

## Procedural Safeguards - 5.2 Procedural Safeguards Notice

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### State Performance Plan (SPP):

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(See Overview in the Introduction for more information on the SPP.)

#### SPP 8:

Percent of parents with a child receiving special education services report that schools facilitated parent involvement as a means of improving services and results for children with disabilities. 20.U.S.C. 1416 (a) (3) (A))

### Intent:

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To provide parents with a comprehensive written explanation of the educational rights and responsibilities of the school district (LEA) for their child who is identified as or suspected of having a disability.

### Timelines:

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A copy of *Whose IDEA Is This?* (the procedural safeguards notice) must be given to the parents of a child with a disability **only one time per school year, except that a copy also must be given to the parents:**

- Upon initial referral or parental request for evaluation;
- Upon receipt of the first complaint made to the state in a school year;
- Upon receipt of the first due process complaint;
- Upon a change in placement for disciplinary action; and
- Upon request by a parent.

## REQUIREMENT

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#### **3301-51-05**

#### ***(I) Procedural safeguards notice***

#### ***(1) General***

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents:

- (a) Upon initial referral or parent request for evaluation;
- (b) Upon receipt of the first due process complaint under paragraph (K) (7) of this rule in a school year;
- (c) In accordance with the discipline procedures in paragraph (K) (20) of this rule; and
- (d) Upon request by a parent.

#### ***(J) Electronic mail***

A parent of a child with a disability may elect to receive notices required by this rule by an electronic mail communication, if the school district makes that option available.

#### ***(I) (2) Internet web site***

A school district may place a current copy of the procedural safeguards notice on its internet web site if a web site exists, but the

school district must still provide parents a printed copy of the procedural safeguards notice.

## GUIDANCE

### General

A list of actions requiring the procedural safeguards notice is included on the chart at the beginning of the Procedural Safeguards section. See "When to Provide Prior Written Notice, Informed Consent, and Procedural Safeguards Notice (Whose IDEA Is This?)."

The school district provides the parents with a copy of *Whose IDEA Is This?* (the procedural safeguards notice) at least once a year.

- If a child transfers into the district from out- of- state, the district must provide the parents with a copy of *Whose IDEA Is This?*
- If a child transfers into the district from another district in the state, school district personnel provide a copy of *Whose IDEA Is This?* to the parents if the sending school district had not provided the parents a copy during the current school year.

The district designates a time when this notice will be provided; for example, the district may provide a copy at the beginning of the school year or at the annual IEP meeting. A copy of this procedural safeguards notice does not need to be provided at the annual IEP meeting if the parents report they have received a copy for the current year and sign the IEP PR-07 form in the relevant section to document their receipt.

Additionally, the school district must provide the parents with a copy of *Whose IDEA Is This?* at the following times:

- Upon initial referral or parental request for evaluation;
- Upon receipt of the first due process complaint in a school year;
- Upon a change in placement for disciplinary action; and
- Upon request by the parents.

If the school district has provided the parents with a copy of *Whose IDEA Is This?* during the current school year and the parents indicate they do not need another copy when one of the above circumstances occurs, the school district documents this offer (date, time and situation when the offer was made) in the child's education record.

The Ohio Department of Education, Office for Exceptional Children provides the parents with a copy of *Whose IDEA Is This?* upon the parents' filing of the first state complaint within a school year.

The parents may elect to receive the procedural safeguards notice as a printed hard copy provided by the district or as an attachment to an e- mail sent by the district if the district makes this option available to parents. Also, parents may express a preference to download the notice from the district's Web site if a copy has been posted, but the district still must provide the parents with a printed copy of the notice.

A copy of *Whose IDEA Is This?* may be provided to the parents at other times, such as when prior written notice is given, but this is not required.

### Electronic mail

The school district may provide *Whose IDEA Is This?* via e- mail if the district makes this option available and if the parents choose to receive the notice electronically.

If the parents choose to receive this notice electronically, the school district should document this request; for example, district personnel make a notation in the child's file of the parent's verbal request including the date of the request and the situation in which it was requested.

## Internet Web site

Guidance provided by the U.S. Department of Education:

The school district may post a copy of *Whose IDEA Is This?* on the district's Web site for easy access by persons who have an Internet connection available. However, the district does not meet its obligation by simply directing a parent to its Web site. The school district must still provide the parents a printed copy of this procedural safeguards notice. If, however, the parents decline the offer of a printed copy and indicate a clear preference to obtain the notice electronically on their own from the district's Web site, the district should document that the parent declined to accept a printed copy of the notice. Posting the procedural safeguards notice on the school district's Web site is clearly optional and is for the convenience of the public. This Web posting does not replace the requirement in the IDEA to provide a printed copy. (*Federal Register*, August 14, 2006, pg. 46693).

