

# COMPANION DOCUMENT TO MAINE'S PROCEDURAL SAFEGUARDS

## A. PARENTAL PARTICIPATION

As a parent, you have the right to know about and go to Individual Education Program ("IEP") Team meetings about your child's special education. These meetings may discuss your child's need for special education, evaluations that may be done, services that may be provided and the setting where your child might get his/her services. If you can't attend a meeting in person, you have the right to attend by phone or video conferencing.

## B. WRITTEN NOTICE TO PARENTS

You must be given a written notice at least 7 days BEFORE any changes in your child's program. If the school decides NOT to make a change, you will also get a written notice. You will receive a written notice for these types of things:

- Whether your child is eligible for special education
- Evaluations
- Changes to services or the setting in which your child receives those services

The school may need you to sign a form allowing them to do one of the things listed above. This form may come to you at the same time as the written notice.

The written notice will:

- Explain the change and why the school wants to make the change or will not make the change.
- List other things that the school thought about and why they decided not to do them.
- Describe the things it used to make the decision: evaluations, tests, review of your child's records, or teacher reports.
- Explain other things that the school thought about to make its decision.
- List people you can contact to help you understand your rights.

## C. PARENT CONSENT

Before the school can do an evaluation to see if your child needs special education, you will need to sign a form for this. If more evaluations or reevaluations are needed, you will need to sign a new form allowing the school to conduct them. The school also cannot begin to provide special education services to your child unless you sign a form. When you sign any of these forms, you are signing that you understand what the district plans on doing and that you agree.

If you don't sign the form to let the school evaluate your child, the school can ask for a hearing or mediation to see if they can evaluate your child without your permission. If you don't sign the form to let the school provide special education services to your child, the school cannot provide those services. If, after your child begins to receive special education services, you decide to take back your consent for those services, the school

must stop providing them to your child.

Either parent can sign the forms. The school will do evaluations or begin services for your child once one parent has signed the forms as long as that parent has parental rights, even if the other parent does not want to sign them.

#### **D. INDEPENDENT EDUCATIONAL EVALUATION**

If you don't agree with a school evaluation, you can ask the school to pay for another evaluation done by a person who does not work for the school. If the school doesn't want to pay, it must ask for a hearing to show that their evaluation is done correctly. If the hearing says that the school evaluation is done correctly, you can still ask for someone else to do the evaluation, but you will have to pay for it. If the hearing shows that the school evaluation is not done correctly, the school will pay for the new evaluation by someone else. This new evaluation will need to meet the same standards as the one done by the school. If an independent evaluation is done, the school will have to talk about that evaluation and how that might change special education for your child.

#### **E. ACCESS TO RECORDS**

You have the right to look at the school's records about your child's special education. The school has to allow you to look at these records within 45 days of your request, or sooner if there is a meeting scheduled or if you have a hearing scheduled about your child's special education. If another child is mentioned in records about your child, you won't be able to see those parts of the records.

You have the following rights:

- The right to ask the school to explain the records.
- The right to have someone who is working with you look at the records.
- The right to ask for copies of records if that is the only way that you are able to look at them.
- The right to prevent the school from releasing your child's records without your consent, unless the state or federal law allows for the release of that information.

You won't have to pay to look at your child's records, but you may have to pay to have copies of records. If you ask, the school will tell you what kinds of records are kept on your child and where all the records are kept and used. The school keeps a list of people who look at a child's records, except for parents and teachers. The school will keep a list of the person's name, the date they looked at the records and why they needed to look at them.

#### **F. AMENDMENT OF RECORDS AT PARENT'S REQUEST**

If you think any of the information in your child's record is wrong, you can ask that the school change it. If the school doesn't want to change the information, they must tell you that they refuse and then you can ask for a hearing.

If the school changes the record because of the hearing, they have to send you a letter

telling you it was changed. If the school doesn't have to change your child's because of the hearing, they have to send you a letter telling you that you can put something in writing in your child's record explaining why you don't agree with the information. Your written statement will stay with your child's record.

### **G. COMPLAINT INVESTIGATION**

If you think the school is not following the special education rules, you can write down your complaints and send it to the Department of Education's Due Process Office. You must write the names and addresses of the child and the school, your contact information, and how you think the school should fix the problem. You must also sign the complaint and give a copy of it to the superintendent. You may use a form for your complaint that is available from the Due Process Office (207-624-6644). The Department will have up to 60 days to investigate (unless the Department has given you or the school more time) and decide if the school is following the special education law or rules. If the school is not following the law or rules, the Department will tell the school what to do to take care of your complaint.

