

# **PROCEDURAL SAFEGUARDS NOTICE**

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## **PARENT RIGHTS FOR EARLY INTERVENTION (0-2 YEARS) & EARLY CHILDHOOD SPECIAL EDUCATION (3-5 YEARS)**

**JULY 2013**



**OREGON DEPARTMENT OF EDUCATION  
OFFICE OF STUDENT LEARNING & PARTNERSHIPS  
255 CAPITOL STREET NE  
SALEM, OREGON 97310**

This document presents procedural safeguards for Early Intervention (EI), under IDEA, Part C, and Early Childhood Special Education (ECSE), under IDEA, Part B. For EI the requirements conform to IDEA regulations effective October 2011. For ECSE, the requirements conform to the U.S. Department of Education's Model Procedural Safeguards Notice (June 2009). Specific information about Oregon is provided where necessary.

Questions or comments about this document may be directed to:

Office of Student Learning & Partnerships  
Oregon Department of Education  
255 Capitol Street  
Salem, OR 97310  
(503) 947-5782

This document is available electronically at:  
<http://www.ode.state.or.us/search/results/?id=261>.

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### **CHILDREN WITH DISABILITIES**

The information in this booklet is for parents of children who are, or may be, eligible for Early Intervention (EI) or Early Childhood Special Education (ECSE) under the Individuals with Disabilities Education Act (IDEA), Parts C and B. Not all children with disabilities are eligible for early intervention or early childhood special education services under IDEA. Some children may have disabilities that affect major life activities but do not meet the eligibility requirements for one of the categories of disability under IDEA. These children may be protected by different federal laws, such as section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Education Act (ADA). The rights for individuals protected under section 504 only are in some ways similar and in some ways different from the procedural safeguards described in this booklet. For more information about section 504, contact your EI/ECSE program or the ODE civil rights specialist.

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## Introduction

### **Who is this booklet for?**

This booklet provides parents of children with disabilities from birth to kindergarten an overview of their educational rights, also called procedural safeguards. This booklet is the *Notice of Procedural Safeguards* for parents and surrogate parents. Federal law requires you to be informed of all procedural safeguards, even those that seldom arise with young children.

### **When must I get a copy of this booklet?**

The law says this *Notice of Procedural Safeguards* must be given to you:

- Once a year;
- When you ask for a copy;
- The first time your child is referred for an early intervention (EI) or early childhood special education (ECSE) evaluation or when you request an evaluation and,
- When your first complaint or due process request in a school year is received; and
- For ECSE, when a disciplinary decision regarding your child constitutes a change of placement.

### **What will this booklet tell me?**

This booklet will tell you about your rights in early intervention and early childhood special education. This booklet will not give you detailed information about IFSPs, services and programs. You may get more information about these areas by talking to your child's service coordinator, teacher, program representative, or from the Oregon Department of Education (ODE) web site and other resources listed in the back of this booklet.

This booklet uses the term "public agency" to mean the school district, EI/ECSE program or other public agency that is responsible for some aspect of your child's EI/ECSE services.

### **Where do the rights in this booklet come from?**

The Individuals with Disabilities Education Act (IDEA) is a federal special education law that requires states to provide EI and ECSE services to eligible young children with disabilities.

### **What is the difference between EI and ECSE?**

Early intervention (EI) means services for children with disabilities from birth to age three that are designed to meet the developmental needs of the child and the needs of the family related to enhancing the child's development. EI services are provided in settings that are natural or typical for children without disabilities, unless the child needs a more specialized setting. These services are described in your child's IFSP.

Early childhood special education (ECSE) means services to meet the unique needs of children with disabilities from age three until the age of eligibility for

public school. Children eligible for ECSE services must be provided with a free appropriate public education (FAPE). FAPE means special education and related services necessary for your child to benefit from his or her education. These services are described in your child's IFSP. The law says that the team must place your child in the "least restrictive environment." This means your child must be placed in the most typical kind of program that will meet your child's needs, based on your child's IFSP.

### **What is an IFSP?**

IFSP stands for Individualized Family Service Plan. A team that includes you, your child's teachers, and others design these services after they decide whether your child has a disability and meets the criteria for special education that is in the law. The IFSP describes the services to be provided to your child. The IFSP team includes you, your child's teachers, and others. The IFSP team reviews your child's assessment information, identifies measurable goals for your child, and determines the services and supports your child needs to reach those goals. You may get more information about IFSPs from your child's service coordinator, teacher or other program staff.

### **Where can I get more information?**

Your local EI/ECSE program is the first stop for more information. There are a number of people in the program who can answer questions about the services for your child, including your child's service coordinator. Other service providers who work with your child also may be helpful to you. Other resources are listed at the end of this booklet.

## **PARENT PARTICIPATION**

### **Who is considered a "parent"?**

Under the IDEA, a parent may be:

- A biological or adoptive parent of a child;
  - A foster parent of a child;
  - A legal guardian (other than a State agency) or other person legally responsible for the child's welfare;
  - An individual acting as a parent in place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives; or,
  - A surrogate parent appointed by the public agency or a juvenile court.
- If more than one person is qualified to act as a parent, and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent under the IDEA. However:
- This rule does not apply if the biological or adoptive parent does not have legal authority to make educational decisions for the child.
  - If there is a court order or judicial decree stating who can act as the parent of a child or to make educational decisions on behalf of a child, that person will be the parent for special education purposes.

### **Do I have the right to participate in making decisions about my child's EI/ECSE services?**

Yes, your participation is valuable. You have the right to participate in meetings about your child's special needs, evaluation, EI/ECSE services, where your child receives services (placement), and other matters relating to your child's EI/ECSE services. This includes the right to participate in meetings to develop your child's IFSP.

### **What is a surrogate parent and when is one needed?**

A surrogate parent is a person who is assigned to make educational decisions for a child with disabilities in specific situations when the parent cannot be identified or located, or the child is a ward of the court. Each EI/ECSE program has a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. The person selected as surrogate: (1) may not have any interest that conflicts with the interests of the child he or she represents and (2) must have knowledge and skills that ensure adequate representation of the child. A surrogate parent participates as the parent at IFSP meetings and has all the rights described in this booklet.

