

Section F

Students

File Code: F-28:6

Policy: Procedural Safeguards

Date Warned:

Date Adopted: CTES - 6/7/94, CAES - 6/20/94, FBUS - 6/27/94 and GMUHS - 6/15/94

Date Amended:

The Windsor Southwest Supervisory Union assures the State Department of Education that it shall protect the rights of children with disabilities and their parents through the application of certain procedural safeguards. This supervisory union shall provide parents with the opportunity to examine all education records regarding the identification, evaluation and educational placement of their child in special education.

For purposes of this section, the word "consent" means that: the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time during the initial evaluation and initial placement in special education. Revoking of consent to ensuing evaluations and ensuing special education placements on the part of the parent shall be through due process.

The word "evaluation" means procedures used to determine whether a child is eligible for special education and the nature and extent of the special education and related services that the child needs. An evaluation for special education shall be conducted with individually administered tests, not with tests that are administered to a group such as a class, a grade or school-wide.

Personally identifiable information is anything that would make the student's identity easily traceable such as the student's social security number or student number or a list of personal characteristics.

#### INDEPENDENT EDUCATIONAL EVALUATION:

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by this supervisory union. An independent educational evaluation at "public expense" means that this supervisory union either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent.

This supervisory union recognizes the rights of parents to obtain an independent educational evaluation of their child.

This supervisory union shall provide parents, on request, information on where an independent educational evaluation may be obtained.

A parent has a right to an independent educational evaluation paid for by this supervisory union, if a parent disagrees with an evaluation obtained by this supervisory union. However, this supervisory union may initiate a hearing under 34 CFR 300.506 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, a parent still has the right to an independent evaluation, but not at public expense and this evaluation shall be considered by the child's evaluation team in making decisions about the child's eligibility for special education or about the child's IEP.

The result of the evaluation at private expense also may be presented as evidence at a hearing regarding the child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be paid for by this supervisory union.

#### PRIOR NOTICE AND PARENTAL CONSENT:

Written notice shall be given to the parents of a child with a disability, a reasonable time before this supervisory union proposes to initiate or change the identification, evaluation, or educational placement of the child, or refuses to initiate or change the identification, evaluation, or educational placement of the child. The written notice shall contain a full explanation of the parental rights, a description of the proposed/ refused action with an explanation so the parent will understand why, and a description of all the options that were considered in arriving at the decision.

Parental consent shall be obtained before conducting an initial evaluation to determine a child's eligibility for special education and shall be obtained prior to the initial placement of a child with a disability in a program providing special education and related services.

Except for an initial evaluation and initial placement, consent shall not be required for a child to receive any type of special education or related services.

In cases where a parent refuses to consent for an initial evaluation or an initial placement in a special education program, this supervisory union may use the due process hearing procedures to determine if the child may be evaluated or initially provided special education and related services without parental consent. If the hearing officer upholds this supervisory union, this supervisory union may evaluate or initially provide special education and related services without the parents' consent subject to the parents rights under 34 CFR 300.510-300.513.

CONTENT OF THE NOTICE:

This supervisory union assures that the content of a notice to a parent regarding a proposal/refusal to initiate/change the eligibility, evaluation or educational placement of the child, shall include:

- ∞ A full explanation of all the procedural safeguards available to the parents under 34 CFR 300.500-300.576;
- ∞ Description of the action proposed or refused by this supervisory union, an explanation of why the agency proposes or refuses to take the action, and the description of any options the agency considered and the reasons why those options were rejected;
- ∞ A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and,
- ∞ A description of any other factors irrelevant to the agency's proposal or refusal.

The above notice will be:

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

If the native language or other mode of communication of the parent is not a written language, steps shall be taken to insure:

- ∞ That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- ∞ That the parent understands the content of the notice and that there is written evidence that the requirements of translating this notice have been met.

MEDIATION:

A parent or this supervisory union has the right to request mediation when there is a disagreement regarding the child's eligibility for special education services, placement for special education, related services, programming or payment for any of these services. The mediation services shall be free to the parent and shall be paid for by this supervisory union. The State Department of Education shall coordinate the arrangement of a trained mediator, upon receipt of a written request, when the school and parent both agree to enter into mediation. Mediation may be used either as the sole form of dispute resolution or as a separate procedure to a due process hearing. Mediation shall be a voluntary step and shall not be used to deny or delay a party's rights.

DUE PROCESS HEARING:

A parent or this supervisory union can initiate a hearing when this supervisory union proposes to initiate or change or refuses to initiate or change the identification/eligibility determination, evaluation or educational placement of the child, or the provision of a free appropriate public education to the child.

To request a due process hearing, a written request shall be sent to the Commissioner of Education, Vermont Department of Education, 120 State Street, Montpelier, Vermont 05620-2501, to challenge the identification/eligibility determination, evaluation, or placement of the child or to question the provision of a free appropriate public education.

