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Disclaimer	<p>All materials have been prepared for general information purposes only. The information presented is not legal advice, is not to be acted on as such, may not be current and is subject to change without notice.</p>
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A **referral** for evaluation sets into motion a host of legal rights and responsibilities that are complex.

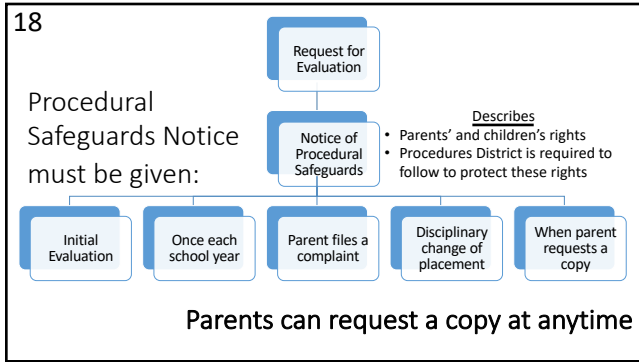
- Notice of Procedural Safeguards is a formal document the district must give parents
- It describes some of these rights and responsibilities

These Procedural Safeguards apply:

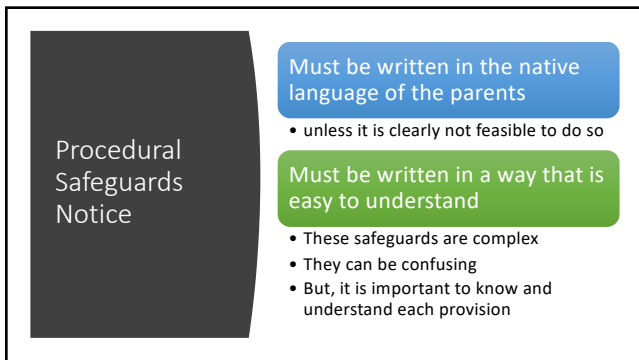
- During the initial evaluation
- And, for those found eligible, throughout the special education process

 A circular flowchart titled "SPECIAL EDUCATION PROCESS". The steps are: Referral (top), Evaluation (right), Eligibility (bottom right), IEP (bottom), Placement (bottom left), Instructor (left), Annual Review (top left), and back to Evaluation. A red arrow points from the text "A referral for evaluation sets into motion..." to the "Referral" node.

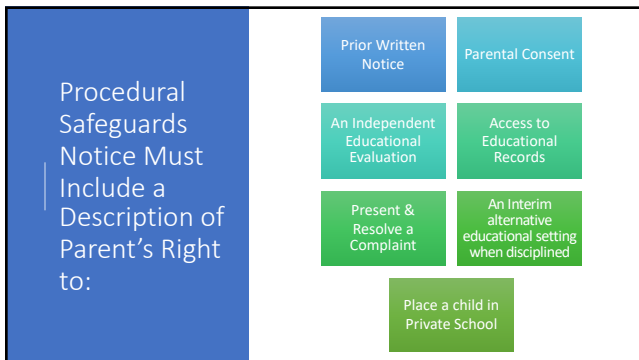
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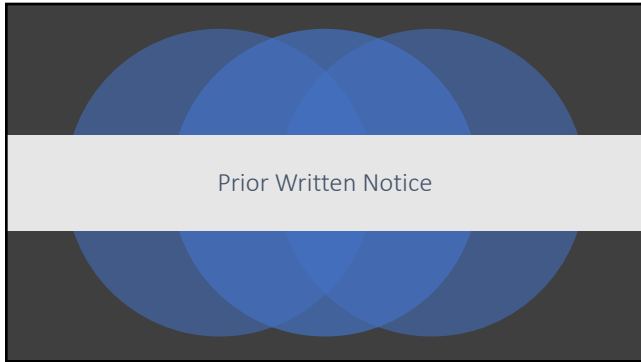
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Parents must be notified before the district:

Proposes to	Refuses your request to
Evaluate your child	Evaluate your child
Hold a meeting about your child's: • Eligibility for Special Education or • Educational Placement.	Make changes to your child's: • IEP or • Educational Placement.

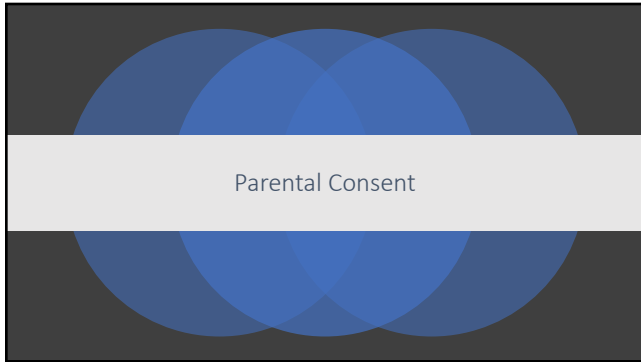
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Prior Written Notice must include all of the following:

- A description of the actions proposed or refused
- An explanation of why the action was proposed or refused
- A description of each assessment procedure, record, or report used to make the decision
- A description of other options considered & reasons they were rejected
- A description of any other relevant factors

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The district must obtain your written, informed consent before they can:

evaluate your child

or

provide special education services to your child

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District's request for your consent must include:

- Specific information about the proposed activity
- Be presented in a way that is understandable to you

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You may consent to all or only those offered services you agree with.