## **EDUCATIONAL RECORDS**

### **May I look at my child's education records?**

Yes. Two laws, the Family Educational Rights and Privacy Act (FERPA) and the IDEA, give you the right to look at all of your child's educational records. Ask your child's teacher, service coordinator or program administrator if you want to look at the records.

If you ask to look at your child's records, your child's program must arrange for this:

- Without unnecessary delay;
- Before any meeting about your child's IFSP;
- Before any due process hearing related to your child (including a resolution meeting or a meeting regarding discipline) related to your child; and, in any case,
- For EI: Within 10 calendar days of your request;
- For ECSE: Within 45 calendar days of your request.

Usually, requests to look at educational records are made to the program administrator.

Your right to inspect and review education records includes:

1. Your right to a response from the EI/ECSE program to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the EI/ECSE program provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**,
3. Your right to have your representative inspect and review the records.

The EI/ECSE program may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable Oregon law governing such matters as guardianship, or separation and divorce.

Each EI/ECSE program must keep a record of parties obtaining access to education records collected, maintained, or used under the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

On request, the EI/ECSE program must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

The EI/ECSE Program may charge a fee for copies of records that are made for you under the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records. An EI/ECSE program may not charge a fee to search for or to retrieve information under the IDEA.

However, for EI, your EI/ECSE program must provide at no cost to you:

1. An initial copy of the child's early intervention (EI) record;
2. A copy of each evaluation, assessment of your child, family assessment, and IFSP as soon as possible after each IFSP.

### **What can I do if I want to correct my child's educational records?**

For EI: If you believe that information in the education records regarding your child or yourself as a parent is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the EI/ECSE program that maintains the information to change the information.

For ECSE: If you believe that information in the education records regarding your child is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the EI/ECSE program that maintains the information to change the information.

The EI/ECSE program must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request. If the EI/ECSE program refuses to change the information as you requested, it must inform you of the refusal and your right to a hearing.

The EI/ECSE program must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

If, as a result of the hearing, the EI/ECSE program decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information and inform you in writing.

If, as a result of the hearing, the EI/ECSE program decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the EI/ECSE program.

Your explanation must:

1. Be maintained by the EI/ECSE program as part of the records of your child as long as the record or contested portion is maintained by the EI/ECSE program; **and**,
2. If the EI/ECSE program discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

### **What is “personally identifiable” information?**

Personally identifiable information is defined in FERPA, 34 CFR 99.1 to 99.38, which protects the records of children with disabilities, including early intervention and early childhood special education records. The IDEA, also adopts the definition of “education records” found at 34 CFR Part 99, FERPA. For EI, the term education records means early intervention records.

Personally identifiable information includes information such as:

- (a) Your child’s name, your name as the parent, or the name of another family member;
- (b) Your child’s address;
- (c) A personal identifier, such as your child’s social security number or student number;
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty;
- (e) Other information, such as your child’s date of birth, place of birth, and mother’s maiden name.

### **Are my child’s educational records confidential?**

Yes, the Family Educational Rights and Privacy Act (FERPA) and IDEA also protect the confidentiality of your child’s education records and personally identifiable information.

Each EI/ECSE program must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.



One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding Oregon's policies and procedures regarding confidentiality under the IDEA and the FERPA.

Each EI/ECSE program must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), you must give written consent before personally identifiable information is disclosed to parties other than officials of your child's EI/ECSE program.

Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of the IDEA.

For ECSE: If you have enrolled your child in a private school that is not located in the same school district in which you reside, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

## **SAFEGUARDS**

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In general, you must give written consent for people other than officials of your child's EI/ECSE program to look at your child's education records unless the disclosure is authorized without parental consent under FERPA and, for EI, under IDEA.

Generally, FERPA authorizes that your child's records may be released without your consent to:

- Teachers and other program staff who have a "legitimate educational interest;"
- Another program, district or educational agency if you are transferring to or getting services from that district or agency.

Your child's records may also be released without your consent in limited circumstances as described in the family education rights and privacy act (FERPA). For example, your written consent is not required to comply with a court order, or in a health or safety emergency. Some information, like your child's name, address, and activities, may be released as "directory information" **IF** you have not signed a paper refusing the release of directory information. Contact your program for a copy of your program's complete records policy.

Your EI/ECSE program must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide EI/ECSE services to your child or is no longer required to be maintained under applicable Federal and State laws.

The information must be destroyed at your request. (Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.)

However, a permanent record of your child's name, address, and phone number and EI/ECSE participation may be maintained without time limitation. For EI, the permanent record may also include the names of service coordinators and EI providers, exit data (including year and age at exit, and any programs entered upon exit.

## **PARENT CONSENT**

### **What does "consent" mean?**

*Consent* means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
3. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

### **Is my consent needed for evaluating my child?**

Yes. The public agency must give you written notice and get your informed written consent before it can evaluate or reevaluate your child. The public agency must inform you about the tests to be used with your child.

Your consent for initial evaluation does not mean that you have also given your consent for the ECSE program to start providing ECSE services to your child.

### **Are there any exceptions to when my consent is needed for evaluating my child?**

Yes. Parental consent is not required before (1) reviewing existing information as part of an evaluation or re-evaluation; (2) giving a test or evaluation that is administered to all children (unless consent is required of all children's parents before administering the test) or (3) conducting evaluation tests, procedures or instruments that are identified on the child's IFSP as a measure for determining progress.

Also, for ECSE, the public agency may reevaluate your child without your written consent if it has taken reasonable measures to get your consent and you have not responded. State regulations still require parent consent before giving an intelligence or personality test.

**May I refuse consent for my child to be evaluated or reevaluated?**

Yes, you may refuse consent for an evaluation or a reevaluation of your child. To avoid confusion, you should inform the public agency in writing if you want to refuse consent.

For ECSE: If you refuse to give consent for an evaluation of reevaluation, the public agency may seek to evaluate your child through a due process hearing if it believes the evaluation is necessary for your child. You and the public agency may agree to try mediation to resolve your disagreements. As with initial evaluations, the ECSE program does not violate its obligations under the IDEA if it does not pursue the reevaluation in this manner.

**May I withdraw my consent for evaluation?**

After you have given the public agency written consent to evaluate or reevaluate your child, you may revoke your consent only for the evaluation activities that are not yet completed.

