
Understanding Your Special Education Rights And Procedural Safeguards



Dear Parent/Caregiver,

This booklet, along with FACT's training *Understanding Your Special Education Rights And Procedural Safeguards*, will support you in your role as your child's number one fan and advocate. These rights are shared with parents/caregivers at each annual individualized education program [IEP] meeting in what is called the Procedural Safeguards Notice. You might admit having received them year after year, but not actually reading them, and you wouldn't be alone! Wanting to know your rights doesn't make you adversarial; knowing them is a foundation for good advocacy and meaningful participation.

This booklet introduces the content included in the Procedural Safeguards Notice, but does not replace it. Develop a notebook and keep a copy of the procedural safeguards, your child's IEPs, notes, and written communication (including Prior Written Notices) so you have it all in one place. This will be a great resource for you!

Why is it Important to Know Your Rights?

Parents and caregivers need to know their rights so that they can advocate successfully for their children, and make sure that they receive the free appropriate public education [FAPE] to which they are entitled. When parents understand the procedural safeguards, they are better prepared to participate meaningfully as a member of their child's IEP team.

What is the Procedural Safeguards Handbook?



The Individuals with Disabilities Education Act [IDEA], i.e., the Federal law that provides for the education of students experiencing disability, requires schools to provide parents a full explanation of their procedural safeguards available under the law, which simply means your rights and things to which you are entitled. Schools typically provide that information in the form of a booklet, which must be given to parents and caregivers at least once per year, typically at the IEP meeting. IDEA requires that this information be available to parents in an easy-to-read format.

General Information to Know

Who is Considered a Parent?

The IDEA gives certain rights to parents of children with disabilities, and defines *parent* to be:

- A student's biological or adoptive parent
- A foster parent, a legal guardian or the person legally responsible for the child's welfare
- Someone acting as a parent for the child (like a step-parent or grandparent)
- A surrogate parent appointed by the school district or a juvenile court

Independent Education Evaluation [IEE]

After you have agreed to an evaluation and it's been completed, you have the right to request an independent education evaluation if you don't agree with the results.

This is completed at no cost to you by an independent party, i.e. someone who does not work for the school district, but meets identified criteria.

Transfer of Rights

When your child turns 18 years old, all the rights described in the procedural safeguards notice transfer to your child, unless a court has appointed a guardian to act on his or her behalf.

The district will notify you and your child at least one year before your child turns 18 that the rights in the procedural safeguards will transfer to your child at the age of majority. Students who have reached 18, which is called the "age of majority," may communicate to the team that they would like you, or another person they choose, to continue to be part of special education decisions and act as an "educational surrogate."

Once the rights have transferred to the student, parents will continue to receive notices of meetings and Prior Written Notices of district actions, but the parent may not attend meetings unless invited by the student or school district staff.

Confidentiality

- You have the right to confidentiality of personally identifiable information in your child's records.
- You have the right to inspect and review your student's records no more than 45 days after you make the request in writing.
- If you request copies of any of the records, the district does have the right to charge for those copies.
- To release any information to anyone, you must give your signed consent.
- You have the right to expect that your school district will keep your child's educational records confidential.

You also have the right to ask that your child's records be corrected if you think the information is inaccurate or violates your privacy. The school district must decide whether to change the record, or if it does not agree to the change, provide Prior Written Notice explaining why.

Develop a notebook with a copy of the Procedural Safeguards, IEP's, and all written communication!

Resolving Disagreements

When you have a disagreement with the school, or feel as though you are heading towards dispute, the first step should always be to discuss the issue, first with the teacher or service provider directly, allowing for opportunity to resolve it immediately at the level it has occurred.

Address disagreement at the level it occurred... but know the chain of command (should it be necessary):

- 1. Teacher**
- 2. Case manager**
- 3. Principal**
- 4. Director of Special Education**
- 5. Superintendent**

If unable to resolve a disagreement, you would then communicate with the case manager (identified on the front page of your child's IEP). If you are still unable to resolve the disagreement, then you should consider if it is necessary to schedule an IEP team meeting. In this event, make your request for a meeting in writing. This establishes a date of when your request is made, and helps to clearly state your concerns and why you are requesting a meeting.

If holding an IEP meeting does not resolve the issue, there are other steps that can be taken.