## REQUIREMENT

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### **3301-51-05**

#### **(1) Procedural safeguards notice**

#### **(3) Contents of notice**

The procedural safeguards notice must include a full explanation of all the procedural safeguards available under rule 3301-51-02 of the Administrative Code, rule 3301-51-04 of the Administrative Code, and this rule including:

- (a) Independent educational evaluations;
- (b) Prior written notice;
- (c) Parental consent;
- (d) Access to education records;
- (e) Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
  - (i) The time period in which to file a complaint;
  - (ii) The opportunity for the school district of residence to resolve the complaint; and
  - (iii) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- (f) The availability of mediation;
- (g) The child's placement during the pendency of any due process complaint;
- (h) Procedures for children who are subject to placement in an interim alternative educational setting;
- (i) Requirements for unilateral placement by parents of children in nonpublic schools at public expense;
- (j) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (k) State-level appeals;
- (l) Civil actions, including the time period in which to file those actions; and
- (m) Attorneys' fees.

## GUIDANCE

### Contents of notice

The school district agrees to use the state required forms including *Whose IDEA Is This?* as the procedural safeguards notice.

If the school district develops its own procedural safeguards notice or revises any of the forms required by ODE/ OEC, the district must submit the forms to OEC for review and approval.

## REQUIREMENT

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### **3301-51-05**

#### **(I) Procedural safeguards notice**

#### **(4) Notice in understandable language**

The notice required under paragraph (I) (1) of this rule must meet the requirements of paragraph (H) (3) of this rule.

#### **(H) (3) Notice in understandable language**

(a) The notice required under paragraph (H) (1) of this rule must be:

- (i) Written in language understandable to the general public; and
- (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

- (i) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- (ii) That the parent understands the content of the notice; and
- (iii) That there is written evidence that the requirements in paragraphs (H) (3) (b) (i) and (H) (3) (b) (ii) of this rule have been met.

## GUIDANCE

### Notice in understandable language

If the school district has a parent mentor, that person may be asked to assist in explaining the notice to the parents.

If the parents' native language is not English, the school district checks the ODE Web site at [http:// education.ohio.gov](http://education.ohio.gov), keyword search: *Whose IDEA*, to determine if *Whose IDEA Is This?* has been translated into the language of the parents. If available in the parents' native language, the school district downloads a copy of *Whose IDEA Is This?* and provides it to the parents. If *Whose IDEA Is This?* has not been translated into the parents' native language, the school district arranges (if such translation services are available) to have this procedural safeguards notice translated.

If it is clearly not feasible to provide the parent with a written translation of the notice, the school district should make arrangements for a bilingual interpreter, who speaks the parents' language, to meet with the parents to explain the notice at a mutually agreed upon time and place.

- For assistance with translation (native language – other than English) or recommendations of translators or oral interpreters, contact:

Lau Resource Center  
Ohio Department of Education,  
Telephone: (614) 466-4109.

If the parents are visually impaired or blind, the school district provides the parent with a copy of *Whose IDEA Is This?* in an accessible format such as print or Braille.

- For information on large print or Braille production, contact:

## Procedures and Guidance for Ohio Educational Agencies serving Children with Disabilities

(October, 2011)

Center for Instructional Supports and Accessible Materials (CISAM)

Ohio State School for the Blind

Telephone: (614) 644-8465 or (614) 644-8423 (Braille Production Program)

[http:// cisam.ossb.oh.gov](http://cisam.ossb.oh.gov)

If the parents are hearing impaired or deaf, the school district arranges for interpreting services. The district should schedule a meeting at a mutually agreed upon time and place for the interpreter to explain the notice to the parents.

The school district documents steps taken to ensure that the notice was explained and that the parents understand the content of the notice. For example, district personnel record the meeting date, time and place where interpreter services were provided and include this documentation with the child's IEP.

School district personnel include this documentation in the space provided on the Parent Consent for Evaluation PR-05 form when the notice was given for an initial evaluation or a reevaluation in which additional assessments are to be conducted.

### LEGAL CITATIONS:

#### Federal Statutes:

20 U.S.C. 615(d)

#### Code of Federal Regulations:

34 CFR §300.504

#### Ohio Revised Code: (Policies)

ORC 3323.05

#### Operating Standards: (Procedures)

3301-51-04

3301-51-05(H) (3), (I) and (J)

### FORMS (\* = required)

- Whose IDEA Is This?\*
- IEP PR-07\*
- Parental Consent for Evaluation PR-05\*