**Is my consent required for my child to receive EI services?**

Yes, you must give your informed written consent before the program can provide EI services to your child. Your consent is required for each EI service described in your child's IFSP. If you decline or refuse a service, that service will not be provided. The other EI services will still be provided.

**Is my consent required for my child to receive ECSE services?**

Yes, ECSE is a special education program. You must give your informed written consent before the program can place your child in an ECSE program for the first time. When you consent for ECSE services, you are consenting for your child to participate in Part B IDEA services, which includes school-age special education services if your child continues to be eligible at school age.

**Consent for the Use of Public Benefits and Insurance (such as Medicaid) for Children in ECSE programs (i.e. children aged 3-21)**

Parents informed, written consent is required before an ECSE program may access your public insurance (E.g. Medicaid) for the first time. This consent must specify: (a) the personally identifiable information that may be disclosed (E.g. records of information about the services that may be provided); (b) the purpose of the disclosure (E.g. billing for services); and (c) the agency to which the disclosure may be made (E.g. Medicaid). The consent must also specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services.

School Districts must provide written notification to you before requesting this consent and before accessing the child's or parent's public benefits for first time. The School District must also provide this written notification to you **annually** after consent to use public benefits is obtained.

**Is my consent required to use public or private benefits or insurance for EI/ECSE services?**

EI/ECSE services for your child are provided at no cost to you or your family. However, your program providing services may ask to bill you or your child's public insurance or benefits (such as Medicaid or the Oregon Health Plan) or private insurance to assist in paying for EI/ECSE services. Your program must have your written consent to do so. If your child is three years of age or above the required consent and notification information is listed above.

Your or your child's public or private insurance cannot be billed for services your child is entitled to receive at no cost such as:

1. Evaluations and assessment of your child;
2. Service coordination for you or your child;
3. The development, review and evaluation of IFSPs.

If you give your consent for you or your child's insurance to be billed for services your program would pay for costs such as deductibles or copayments associated with those services. If you disagree with costs associated with insurance billing you may use any of the processes outlined in "Resolving Disagreements."

There is no additional cost for services to families with public or private insurance. Services will not be delayed or denied due to inability to pay or your denial of consent to access your public or private insurance.

**May I refuse consent for my child to receive ECSE services?**

Yes, you may refuse consent for the initial placement of your child in special education. To avoid confusion, you should inform the program in writing if you want to refuse consent.

If you wish to revoke (cancel) your consent after your child has begun receiving ECSE and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the ECSE Program is not required to amend (change) your child's education records to remove any references that your child received ECSE and related services after your withdrawal of consent.

If you do not respond to a request to provide your consent for your child to receive ECSE and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, your ECSE Program may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the ECSE and related services (recommended by your child's IFSP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive ECSE services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the ECSE program does not provide

your child with the ECSE services for which it sought your consent, the ECSE program:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; **and**,
2. Is not required to have an IFSP meeting or develop an IFSP for your child for the ECSE services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided ECSE and related services, then the ECSE Program may not continue to provide such services, but must provide you with prior written notice, as described under the heading **Prior Written Notice**, before discontinuing those services.

### **Special rules for initial evaluation of wards of the State**

If a child is a ward of the state and is not living with a parent, the ECSE program does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the ECSE program cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; **or**,
3. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

*Ward of the State*, as used in the IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child;
2. Considered a ward of the state under state law; **or**,
3. In the custody of a public child welfare agency.

*Ward of the State* does not include a foster child who has a foster parent. In Oregon, a ward of the state is a child who is temporarily or permanently in the custody of, or committed to, the Department of Human Services through the action of the juvenile court.

### **Other consent requirements – ECSE**

The ECSE program must keep records of reasonable efforts to obtain parental consent for initial evaluations, to provide ECSE services for the first time, to reevaluation and to locate parents of wards of the state for initial evaluations. The documentation must include a record of the ECSE program's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; **and**,
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Your EI/ECSE program may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

If you have enrolled your child in a private preschool at your own expense and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you do not respond to a request to provide your consent, the ECSE program may not use its consent override procedures (i.e., mediation, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

## **PRIOR WRITTEN NOTICE**

### **Prior Written Notice**

Your EI/ECSE program must give you written notice (provide you certain information in writing), whenever it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of early intervention services for a child from birth to three or the provision of a free appropriate public education (FAPE) for a child ages three – five; **or**
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of early intervention services for a child from birth to three or the provision of FAPE for children ages three-five.

### **When must the program give you prior written notice?**

In addition to being a required participant in decision-making, you have the right to have the program notify you in writing about important decisions that affect your child's EI/ECSE services a reasonable time before those decisions are put into place. These include decisions to:

- Identify your child as a child with a disability, or change your child's eligibility from one disability to another;
- Evaluate or reevaluate your child;
- For EI, provide early intervention services to your child or change a component of your child's EI services;
- For ECSE, provide a free appropriate public education to your child or change a component of your child's free appropriate public education;
- Develop an IFSP for your child, or change your child's IFSP; **or**,
- Place your child in EI/ECSE services or change where your child receives EI/ECSE services.

You also have the right to prior written notice from the program when the program refuses your request to take these actions.

### **What information must the written notice include?**

Prior written notice must include:

- The action the program is proposing or refusing to take:

- Why the program is proposing or refusing the action;
- A description of any other options considered and the reasons why those options were rejected;
- A description of each evaluation procedure, test, record or report used as a basis for the action proposed or refused;
- A description of any other factors relevant to the action proposed or refused;
- A statement of complaint procedures, including a description of how to file a complaint and the timelines under those procedures;
- A copy of this *Notice of Procedural Safeguards* booklet or how you can get a copy; **and**,
- Sources for you to contact to get help in understanding these procedural safeguards.

Prior written notice must be provided in your native language unless it is clearly not feasible to do so. The notice must be written in language understandable to the general public.

If your native language or other mode of communication is not a written language, the program must take steps to ensure that:

- The notice is translated orally or by other means in your native language or other mode of communication;
- You understand the content of the notice: **and**,
- There is written evidence that these requirements have been met.

*Native language*, when used with an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

### **May I request to see notices by email?**

If your EI/ECSE program offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Prior written notice;
2. This Notice of Procedural Safeguards **and**,
3. Notices related to a due process hearing.