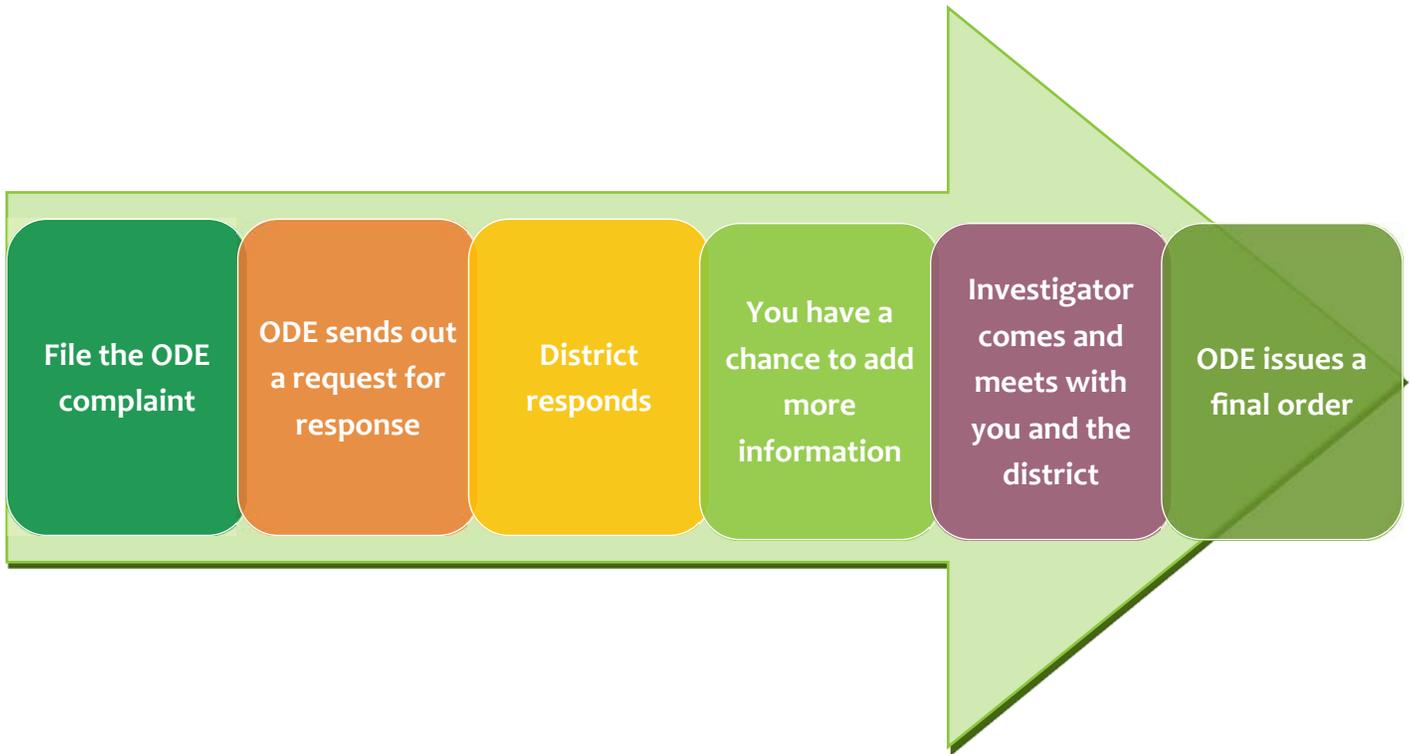
Mediation

- Mediation is an informal, optional process that helps parents and educators reach a decision.
- It's not mandatory; either party can refuse it.
- It can't be used to delay access to other forms of resolution, like a formal complaint or due process.
- Parents or the district can request mediation.
- It is provided free of charge to parents and the school district (Oregon Department of Education [ODE] covers the cost).

When Should You Mediate?

- You feel further discussion of the issue with the team is not going to be productive or resolve the issue.
- You feel that your concerns and requests are not being heard or understood.
- Mediation is also helpful when communication and trust within the team have broken down.

State Complaint (60 Day Timeline)



At the conclusion of the state complaint process, ODE issues a Final Order, determining if the complaint was valid and what corrective action needs to be taken.

Due Process

Due process hearings are often reserved for the most serious situations that cannot be resolved with a less formal process. Prior to final order, you can still resolve through mediation.

Due process is a formal legal proceeding that looks like a trial. The parents and district can present evidence, put on expert testimony, call witnesses, and cross examine in the presence of an administrative law judge. An impartial Administrative Law Judge [ALJ], who is not an employee of ODE, hears the evidence and decides the issue.