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Independent Educational Evaluation (IEE)

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Independent Educational Evaluation (IEE)

When Do Parents have the Right to an IEE?

- Parent disagrees with the results of an assessment conducted by the District

Who Pays for the IEE?

- Parent is entitled to one IEE at District's expense each time District conducts an evaluation (which parent disagrees with)
- Unless a Due Process hearing determines District's evaluation was appropriate

Who Conducts the IEE?

- A person qualified to conduct the assessment
- District must provide a list of potential assessors
- Parents are not required to choose from that list

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Some of the reasons you may feel the evaluation was inadequate include:

-  The evaluation did not cover all areas of educational need
-  The evaluator was not qualified
-  The instruments used were inappropriate or outdated
-  Other factors were not appropriate and resulted in findings that do not accurately reflect your child.

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19 Parents should inform the district of their request in writing

State that you feel the evaluation was invalid

NEVER because you disagree with the conclusion the team reached.

And explain the reasons why

NOT REQUIRED

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Failure to use a variety of...

Instruments	Sources	Environments
<ul style="list-style-type: none">✓ Formal Assessment Tools✓ Observations✓ Interviews✓ Rating Scales	<ul style="list-style-type: none">✓ Teacher(s)✓ Parent(s)✓ Student✓ Others	<ul style="list-style-type: none">✓ Classroom, recess, lunch✓ Subject matters (academic/non, preferred/non)✓ Times of day

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Measure Ability or Interest?

"[Student] was visually and physically prompted to touch the picture of the airplane on the iPad. He did not appear to be interested in this activity. [He] was visually cued to touch the picture. He touched the screen, but not the picture. Using hand over hand, the assessor had him touch the desired picture to encourage and model pressing the picture. After a few minutes, [he] would no longer participate and attempted to get away from the activity.... Due to [his] current level of communication intent and attention, [student] does not appear to require Assistive Technology Services."

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Inconsistencies

"[Student] presented as a nonverbal student...and used Augmentative or Alternative Communication (AAC) to communicate";

"Due to lack of verbal expressive language skills, [Student] communicates using changes in breathing patterns, body position changes, facial expressions, pointing, and gesturing";

"[Student] uses PECS to communicate";

"He currently does not differentiate between various symbols. [Student] uses PECS in a field of one.";

"[Student] did not demonstrate a functional form of communication."

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When parents

Request an IEE in writing



District must

- Agree to fund the IEE or
- File for due process claiming the evaluation was appropriate

without unnecessary delay

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- There is no bright-line rule for this time frame.
- Permits a flexible period of time that could accommodate good faith discussions and negotiations over the need for, and arrangements for, an IEE.
- A delay of more than 2-3 months is likely “unnecessary delay.”
 - But it will depend on the circumstances.
 - 2-month delay reasonable where district sent parents PWN stating its disagreement within 10 days of IEE request. (Santa Monica-Malibu Unified Sch. Dist., 62 IDELR 279 (SEA CA 2013).)
 - 3-month delay deemed unreasonable. (Pajaro Valley USD v. J.S., (N.D. Cal. 12/15/06) 47 IDELR 244.)

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20 If the district refuses to fund the your requested IEE, you have two choices:

<p>1</p> <p>Pay for it and then file a complaint/due process →seek a ruling the district must reimburse you.</p>	<p>2</p> <p>File the complaint/due process →seek a ruling that the district must fund it.</p>
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Parents v. Fullerton, OAH 201106318 (2012)

- **March 2010:** District assessed student
 - Parent did not ask for an IEE but did raise concerns.
- **September 2010:** parent asked for an IEE
 - District responded that standardized tests could not be repeated until 12 months had elapsed since the previous assessment.*
- **May of 2011:** parents again asked for an IEE, stating they disagreed with the March 2010 assessment
 - District refused the IEE claiming it wanted to reassess the student first.
- **ALJ held:** procedural violation (district could only fund or file)
 - District had to reimburse parents for the cost of the IEE.*
(more than \$6,000.)

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The Office of Special Education Programs (OSEP) has approved some limits on IEEs.

The District may establish criteria that:

- Requires assessor have certain qualifications
- Imposes geographical limits
- Imposes a cost cap

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However, these limits may not interfere with the parents' right to obtain an IEE.