## EVALUATION AND REEVALUATION

### **If my child is getting EI services, will my child need to be evaluated to be eligible for ECSE services?**

Yes. If your child receives EI services, your child will need to be evaluated for ECSE eligibility before turning three years old. The IFSP team must review existing evaluation data and decide whether more information is needed to determine whether your child is eligible for ECSE services.

### **If my child is getting ECSE services, will my child need to be reevaluated to be eligible for school-age special education services?**

If your child is identified by ECSE as a child with a disability other than developmental delay, your child will continue to be eligible for school-age special education services. The school district may, but is not required to, conduct a reevaluation to reconsider eligibility.

If your child is identified by ECSE as a child with a developmental delay and suspected of having a categorical disability, a reevaluation must be conducted to determine eligibility as a child with a disability in one of the following categories of disability found in IDEA:

- Autism Spectrum Disorder
- Communication Disorder
- Deaf-Blindness
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disabilities
- Other Health Impairment
- Orthopedic Impairment
- Specific Learning Disability
- Traumatic Brain Injury
- Vision Impairment

The IFSP team must review existing evaluation information and decide whether additional information is necessary to determine whether your child is eligible for special education under one of these categories.

If the team does not suspect a categorical disability or decides no additional information is needed to determine whether your child continues to be eligible for special education, the public agency must notify you of that decision and the reasons for it. You still have the right to request an evaluation to determine whether your child continues to be eligible. The public agency is not required to do an evaluation of your child unless you request it.

If your child is identified by ECSE as a child with a disability other than developmental delay, your child will continue to be eligible for school-age special education services. The school district, may, but is not required to, conduct a reevaluation to reconsider eligibility.



**If my child is in the ECSE program, how often will my child be reevaluated?**

Your child may not be reevaluated more than once a year, unless you and the public agency agree otherwise. For ECSE and school-age children, some form of reevaluation, or consideration of reevaluation, typically occurs every three years, but may occur more often.

**INDEPENDENT EDUCATIONAL EVALUATIONS-ECSE ONLY**

**What is an independent educational evaluation?**

An independent educational evaluation (IEE) is an evaluation by a qualified examiner who is not an employee of the public agency responsible for your child. You have the right to an independent educational evaluation at public expense if you disagree with the evaluation that the public agency has provided for your child. Public expense means that the public agency must arrange for the evaluation to be provided at no cost to you.

You are entitled to only one independent educational evaluation of your child at public expense each time the public agency conducts an evaluation of your child with which you disagree.

**What are the criteria for an independent educational evaluation?**

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria that the public agency uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

The public agency must provide you, on request, with an opportunity to demonstrate that unique circumstances justify an independent educational evaluation that does not meet the agency's criteria.

**How do I ask for an independent educational evaluation?**

If you request an independent evaluation, it is important to clearly inform the public agency about your request. The public agency may ask why you disagree with the evaluation they have provided for your child. You may, but are not required to, provide an explanation.

If you request an independent educational evaluation, the public agency must without delay, inform you about where an independent educational evaluation may be obtained, and advise you of the public agency's criteria for independent educational evaluations. You are not required to use an evaluator from the public agency's list.

If you request an independent evaluation, or reimbursement for an independent evaluation, the public agency must respond to your request without delay. The public agency must either request a due process hearing to show that its evaluation is appropriate for your child, or ensure access to an independent evaluation at no cost to you.

If the public agency initiates a due process hearing and the final decision is that the public agency's evaluation is appropriate, you may obtain an independent educational evaluation at your own expense.

**What happens with the results of the independent educational evaluation?**

If you obtain an independent educational evaluation, the results of the evaluation must be considered by the ECSE program in any decision related to your child's free appropriate public education. The results of the evaluation may be presented as evidence at a due process hearing.

## **RESOLVING DISAGREEMENTS**

**What may I do to resolve a disagreement about my child's EI or ECSE program?**

If you have concerns about your child's EI/ECSE services, it is suggested that your first step is to talk to your child's service coordinator or an EI/ECSE program administrator. It helps to deal with concerns when they first arise so steps can be taken as soon as possible to support the working relationship between you, the staff and your child. If the concerns are not resolved, you may request mediation, file a complaint, or request a due process hearing through ODE.

**What is mediation?**

Mediation is a special kind of meeting to help you and your child's EI/ECSE program reach an agreement about your concerns. Mediation is voluntary, confidential, and informal. Either you or a program representative may request mediation, but you both must agree to try mediation before the mediation is scheduled. ODE is responsible for the cost of the mediation process.

The person who leads the mediation is called a mediator. A mediator is a neutral person who is trained in strategies to assist people in resolving disagreements over difficult issues. The mediator must not have a personal or professional interest which conflicts with the mediator's objectivity. If you and your program agree to try mediation, you and the program will choose a mediator from a list of qualified mediators provided by ODE. The mediator does not work for you, the program, or ODE. (A mediator is not considered an employee of ODE just because ODE pays the mediator to conduct the mediation.)

Mediation may not be used to deny or delay your right to a due process hearing, or to deny any other rights you have under the IDEA.

Mediation discussions are confidential and may not be used as evidence in a hearing or in court.

**When is mediation available?**

Mediation is available through ODE to allow you and the EI/ECSE program to resolve disagreements involving any matter under the IDEA, including matters arising before the filing of a due process hearing request. Mediation is available to resolve disputes under the IDEA, whether or not you have requested a due process hearing or filed a special education complaint.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the EI/ECSE program.

**How do I request mediation?**

You may contact the ODE Mediation Coordinator at (503) 947-5797. You can also use the mediation request form which is available from ODE. See Resources.

**Do I have to agree to try mediation?**

No. Mediation is voluntary. ODE encourages mediation, but you do not have to try mediation before a due process hearing or filing a complaint or to use any of the rights in this booklet. If you are unsure about mediation, ODE may offer you an opportunity to meet with a neutral person who can explain the benefits of mediation.

**What happens if an agreement is reached in mediation?**

If you and the EI/ECSE program resolve a dispute through mediation, both parties must enter into a legally binding agreement that states the resolution and that:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any later due process hearing or court proceeding; **and**,
2. Is signed by both you and a representative of the EI/ECSE program who has the authority to hold the program to the agreement.

A written, signed mediation agreement is enforceable in any state court that has the authority under state law to hear this type of case or in a federal district court.