- (a) Pursuant to State Law, 16 V.S.A. §2957, a due process hearing to enforce special education rights under State or Federal law, must be brought within 2 years of the alleged violation or within 2 years of when the problem is discovered. Failure to do so within the time limits may result in the loss of the right to bring a complaint.
- (b) A due process hearing against a local school, or another educational agency, or the State to obtain reimbursement for the costs of a special education placement made and paid for by the parent, must be brought within 90 days of the placement. Where such a placement has been made without the school district of residence being offered a reasonable opportunity to evaluate the child and to develop an IEP, reimbursement may not be sought for any costs incurred before the school district is offered such a chance to evaluate the child and develop an IEP. Please note, however, that in no instance do the 90 days begin until the parents have been provided with a notice of their "Parental Rights in Special Education" and this time limit has been explained to their understanding.

A parent shall be told of any free or low cost legal services and other relevant services available (e.g. an expert on disabling conditions that may be a witness at the hearing), when they contact the State Department to request a hearing or when they ask this supervisory union to explain what the costs would be for them to go to a hearing to resolve a dispute.

Either party to a hearing may request that the State Depart-

concerning the identification, evaluation, and educational placement of a child with a disability, and the provision of a free appropriate public education.

IMPARTIAL HEARING OFFICER:

The State Department of Education assures this supervisory union and parent that a hearing shall not be conducted:

- ∞ By a person who is an employee of a public agency which is involved in the education or care of the child, or
- ∞ By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

A person who otherwise qualifies to conduct a hearing under the above two stipulations, is not an employee of any agency solely because he or she is paid by the agency to serve as a hearing officer.

The State Department of Education will keep a list of the persons who serve as hearing officers. The list shall include a statement of the qualifications of each of those persons and shall be available for public inspection.

HEARING RIGHTS:

This supervisory union assures that any party to a hearing has the right to:

- ∞ Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- ∞ Present evidence and confront, cross examine, and compel the attendance of witnesses;
- ∞ Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;
- ∞ Obtain a written electronic verbatim record of the hearings;
- ∞ Obtain written findings of fact and decisions.

Parents involved in hearings will be given the right to:

- ∞ Have the child who is the subject of the hearing present;
- ∞ Open the hearing to the public.

COPIES OF HEARING FINDINGS AND DECISIONS:

Copies of due process hearing decisions are sent to the State Special Education Advisory Council by the State Department of Education and are available to the public upon request. All Procedural Safeguards Policy Page 6

personally identifiable information is removed from copies of the decisions in keeping with the confidentiality requirements of Federal law. To obtain a copy of a due process decision, please contact the Vermont Department of Education, Legal Division, 120 State Street, Montpelier, VT 05620-2501.

HEARING DECISION; APPEAL; CIVIL ACTION:

A decision made in a hearing is final unless a party to the hearing brings an appeal to the appropriate civil court. Any party who is not satisfied with the findings and decisions resulting from a hearing has the right to bring an appeal through the appropriate civil court.

COMPLAINT MANAGEMENT:

In addition to Section 2364.3.7 of the Vermont Rules to Special Education, the following procedure shall apply: *Any party dissatisfied with a final decision and order rendered by the Commissioner of Education in response to a complaint filed under Section 2364.3.7, shall be notified of their right to request the Secretary of the U.S. Department of Education to review the final decision of the State with respect to the complaint.*

TIMELINES AND CONVENIENCE OF HEARING AND REVIEWS:

The State Department of Education ensures that not later than 45 days after the receipt of a request for a hearing a final decision shall be reached in the hearing and a copy of the decision shall be mailed to each of the parties. A hearing or reviewing officer shall have the option of granting specific extensions of time at the request of either party. Each hearing shall be conducted at a time and place that is reasonably convenient to the parents and child.

CHILD'S STATUS DURING ADMINISTRATIVE OR JUDICIAL PROCEEDINGS:

A child affected by a decision resulting from an administrative or judicial proceeding will remain in his current educational placement unless by mutual agreement, the child's parents and this supervisory union agree otherwise. If the affected child is not already in school, the child, with consent of the parents, will be placed in a public school program until the completion of all proceedings.

SURROGATE PARENTS:

This supervisory union assures that the rights of a child with a disability shall be protected when:

- ∞ No parents (as defined in 34 CFR 300.10) can be identified.
- ∞ This agency, after reasonable efforts, cannot discover the whereabouts of a parent; or,

- ∞ The child is in the custody of the State under the laws of this state.

This supervisory union insures that a person selected as a surrogate:

- ∞ Will have no interest that conflicts with the interest of the child he or she represents; and,
- ∞ Has knowledge and skills, that insure adequate representation of the child.

A person assigned as a surrogate parent will not be an employee of this supervisory union or any other agency involved in the education or care of the child.

A person who otherwise qualifies to be a surrogate parent, is not an employee of an agency solely because he or she is paid by the agency to serve as a surrogate parent.

The surrogate parent may represent the child in all matters relating to:

- ∞ Identification, evaluation, and educational placement of the child, and,
- ∞ The provision of a free appropriate public education to the child.