### **H. MEDIATION**

If you and the school do not agree about whether your child should receive special education services, the services he/she should have, the setting in which your child receives his/her services, or about evaluations, either you or the school can ask for mediation. Both you and the school must agree to the mediation. You can ask for mediation even if you are also asking for a hearing or filing a complaint.

The mediator must be impartial (does not favor either side) and is free to both you and the school. The mediation must be held promptly and at a time and a place that is convenient to both you and the school. The mediator is trained in helping people resolve disputes. If you and the school reach agreement during the mediation, the school must do what the agreement says. If the school does not do what you agreed on during the mediation, you can file a complaint about that. What people say at the mediation remains confidential.

### **I. DUE PROCESS HEARING**

Either you or the school can ask for a hearing about whether your child should receive special education services, the services he/she should have, the setting in which your child receives his/her services, or about evaluations. You must ask for a hearing in writing, and you may choose to use a form that is available from the Due Process Office (207-624-6644). You must write your child's name, his/her address, and where your child goes to school. You have to write down the problem and any other information about the problem. You should also write down what you would like to have happen for your child. You must give a copy of the form or letter to the superintendent.

An impartial hearing officer will listen to both you and the school. There may be people who can help you understand the hearing process, and you can ask the Due Process Office to give you a list of those people. At least five working days before the hearing, you and the school will need to share evidence that you want to talk about at the hearing.

A decision about the complaint will be made within 45 days, unless the hearing officer has given you or the school more time. The hearing officer's decision is final unless you or the school decides that you want to bring a civil action in court. (See below.)

You and the school have the right to:

- Bring a lawyer and/or people who have special skills or training on children with disabilities.
- Bring evidence and question witnesses. You can require witnesses to attend by serving them with a subpoena (available from the Due Process Office).
- Not allow evidence that wasn't shared at least five working days before the hearing.
- Get a recording or exact written report of the hearing.
- Get a written report of what the hearing officer decided.

As the parent, you have more rights:

- You can bring your child to the hearing.
- You can say that the public can attend.
- You don't have to pay for the report of decisions and record of the hearings.
- The hearing has to be held during regular business hours at a time and place that works for you and your child.

## **J. CIVIL ACTION**

Either you or the school can bring a civil action if they are unhappy with the result of the due process hearing. The court will review the record of the hearing, may review additional information and make a decision. You must go through the hearing process before filing a civil action.

## **K. AWARD OF ATTORNEY'S FEES**

The school may have to pay your attorney's fees if ordered to do so by the court. A settlement agreement may include the school paying your attorney's fees. You or your attorney may have to pay the school's attorney's fees, but only in the rare case when the court finds that you brought your case for an improper reason, such as to harass the school or cause delay without a good reason.

## **L. CHILD'S STATUS DURING DUE PROCESS PROCEEDINGS**

Unless you and the school agree to something else, your child must stay in his/her current educational program until your complaint, mediation or hearing is finished.

## **M. PRIVATE SCHOOL PLACEMENT BY PARENTS**

In some cases, a school district might have to pay you for sending your child to a private school. You would need to show at a due process hearing that your child's local school did not provide a free appropriate public education and that the private school you chose is right for your child.

You must also either tell the school at an IEP Team meeting that you don't like the plan for your child and are going to send your child to a private school for which the public school should pay, or else write those things in a letter at least 10 days before you remove your child from the public school. If evaluations were already planned for your child, you will need to let the school do those evaluations.

#### **N. DISCIPLINARY PROCEDURES**

Even though your child is in special education, he/she must follow the same rules as all other students and may be suspended if he/she breaks those rules. If your child is suspended for more than 10 days, either in a row or over the whole school year, the school must provide some services outside of your child's regular school program to help your child continue to work on IEP goals.

If your child is suspended for a total of more than 10 days, there will be a meeting to determine if your child's behavior that led to the suspensions is related to your child's disability. If your child's behavior is because of his/her disability, the IEP team must do a study of your child's behavior and write a behavior plan, and must return the child to his/her program (unless the suspension involved weapons, drugs or serious injury). If the child's behavior is not because of his/her disability, then the school may treat your child the same way they treat other children, and must consider whether to do a study of your child's behavior or write a behavior plan.

If the school decides that your child's behavior is not because of his/her disability and you disagree, you can ask for an expedited due process hearing. The hearing will take place sooner than usual, within 20 days plus 10 days for the hearing officer to write a decision. If your child was placed in a different setting because of his/her behavior, he/she must remain in that different setting while the due process hearing takes place unless you and the school come to a different agreement.

#### **O. TRANSFER OF RIGHTS**

Once your child is 18, he/she will have the rights outlined in Maine's Procedural Safeguards unless a court gives him/her a legal guardian. Your child will be told of these rights about a year before he/she turns 18. Both you and your adult child will be invited to meetings and get the written notices about changes.