Going to due process is at your own cost, including a lawyer and court fees. While it's not required, parents most often find it necessary to have an attorney to help them navigate the legal process. There is no guarantee that your costs will be covered if a decision is found in your favor.

Other things to know:

- Either a parent or the district can file for due process
- Can go back regarding issues for two years
- Eligible issues include the following:
 - Disagreement over identification
 - Evaluation
 - Educational placement
 - Provision of a free and appropriate public education [FAPE]
- Include what actions you think will resolve the issue

While the case is pending, your child must “stay put” in his/her current placement until the matter is decided, unless both parties agree to a change in placement. Parents can ask for compensatory education if they believe their child was denied services or FAPE during the time of the disagreement and due process. Prior to getting the

final decision, you can still resolve the issue through mediation.

After a decision is made, you have 90 days to appeal.

Dispute Resolution Comparison

In the chart below, you can compare the various aspects of the dispute resolution options. Appreciating that there are circumstances when each is appropriate, when considering your options, keep the end goal in mind - *successful outcomes for your child!*

Healthy team dynamics are important and contribute greatly to this end goal, so select the dispute resolution option that will address your concerns, and to the greatest extent possible, preserve relationships.

A formal complaint requires more than just “They just aren’t doing it!” You need:

- 1. A clear presentation of the violation**
- 2. Citation of law and administrative rule**
- 3. Data and facts to substantiate**

	Mediation	State Complaint	Due Process Hearing
Who can initiate the process?	Parent or LEA, but must be voluntary for both	Any individual or organization	Parent or LEA
What is the time limit for filing?	None specified	1 year from the date of the alleged violation.	2 years from the date of the alleged violation.
What issues can be resolved?	Any matter under part 300, including matters arising prior to the filing of a complaint or due process hearing.	Alleged violations of Part B of IDEA or Part 300	Any matter relating to the identification, evaluation, education placement, or free appropriate public education.
What is the timeline for resolving the issues?	None specified.	60 days from receipt of complaint.	45 days from the end of the resolution period.
Who resolves the issues?	Parent and LEA with a mediator. The process is voluntary, and both parties must agree to any resolution.	ODE Investigator	Administrative Law Judge [ALJ]

Discipline

When considering the discipline of a child who experiences a disability and receives special education, you have rights to specific procedures and protections when the school takes disciplinary action towards your child.

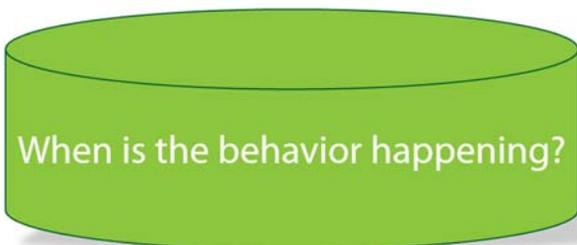
Be proactive! If your child has a disability that impacts his or her ability to maintain appropriate behavior in the classroom, request a functional behavior assessment and a behavior support plan.

Functional Behavior Assessment [FBA]

FBA's examine the following:

- Why is this behavior happening?
- What need is the child trying to get met by behaving in this way?
- When is the behavior occurring?
- What are the possible triggers? Is it time of day? Sensory related? Hunger driven?
- What are the signs it's about to happen?

If the FBA can address all of these areas, then there will be plenty of useful information to develop a good behavior support plan.



Behavior Support Plan [BSP]

A behavior support plan should identify the supports that help your child avoid engaging in negative behavior, and the responses the district can use when the behavior does occur.

As a parent, you are a key contributor in helping develop a good Behavior Support Plan. The plan should include ways to reduce the trigger events identified in the FBA or ways to help the student cope with the trigger events.

It should include specific ways school staff should respond to the student when they see

triggers or warning signs that the behavior is about to occur.

The BSP should also address:

- Other ways to have the student's need met
- How to respond when the behavior occurs
- How to help the student de-escalate or calm back down if appropriate.

As you see, a BSP is not about listing out consequences to behavior, but focuses on how to specifically support the student before and through the behavior.

A behavior support plan focuses on how to specifically support the student **before** and **through** the behavior.

Restraint & Seclusion Brief Overview

What is physical restraint: Oregon Administrative Rule (OAR) 581-021-0062(1)(a) defines physical restraint as “the restriction of a student’s movement by one or more persons holding the student or providing physical pressure upon the student. The rule notes it is not touching or holding a student without the use of force to direct the student or to assist the student in completing a task.