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Accessing Dear Colleague Letters and other clarifying documents

- <https://sites.ed.gov/idea/policy-letters-policy-support-documents/>

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Geographical Limitations	<u>Case Examples:</u>
<ul style="list-style-type: none"> • "The district may impose limitations on the number of miles an evaluation can be conducted away from the district, as long as this does not prevent the parent from getting the appropriate evaluation." <p style="text-align: right; font-size: small;">Letter to Bluhm, 211 IDELR 227A (OSEP July 2, 1980)</p>	<ul style="list-style-type: none"> • District was not required to pay for an evaluation more than 200 miles from the school district when there were qualified providers within the school's geographic criteria. <i>A.L. v. Jackson Cty. Sch. Bd.</i>, 635 Fed. Appx. 774 (11th Cir. 2015) • Geographic limit of 30 miles found unreasonable. 57 IDELR 208 (SEA Ohio 2011)

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20 What do you do if the district gives you a response with cost limits?

Call each person on their list and ask: <ul style="list-style-type: none"> • If they have any relationship with a school district. • What their charge is for an IEE • What that fee includes 	The district does NOT have to pay to have the independent evaluator attend the IEP meeting. <ul style="list-style-type: none"> • The IEP team must include an individual who can interpret the instructional implications of evaluation results. • This does not have to be the person who conducted the evaluation.
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FYI Re: Travel Expenses and IEEs

- A Utah-based school was obligated to reimburse parent \$1,198.80 in travel-related expenses incurred in accompanying her daughter to Massachusetts to undergo a deafblind IEE.
- In reaching this conclusion, the court found that
 - there were no specialists in Utah who were qualified to conduct the IEE and
 - the school itself had utilized the Massachusetts-based evaluator to conduct the school's own triennial evaluation.

M.S. v. Utah Sch. for the Deaf & Blind, 822 F.3d 1128, (10th Cir. 2016).

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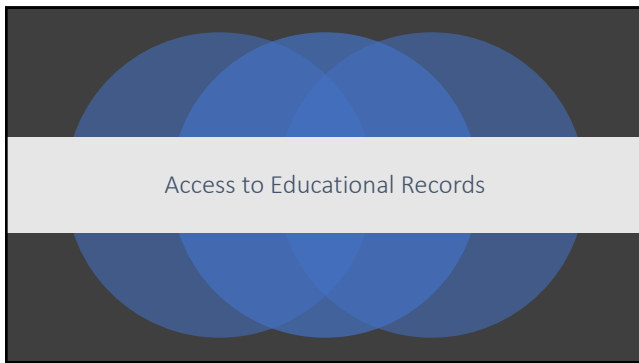
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And remember, parents can always fund their own private evaluations.

The district must *consider* the results of outside evaluations.

The results may also be presented as evidence at a due process hearing.

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Parents have the right to:

- 1 • See their child's educational records
- 2 • Have copies of their child's educational record
- 3 • Have records explained to them by school officials

State law gives parents the right to examine and receive copies of all school records of their child within **five business days** from the date of an oral or written request.

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Educational Records

<p>The school district can ask parents to pay for the copies, but</p> <ul style="list-style-type: none"> • they may charge no more than the actual cost of reproducing the records. • If the charge effectively prevents a parent from getting copies, they must be provided at no cost. 	<p>If you believe a part of your child's record is inaccurate or misleading, you have the right to:</p> <ul style="list-style-type: none"> • ask the district to change that information and • take steps to challenge the district if they refuse to amend the record
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Cal. Ed. Code Sec. 49070

- Parents can file a request, with district superintendent, to correct or remove information from their child's educational file.
- Within 30 days, the superintendent must either approve or deny the request.
- If the superintendent denies the request, the parent has 30 days to the school board appeal.
- If the appeal is unfavorable, the parent may still submit an objection in writing to the child's file.

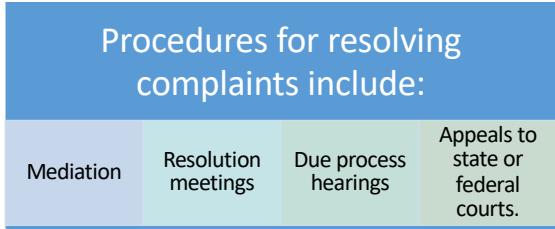
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Other Procedural Safeguards

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Present & Resolve a Complaint



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Class on Dispute Resolution will Discuss:

- The time period parents have in which to make a complaint
- How the school district or state may resolve the complaint
- The difference between the due process and state complaint procedures
- The availability of mediation services
- The student's educational placement while the complaint is being resolved; including "Stay Put" rights
- How parents can get reimbursement of attorney's fees

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Student Discipline

The Procedural Safeguards Notice must also inform parents of the students' rights when they are facing disciplinary measures, including:



This is covered in more detail in the class on Student Discipline

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Interim Alternative Educational Setting (IAES)		
District may place a student in an IAES for up to 45 school days, without parent's written consent, only if the student:	possesses or attempts to sell	a weapon or illegal drugs,
	inflicts serious bodily harm on another person	at school, on school grounds or at a school function

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Private School	
The district is not required to pay for the private school, unless:	child previously received special education from the district, <u>and</u>
	it is determined through legal procedures that the services were inappropriate

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<p>Helpful Information</p> <ul style="list-style-type: none"> • https://www2.ed.gov/admins/lead/speced/privateschools/idea.pdf
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