**Besides mediation, what are the options for resolving EI/ECSE disputes and how are they different?**

The IDEA regulations have two other procedures for resolving disputes: State complaints, sometimes called special education complaints, and due process hearings. As explained below, any individual or organization may file a state complaint alleging a violation of any IDEA requirement by an EI/ECSE program, school district, ODE, or any other public agency.

### **What is a special education complaint?**

A state complaint is a written, signed statement that describes a possible violation of IDEA by your EI/ECSE program. In it you ask ODE to investigate and resolve the issue.

A complaint investigation is an informal, objective review of your concerns by ODE. There is no cost to you for this investigation and no attorney is required.

### **What are the timelines for filing a complaint with ODE?**

Complaints must be related to a violation within the 12 months before you file your complaint with ODE.

### **What must a complaint include?**

The complaint must include:

1. A statement that the EI/ECSE program, school district or other public agency has violated a requirement of the IDEA or its regulations;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant (the person or agency complaining); **and**,
4. If alleging violations regarding a specific child:
  - (a) The name of the child and address of the residence of the child;
  - (b) The name of the EI/ECSE program the child is attending;
  - (c) In the case of a homeless child or youth, available contact information for the child and the name of the school or program the child is attending;
  - (d) A description of the nature of the problem, including facts relating to the problem; **and**,
  - (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

You may use the ODE complaint form for this information:

<http://www.ode.state.or.us/search/page/?id=1219>.

Written complaints are sent to:

Deputy Superintendent of Public Instruction  
Oregon Department of Education  
255 Capitol Street NE  
Salem, OR 97310

The party filing the complaint must forward a copy of the complaint to the EI/ECSE program or other public agency serving the child at the same time the party files the complaint with ODE.

### **What happens after I send the written special education complaint to ODE?**

ODE will immediately contact you and the program to discuss complaint resolution options, including mediation. ODE will also identify which allegations it may investigate.

### **What are ODE's timelines for resolving a complaint?**

If you file a written complaint of this type, ODE must complete any investigation and send a written order within 60 days.

This timeline may be extended for exceptional circumstances related to the complaint. The timeline may also be extended if the parent and EI/ECSE program voluntarily agree to extend the time to try mediation or local resolution.

Within this timeline ODE must:

1. Carry out an independent on-site investigation, if ODE determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the EI/ECSE program or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to try mediation;
4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of the IDEA; **and**,
5. Issue a written decision that addresses each allegation in the complaint with (a) findings of fact and conclusions; **and** (b) the reasons for ODE's final decision.

### **What is a written order?**

A written order includes the findings of fact about the allegations, conclusions, discussion, and any ordered corrective action.

The final order does not identify you or your child by name. The final order is a public record. A complaint final order is considered an uncontested case under state law.

If you are dissatisfied with the final order, you may appeal within 60 days to the Marion County Circuit Court or the Circuit Court for the county where you live.

The complaint order does not prevent parents from requesting a due process hearing on the same violations.

### **What must be included as corrective action?**

In resolving a state complaint in which ODE has found a failure to provide appropriate services, ODE must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; **and**,

2. Appropriate future provision of services for all children with disabilities.

The final order must include procedures for effective implementation of ODE's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

You or the EI/ECSE program may file a due process hearing request on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child or the provision of early intervention services for a child from birth to age three or a free appropriate public education (FAPE) for a child ages three – five.

ODE staff must resolve a state complaint and issue a final order within a 60-calendar-day timeline, unless the timeline is properly extended.

An impartial due process hearing officer (called an administrative law judge, or ALJ) must conduct a due process hearing (if not resolved through a resolution meeting or mediation) and issue a written decision within 45-calendar-days after the end of the resolution period unless the ALJ grants a specific extension of the timeline at your request or the program's request.

**What happens if I file a complaint and request a due process hearing at the same time?**

If a written state complaint is received that is also the subject of a due process hearing request, or the complaint has multiple issues of which one or more are part of a hearing request, ODE must set aside the complaint, or any part of the complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties (the parent and the school district), then the due process hearing decision is binding on that issue and ODE must inform the complainant that the decision is binding.

A complaint alleging an EI/ECSE program's, school district's or other public agency's failure to implement a due process hearing decision must be resolved by ODE.

**What is a due process hearing?**

A due process hearing is a formal legal proceeding before an administrative law judge (ALJ) who decides issues of fact and law. The ALJ issues a written, final binding opinion.

**When may I ask for a due process hearing?**

You may request a due process hearing if you disagree with the identification, evaluation, and, placement or other aspects relating to your child's EI services

and for ECSE, free appropriate public education. You may ask for an “expedited” due process hearing as described in the *Discipline Section*.

### **What is the timeline for asking for a due process hearing?**

A due process hearing must be requested within two years of the date you knew or should have known about the act or omission that gave rise to the hearing request.

This two year timeline does not apply if you were prevented from requesting a hearing because:

- The EI/ECSE program misrepresented to you that it had solved the problem; **or**,
- The EI/ECSE program did not give you information that the program was required to give.

### **How do I request a due process hearing?**

You (or your attorney, if you are represented) or the EI/ECSE program (or the program’s attorney) must send a written request for a hearing to ODE and the other party. Your hearing request must include:

- Your name and address (or contact information, if you do not have an address) and the name of your child’s EI/ECSE program;
- A description of the nature of the problem related to the hearing request, including specific facts; **and**,
- Any suggestions you have for resolving the disagreement.

A model form for requesting a due process hearing is available from ODE. (See Resources at the end of the booklet.) You can use ODE’s model forms or another appropriate form or document, so long as it includes the required information for filing a due process hearing request.

You or the EIECSE program may not have a due process hearing until you or the EI/ECSE program (or your attorney or the EI/ECSE program’s attorney), files a due process hearing request that includes this information.

Nothing in the procedural safeguards section of the federal regulations under Part B of the IDEA [(34 CFR 300.500 through 300.536)] prevents you from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

### **When may the public agency ask for a due process hearing?**

For ECSE: A public agency may request a due process hearing when a parent refuses consent for an initial evaluation or reevaluation or, for ECSE, to demonstrate that the public agency has conducted an appropriate evaluation or offered a free appropriate public education. A public agency may not request a due process hearing to override parents’ refusal of consent for initial placement in ECSE or for EI services.