What is seclusion: OAR 581-021-0062(1)(b) defines seclusion as “the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving.”

When may restraint or seclusion be used? Your child can only be physically restrained or secluded when your child’s behavior poses a **reasonable threat of imminent, serious bodily injury to self or others**, and when less restrictive interventions would not be effective.

Your child should not be restrained or secluded for extended periods of time. Restraints and seclusions are emergency interventions that should not be used to manage behavior on a regular basis.

Note: Some students may be protected by the discipline provision of the IDEA, even if they are not currently on an IEP:

- If you have requested an evaluation for special education
- If you've expressed concern in writing to your school that your child might need special education
- If the teacher or other staff has expressed a similar concern, then the student is protected by the same rights under the Individuals with Disabilities Education Act [IDEA].

Manifestation Determination Meeting

A manifestation determination meeting is a process that looks at all the data and information related to a problem behavior and evaluates the extent to which it is because of the student's disability.

This is a serious action, as it comes because of one of the following situations:

- 10 school days of suspension in a row
- A pattern of suspensions (*See "Pattern of Suspensions" below)
- Move for expulsion

****Pattern of Suspensions:***

- Removals total more than 10 school days (does not have to be consecutive)
- Your child's behavior is similar to behavior seen in previous incidents of suspension
- Length of removal, total time child has been removed, and how close removals are to one another

The Manifestation Determination asks:

⇒ Was the child's conduct caused by, or did it have a direct and substantial relationship to, the child's disability?

- or -

⇒ Was the conduct a direct result of the school's failure to implement the IEP?

If the team answers YES to either of these questions, the behavior is a manifestation of the child's disability.

If the behavior *is* a manifestation of the child's disability, the team needs to:

- Conduct an FBA for the student and implement a behavior plan. *If this has already been done, the team should review it and modify it as necessary to address the behavior.*
- Return the student to the placement from which s/he was removed, unless the parents and the district agree to change the placement. *See the Special Circumstances box on the next page.

Private School

If a parent chooses to place their child in a private school, the district is not responsible for the cost of the child's education, though parents may still access special education services with a service plan. When making this decision, the family is relinquishing many of its rights, and the district is not required to provide a free appropriate public education [FAPE].

Service Plan

A written statement that describes the special education and related services the district will provide to your child.

A Closing Story

There once was a family making its way through the land of special education. The team was happy and in agreement, singing along without a care in the world... and then it happened; they weren't singing the same song. One person was humming a tune, while another whistled a different melody. What could they do? They found themselves at a fork in the road.

The simple truth about disagreement

Disagreement is a natural part of any group activity. The bottom line is that when it occurs in the IEP process, parents are at a fork in the road with a decision to make: **Accept, Negotiate, Dispute**. Some of us swirl at the bottom of the fork, mad and upset, stewing on the problem. Some parents do this for a short time, others longer; the simple truth is you have a decision to make.

FACT support specialists can help you out of that swirl. Call or email FACT's Helpline for additional support: **(503) 786-6082 or 1(888) 988-3228 ext. 302; support@factoregon.org.**



- ◇ **Accept:** you can be okay with what is offered by the district (i.e., IEP is implemented as is)
- ◇ **Negotiate:** you are not okay with what's offered, and want to continue to talk more (i.e., request parent conference or team meeting)
- ◇ **Dispute:** you strongly disagree, and neither side will change its mind (i.e., request mediation or other dispute resolution)

Who We Are

Family and Community Together [FACT] is a family leadership organization for individuals and their families experiencing disability, working collaboratively to facilitate positive change in policies, systems, and attitudes through family support, advocacy, and partnerships.

FACT strives to:

- Strengthen the voice of Oregon families raising children experiencing disability
- Connect families to families
- Provide and promote peer-delivered family support
- Create opportunities for meaningful collaboration

FACT provides:

- IEP trainings and support
- Person-centered plan workshops
- Behavior support trainings
- Natural support trainings
- Advocacy trainings
- Family outings and community activities



FACT- Family and Community Together

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Resources

FACT Oregon

www.factoregon.org

Disability Rights Oregon

www.disabilityrightsoregon.org

National Center on Dispute Resolution in
Special Education

www.directionservice.org/cadre

Oregon Department of Education

Dispute Resolution

www.ode.state.or.us/search/results/?id=125



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