to provide written parental consent pursuant to applicable law before the student is placed in a special education program.
7. The right to determine whether the due process hearing will be open or closed to the public.

### **Prior Written Notice**

The Superintendent or designee shall send to parents/guardians of a student with a disability a prior written notice within a reasonable time before: (20 USC §1415(c); 34 CFR §300.503)

1. The district initially refers the student for assessment.
2. The district proposes to initiate or change the student's identification, evaluation, educational placement or the provision of a free, appropriate public education.
3. The district refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of a free and appropriate public education.
4. The student graduates from high school with a regular diploma.

This notice shall include: (20 USC §1415(c); 34 CFR §300.503)

1. A description of the action proposed or refused by the district.
2. An explanation as to why the district proposes or refuses to take the action.
3. A description of any other options that the district considered and why those options were rejected.
4. A description of each evaluation procedure, test, record or report the district used as a basis for the proposed or refused action.

5. A description of any other factors relevant to the district's proposal or refusal.
6. A statement that the parents/guardians of the student have protection under procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of procedural safeguards can be obtained.
7. Sources for parents/guardians to obtain assistance in understanding these provisions.

Students with disabilities and their parents/guardians shall be provided written notice of their rights in language easily understood by the general public and in the primary language of the parent/guardian or other mode of communication used by the parent/guardian, unless to do so is clearly not feasible. The notice shall include, but not be limited to, those rights prescribed by law. (34 CFR §300.503)

If the native language or other mode of communication of the parent/guardian is not a written language, the district shall take steps to ensure that: (34 CFR §300.503)

1. The notice is translated orally or by other means to the parent/guardian in his/her native language or other mode of communication.
2. The parent/guardian understands the contents of the notice.
3. There is written evidence that items #1 and #2 have been satisfied.

### **Procedural Safeguards Notice**

A procedural safeguards notice shall be made available to parents/guardians of students with a disability upon: (20 USC §1415(d))

1. Initial referral for evaluation;
2. Each notification of an IEP meeting;
3. Reevaluation of the student;
4. Registration of a complaint;
5. Filing for a prehearing mediation conference or a due process hearing

This notice shall include information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; the type of representative who may be invited to participate; and the right of the parent/guardian and/or the district to electronically record the proceedings of IEP meetings in accordance with applicable law. A copy of this notice shall be attached to the student's assessment plan and referred to at each IEP meeting.

In addition, this notice shall include a full explanation of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present complaints to initiate due process hearings; the student's placement while due process proceedings are pending; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parent/guardians of students in private schools at public expense; mediation; due process hearings; state-level appeals; civil action; attorney's fees, and the state's complaint procedure.

(20 U.S.C. § 1400 et seq., Individuals with Disabilities Education Act; 34 C.F.R. § 300 et seq.,

Assistance to the States for the Education of Children with Disabilities)

*New Sample Appendix: April 2010*

First Reading: October 26, 2011

Second Reading: November 8, 2011

Final Adoption: November 8, 2011