### **What happens after a due process hearing is requested?**

When you request a hearing, ODE will send you a copy of this Notice of Procedural Safeguards, inform you that mediation is available at no cost, and advise you of any free or low-cost legal services. The Office of Administrative Hearings will appoint an ALJ to conduct the hearing. The ALJ will contact you to set up a pre-hearing conference.

If the EI/ECSE program filed the hearing request, you have 15 days from receiving this request to notify the ALJ of any problems with this notice. Likewise, if you filed for the hearing, the program has 15 days to notify the ALJ of any problems with your notice. The ALJ has 5 days to decide whether the notice follows the rules, and must immediately notify you and the program, in writing, of this decision.

You may correct any problems with your hearing request by sending another request if:

- The EI/ECSE agrees in writing; **or**,
- The ALJ agrees and it is more than 5 days before the hearing.

Sending another request for a hearing will restart the timelines for completing a due process hearing.

The party requesting the hearing may not raise any issue in the hearing that was not stated in the hearing request, unless the other party agrees otherwise.

If the EI/ECSE program has not already given you written notice of EI/ECSE action related to the issues in your hearing request, the EI/ECSE program has 10 days from receiving your hearing request to send you this notice.

1. An explanation of why the EI/ECSE program proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized family service plan (IFSP) team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the EI/ECSE program used as the basis for the proposed or refused action; **and**,
4. A description of the other factors that are relevant to the EI/ECSE program's proposed or refused action.

Providing the information in items 1-4 above does not prevent the EI/ECSE program from stating that your due process hearing request was insufficient. Otherwise, the program has 10 days from receiving your hearing request to send you a response that specifically addresses the issues in your hearing request.

You and other IEP team members must meet for a "resolution session" within 15 days of a hearing request.



### **What is a resolution session?**

A resolution session is a meeting to solve the problem about your child's EI/ECSE program. The meeting must include you, members of the IFSP team who know about the problem, and an EI/ECSE representative who has authority to make decisions for the program. The program may not have an attorney present unless you bring an attorney. A resolution session is required unless you and the program agree in writing to waive this meeting, or you and the program agree to try mediation instead.

If you and the program reach an agreement in the resolution session, you and the program will sign a written agreement that lists all the agreements reached. Like a mediation agreement, this agreement is legally binding and enforceable in court. You or the program may cancel this agreement by sending a written statement to the other party within three business days of signature.

### **What is the timeline for the hearing?**

If the problem has not been resolved to your satisfaction within the resolution period, the timelines for the due process hearing begins. The hearing and a final order must be completed within 45 days from the end of the resolution period. The ALJ may allow more time if you or the program ask for more time.

### **Under what circumstances can the 30 day resolution period be shortened or extended?**

Except where you and the EI/ECSE program have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a resolution meeting.

If, after making reasonable efforts and documenting such efforts, the EI/ECSE program is not able to obtain your participation in the resolution meeting, the EI/ECSE program may, at the end of the 30-calendar-day resolution period, request that the ALJ dismiss your request for a due process hearing. Documentation of the district's efforts must include a record of attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; **and**,
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the EI/ECSE program does not hold the resolution meeting within 15 calendar days of receiving notice of your due process hearing request **or** does not participate in the resolution meeting, you may ask the ALJ to order that the 45-calendar-day due process hearing timeline begin.

If you and the EI/ECSE program agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the EI/ECSE program agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the EI/ECSE program agree to try mediation, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation process until an agreement is reached. However, if either you or the EI/ECSE program withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

### **What are the qualifications for ALJs?**

At a minimum, an ALJ:

1. Must not be an employee of ODE or the EI/ECSE program that is involved in the education or care of the child. A person is not an employee of ODE solely because the person is paid by ODE to serve as an ALJ;
2. Must not have a personal or professional interest that conflicts with the ALJ's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and federal and state regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts; **and**,
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

ODE keeps a list of those persons who serve as ALJs and a statement of the qualifications for each one.

### **What are my hearing rights?**

Your due process hearing rights include:

- The right to bring an attorney who can give you advice;
- The right to bring one or more individuals who have special knowledge or training about children with disabilities;
- The right to have your child remain in his or her current EI/ECSE placement during the process of hearing and appeal unless:
  - You and the program agree to another placement;
  - Your child is applying for initial admission to the program and you consent to your child's placement in the program;
  - Your child is suspended or expelled and placed in an interim alternative educational setting for behavior that is not a manifestation of the child's disability;
  - Your child is removed by the program to an interim placement for up to 45 days for a weapon or drug violation or for causing serious bodily injury to another person ; **or**,
  - Your child is removed by an ALJ to an interim placement for up to 45 days due to the substantial likelihood of injurious behavior;
- The right to present written and verbal evidence, and to confront, cross-examine, and require witnesses to be present;
- The right to be informed at least five business days before the hearing of the evaluations completed by the district or program by that date and

- recommendations based on those evaluations that they intend to use at the hearing;
- The right to have your child present at the hearing;
  - The right to have the hearing closed or open to the public;
  - The right to prohibit the introduction of any evidence at the hearing that has not been disclosed to you at least five business days before the hearing. The ALJ may prohibit the introduction of any evidence not disclosed five business days before the hearing without the consent of the other party;
  - The right to a written or, at your option, an electronic verbatim record of the hearing at no cost within a reasonable time of the closing of the hearing; **and**,
  - The right to a written or, at your option, an electronic copy of the hearing decision at no cost.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

### **What is the basis for the ALJ's decision?**

An ALJ's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds. In matters alleging a procedural violation, an ALJ may find that your child did not receive FAPE only if the procedural inadequacies:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**,
3. Caused a deprivation of an education benefit.

This rule does not prevent an ALJ from ordering an EI/ECSE program to comply with the requirements in the procedural safeguards section of the IDEA (34 CFR 300.500 through 300.536) (OAR 581-015-2300 through 2385).

### **Special rule for ECSE:**

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA.

This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the

IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

The final order will be given to the State Interagency Coordinating Council and the State Advisory Council for Special Education. The final order does not identify you or your child by name. It is a public record.

### **What may I do if I disagree with the hearing decision?**

A hearing decision is final except that a losing party may bring a civil action in court within 90 days of the final order. If you file a civil action in federal or state court, the court must:

- Receive the record of the hearing;
- Hear additional evidence at the request of a party;
- Base its decision of the preponderance of the evidence; and,
- Grant such relief as the court determines is appropriate.

### **When may a court order reimbursement for attorney fees? (ECSE only)**

A court may require ODE to reimburse you for your reasonable attorney fees if you prevail in the due process hearing.

A court may require your attorney to pay for the EI/ECSE program's attorney if your claim is "frivolous, unreasonable or without foundation." A court may require you or your attorney to pay for the program's attorney if your claim was presented "for any improper purpose" such as to harass, or to delay or increase the cost of litigation without reason.

### **How does the court determine reasonable attorney fees?**

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than 10 calendar days before the proceeding begins;
  - b. The offer is not accepted within 10 calendar days; **and**,
  - c. The court finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.
3. Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.
4. Fees may not be awarded relating to any IFSP meeting unless the meeting is held as a result of an administrative proceeding or court action. Fees also may not be awarded for mediation.

A resolution meeting is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**,
4. The attorney representing you did not provide to the EI/ECSE Program the appropriate information in the due process hearing request.

However, the court may not reduce fees if the court finds that the public agency unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

## **CHILDREN ATTENDING PRIVATE SCHOOLS—ECSE ONLY**

### **Are special education services available to children who are enrolled by their parents in a private school?**

Yes, in general, but not necessarily to every child. Children who are enrolled by their parents in private schools may participate in publicly funded special education and related services. Federal law allows the ECSE program to limit the public funds spent for these services. If your child is to receive special education services under this provision, the program will meet with you to develop a service plan describing the services to be provided to your child. Services may be provided on-site at the private school or at an EI/ECSE program. If the services are offered at the EI/ECSE program, the public agency must offer transportation for the child to access these services.

### **When is a program required to reimburse parents for private school tuition?**

ECSE programs are not required to pay for the cost of education, including early childhood special education and related services, of a child with a disability at a private school or facility if the program made a free appropriate public education available to the child and the parents chose instead to place the child in a private school or facility.

A court or ALJ may require an ECSE program to reimburse parents for the cost of a private school placement made without the consent of or referral by the program only if:

- The child received ECSE services under the authority of the EI/ECSE program before enrolling in the private school;
- The court or ALJ finds that at that time the program did not make a free appropriate public education available to the child in a timely manner; **and**,
- The private placement is appropriate.

An ALJ or court may find the parents placement to be appropriate, even if the placement does not meet the state standards for EI/ECSE programs.

### **When may the court reduce or deny reimbursement to parents?**

#### **Notice:**

The court or ALJ may reduce or deny reimbursement if the parents did not give the ECSE program notice that they were rejecting the placement proposed by the ECSE program and state their concerns and their intent to enroll their child in a private school at public expense. This notice must be given either:

- At the most recent IFSP meeting that the parents attended before removing the child from the ECSE placement; **or**,
- In writing to the ECSE program at least ten business days before removing the child from the ECSE placement.

A court or ALJ must not reduce or deny reimbursement if a parent does not give this notice if:

- Giving notice would likely result in physical harm to the child;
- The EI/ECSE program prevented the parent from giving notice; **or**,
- The parent had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of this notice requirement.

A court or ALJ **may not** reduce or deny reimbursement if a parent does not give this notice if:

- The parent is not literate or cannot write in English; **or**,
- Giving notice would likely result in serious emotional harm to the child.

**Evaluation;** The court or ALJ also may reduce or deny reimbursement if the parent does not make the child available for an evaluation by the public agency, if:

- The public agency gave prior written notice of its intent to evaluate or reevaluate the child;
- The purpose of the evaluation as described in this notice was appropriate and reasonable; **and**,
- The public agency gave the parent this notice before the child was removed from the ECSE placement.

**Unreasonableness:** Reimbursement may also be reduced or denied upon a judicial finding that parents were unreasonable in their actions or the costs of the private program were unreasonable.

## **DISCIPLINE AND PLACEMENT IN INTERIM ALTERNATIVE EDUCATIONAL SETTING-ECSE ONLY**

Federal law requires parents to be notified of procedural safeguards relating to school discipline and procedures for placement in alternative settings even though these procedures were not written with EI/ECSE programs in mind.

### **May a child be suspended from an ECSE program?**

Yes. The ECSE program may suspend a child with a disability from the child's current educational placement for disciplinary reasons for up to ten school days in a row if children without disabilities would be suspended for that behavior. The program may use short-term removals, including suspension, moving the child to an appropriate interim alternative educational setting, or putting the child in another setting, to the same extent these options would be used with children without disabilities.

### **May a child be suspended for more than ten school days in a school year?**

It depends. A child may be suspended from an ECSE program for additional periods of up to ten school days in a row if there is not a "pattern" to the suspensions. A "pattern" exists if:

- The child's behavior is substantially (for the most part) similar to the child's behavior in previous incidences there resulted in this series of removals; **and**,
- Other factors such as the length of time of each suspension, the total amount of time a child is out of school, and how close the suspensions are to each other indicates a pattern. Whether a series of removals constitutes a pattern is determined on a case-by-case basis by the EI/ECSE program and, if challenged, is subject to review through due process and judicial proceedings.

If there is a "pattern" to the suspensions, the program may only suspend a child if the child's IFSP team decides that the child's behavior was not a "manifestation" of the child's disability.

If there is no "pattern," then EI/ECSE personnel, in consultation with at least one of the child's teachers, determine what services are needed for the child to continue to progress toward the IFSP goals during the removal.

A child may be removed for more than ten school days in a row (usually called an "expulsion") if the child's IFSP team decides that the child's behavior was not a "manifestation" of his or her disability.

**If a child is suspended or expelled for more than ten school days in a school year, does the program still have to provide ECSE services for the child?**

Yes. After the first ten days of removal, the program must give the child the services the child needs to continue to participate in age-appropriate activities and to progress toward the child's IFSP goals. These services may be provided in a different location, called an "interim alternative educational setting."

**May the IFSP team decide to move a child to a different school or program even if the child is not suspended or expelled?**

Yes. The parents are a part of the IFSP team that makes this decision. The decision needs to be based on the child's IFSP and what the child needs to be successful in school. Along with other factors, the child's IFSP team can consider the impact of the child's behavior on teachers and other children.

**Must the program give the parent notice of the disciplinary action?**

Yes, the program must notify the parent not later than the date on which the decision to take the action is made and provide the parent with this Notice of Procedural Safeguards.

**How does the IFSP team decide if behavior is a "manifestation" of a child's disability?**

The IFSP team, including the parents, looks at all relevant information about the child, including test results, information from the parents, observations of the child, and the child's IFSP and placement.

The child's IFSP team may determine that the child's behavior was a manifestation of the child's disability if:

- The behavior was caused by or directly related to the child's disability; or,
- The behavior was the direct result of the program not implementing the child's IFSP.

This decision must be made within 10 school days of any decision to change the placement of a child with a disability because of a violation of code of student conduct.

**What happens if the IFSP team decides that the child's behavior was a manifestation of the child's disability?**

If the IFSP team concludes that the behavior was a manifestation of the child's disability the program may not expel the child or suspend the child for more than ten school days in a row or for more than ten school days in the school year if the removals are a "pattern."

The program and parent may hold an IFSP meeting to review the information, and the IFSP team may make changes in the child's IFSP services and/or placement. If the IFSP team finds that conduct in question was the direct result of the program not implementing the IFSP, the program must take immediate action to remedy the deficiencies.



The IFSP team must complete an evaluation of the child's behavior (called a "functional behavior assessment") and develop a behavior intervention plan for the child. If the child already has a behavior intervention plan, the IFSP team must review and change the plan, if needed, to address the behavior. Except as described under **Special circumstances**, the EI/ECSE program must return the child to the placement from which the child was removed, unless the parent and the program agree to a change of placement as part of the modification of the behavioral program intervention plan.

### **What happens if the IFSP team decides that the child's behavior was *not* a manifestation of the child's disability?**

If the IFSP team concludes that the behavior was not a manifestation of the child's disability:

- The program may take disciplinary action, such as expulsion, in the same manner as it would for children without disabilities;
- The program must make sure that the child's special education and disciplinary records are provided to the expulsion hearings officer if an expulsion hearing is required;
- The program must continue to provide a free appropriate public education to the child consistent with the child's individual needs, which may be provided in an interim alternative educational setting as determined by the IFSP team; **and**,
- As appropriate, the program must give the child a functional behavior assessment, and behavior intervention services and modifications to address the child's behavior so it does not continue.

**Special circumstances:** EI/ECSE personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

### **When can the program immediately remove a child to another school or program?**

Whether or not the behavior was a manifestation of the child's disability, EI/ECSE personnel may move a child to an interim alternative educational setting (determined by the child's IFSP team) for up to 45 school days under the following special circumstances:

- The child carries a weapon to the EI/ECSE program or to an EI/ECSE function or possesses a weapon at school;
- The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at the EI/ECSE program or an EI/ECSE function; **or**,
- The child causes serious bodily injury to another person while at the EI/ECSE program, on the EI/ECSE program grounds, or at an EI/ECSE function.

### **When may a parent or program get an expedited hearing to resolve a disciplinary dispute?**

A parent who disagrees with the IFSP team's manifestation determination or a decision regarding the child's placement may request a due process hearing. A program may request a hearing if the program believes that maintaining the child's current placement is substantially likely to result in injury to the child or others.

An EI/ECSE program may request an expedited hearing to move a child to an interim alternative educational setting for up to 45 days at a time if:

- The child would be substantially likely to cause injury to the child or others in the current placement;
- The program has made reasonable efforts to minimize the risk of harm in the current placement; **and**,
- The interim alternative educational setting meets the requirements below.

### **What procedures apply to an expedited due process hearing?**

Whenever a parent or an EI/ECSE program requests a due process hearing, a hearing must be held that meets the requirements of a regular due process hearing except:

1. ODE must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a written determination within **10** school days after the hearing.
2. Unless the parents and the EI/ECSE program agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **7** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings.

An impartial ALJ must conduct the due process hearing and make a decision.

The ALJ may:

1. Return the child with a disability to the placement from which the child was removed if the ALJ determines that the removal was a violation of these requirements, or that the child's behavior was a manifestation of the child's disability; **or**,
2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the ALJ determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated if the EI/ECSE program believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

When the parent or EI/ECSE program has filed a due process hearing request related to disciplinary matters, the child must (unless the parent and EI/ECSE program agree otherwise) remain in the interim alternative educational setting pending the decision of the administrative law judge, or until the expiration of the time period of removal as provided for under these requirements.

**What are the requirements for an interim alternative educational setting?**

An interim alternative educational setting must:

- Allow the child to continue to participate in age-appropriate activities, although in a different setting;
- Allow the child to continue to receive ECSE services and modifications, including those described in the child's IFSP, to enable the child to meet IFSP goals; **and**,
- Provide, as appropriate, a functional behavior assessment, behavior intervention services and modifications to address the child's behavior so it does not continue.

## RESOURCES

The publicly funded organizations listed here may be able to assist you in understanding the procedural safeguards and other provision of the IDEA.

Your local EI/ECSE program

Your EI/ECSE contractor

Oregon Department of Education (ODE)  
Office of Student Learning & Partnerships  
Salem: (503) 947-5782  
Web site: <http://www.ode.state.or.us>

Family and Community Together (FACT)  
Toll Free: (888) 988-3228  
Web site: [www.factoregon.org](http://www.factoregon.org)

Disability Rights Oregon (DRO)  
Portland area: (503) 243-2081  
Toll free: (800) 452-1694  
Web site: <http://www.disabilityrightsoregon.org/>

National Information Center for Children and Youth with  
Disabilities (NICHY)  
Toll free: (800) 695-0285  
Web site: <http://www.nichcy.org>

The State Interagency Coordinating Council (SICC) provides advice and support to the statewide service system for young children with special needs and their families. Information about the council and a schedule of their meetings is available from ODE by calling (503) 947-5662. Information about SICC is available at: <http://www.ode.state.or.us/search/page/?id=1229>.

The State Advisory Council for Special Education (SACSE) meets several times each school year. Each meeting includes a time for public comment. Information about the council and a schedule of their meetings is available from the ODE by calling (503) 947-5797. Information about SACSE is available at: <http://www.ode.state.or.us/search/results/?id=251>.