



PRINCIPALS INSTITUTE: PART II
Procedural Safeguards Under the IDEA

PROCEDURAL SAFEGUARDS NOTICE (PSN)

- The IDEA includes a system of “procedural safeguards” to protect the rights of children with disabilities and their parents.
- These procedural safeguards must be given to parents in the form of a notice written in the parents native language and in an easily understandable manner.



PROCEDURAL SAFEGUARDS NOTICE (PSN)

The PSN must be provided at least once a year, and/or:

- Upon initial referral for an evaluation by the school or parental request for an evaluation
- Upon receipt of the first administrative complaint in a school year
- Upon receipt of the first due process complaint in a school year
- Upon removal of the student for disciplinary reasons when the removal constitutes a change in placement
- Upon parental request



PROCEDURAL SAFEGUARDS NOTICE (PSN)

The PSN must include an explanation of the following topics:

- Independent educational evaluations (IEE)
- Prior written Notice (PWN)
- Parental consent
- Access to educational records
- Dispute Resolution
- Child's placement during the pendency of a due process hearing
- Placement in an interim alternative educational setting (IAES)
- Unilateral placement of children in private schools at public expense by their parents



PRIOR WRITTEN NOTICE (PWN)

Prior written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of the FAPE.

- PWN is a vital component of procedural safeguards.
- PWN is a record of decisions that have been made but have not yet been acted upon
- PWN gives parents notice so they may seek resolution if they disagree with a decision



WHEN IS A PWN GIVEN?

- Upon **IDENTIFICATION** or initial referral by the school for the child to be evaluated
- Upon the proposal or refusal to **EVALUATE**
 - Collection of additional evaluation data
 - Eligibility determination
- Upon proposal or refusal to initiate or change **PLACEMENT** in special education and within the continuum of alternate placements
- Upon the proposal or refusal to initiate or change the provision of **FAPE**



PWN FOR IDENTIFICATION

- PWN for identification is required when a decision is made to refer a child not currently identified as a child with a disability for evaluation.
- The purpose of the PWN is to outline for parents the decision to refer the child to the multi-disciplinary evaluation team (MET) and the reasons for the referral.
- PWN is provided **BEFORE** the review of existing data (RED)
 - ❖ This PWN comes **BEFORE** any psycho-educational evaluative “testing” occurs.



PWN FOR EVALUATION:

COLLECTION OF ADDITIONAL DATA

- PWN for evaluation is required when the team has made a decision regarding the collection of additional data.
- Review of Existing Data is **completed** and a decision has been made by the team whether or not to collect more data to determine:
 - Whether a child meets the criteria for a particular category of disability
 - Present levels of performance and educational needs
 - Whether the child needs special education and related services to make progress in the general curriculum



PWN FOR EVALUATION:

COLLECTION OF ADDITIONAL DATA

- The purpose of the PWN is to outline for parents the decisions made regarding evaluation:
 - The team determined that there is no need to collect additional data
 - The team determined that additional data are needed
 - The team must obtain parental consent to collect additional data.
 - ❖ This PWN comes **BEFORE** any psycho-educational evaluative “testing” occurs.



PWN FOR EVALUATION: ELIGIBILITY DETERMINATION

- PWN for evaluation is also required when the team has determined whether the child is a child with a disability.
- The purpose of the PWN is to inform the parents:
 - whether the child meets the criteria for a particular disability
 - whether the disability is impacting the child's ability to successfully access the general curriculum
 - whether the child needs special education and related services in order to make progress
- PWN is provided once the eligibility determination has been made, and if appropriate, the need for services has been identified.
 - ❖ This PWN comes **AFTER** any psycho-educational evaluative "testing" occurs.



PWN FOR EDUCATIONAL PLACEMENT

- PWN for placement is required when decisions about a child's placement within the continuum of alternate placements has been made. (The child has *already* been evaluated and found eligible for special education.)
 - For initial placement in special education a parent must provide informed written consent before the delivery of any services.
 - Exiting special education constitutes a change in placement and requires a PWN.
 - Graduation from high school with a regular high school diploma is a change in placement.
 - Disciplinary removals that constitute a change in placement require a PWN.
- PWN is provided after a parent consents to initial provision of services and after the IEP has been developed or amended and placement has been determined.



FREE AND APPROPRIATE PUBLIC EDUCATION (FAPE)

- PWN is required for FAPE after an IEP has been developed or amended.
 - When the team has determined what constitutes special education and related services for this student
 - When a parent requests additions of modifications to FAPE that the school refuses
- The purpose of the PWN is to outline for the parents the actions proposed as a result of the IEP meeting or amendment and/or those actions that are refused such as:
 - Special education and related services
 - Measurable annual goals
 - Supplementary aids and services



DISCIPLINE

The 10-day Rule:

- School personnel may remove a student with a disability who commits a violation of the student code of conduct for not more than **10 school days** to an appropriate interim alternative educational setting, another setting, or suspension.



DISCIPLINE

Remember to consider:

- In-school suspensions
- Partial day suspensions
- Bus suspensions
 - ❖ These all may “count” toward 10 days, depending upon circumstances.



THE 11TH DAY

After a student with a disability has been removed from his or her current placement for 10 school days in a school year, services must be provided during any subsequent removals.



PROVISION OF SERVICES

School personnel, in consultation with at least one of the student's teachers, decide what educational services to offer during removals that do not constitute a change of placement.



PROVISION OF SERVICES

The **IEP team** determines the extent to which services are necessary to enable the child to progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP during removals that constitute a change of placement.



CHANGE OF PLACEMENT

A change of placement occurs if:

- The student is removed for more than 10 consecutive school days.
- The student is subjected to a series of removals that constitute a pattern because:
 - they cumulate to more than 10 school days in a school year;
 - the child's behavior is substantially similar to his behavior in previous incidents that resulted in a removal; and
 - because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
 - ❖ School personnel determine on a case-by-case basis if a pattern of removals constitutes a change of placement.



MANIFESTATION DETERMINATION

- A manifestation determination is a meeting to determine if the child's behavior that gave rise to the disciplinary incident was a manifestation of his or her disability.
- The manifestation determination is conducted by the school, the parent, and relevant members of the IEP team (as determined by the parent and the school).
- The manifestation determination must take place within **10 school days** of any decision to change the placement of a child with a disability due to a violation of a code of student conduct.



MANIFESTATION DETERMINATION

A manifestation determination is required when:

- A school is considering removing a child from his or her current educational placement for more than 10 consecutive school days
- A school is considering removing a child from his or her current educational placement more than 10 cumulative school days in a school year, if that removal is deemed a change in placement
- Any time placement is made in an Interim Alternative Educational Setting (IAES)



MANIFESTATION DETERMINATION

The conduct shall be deemed a manifestation of the child's disability if either of the following apply:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability

OR

- If the conduct in question was the direct result of the school's failure to implement the IEP



MANIFESTATION DETERMINATION

If the behavior **IS** a manifestation of the child's disability, the IEP team must:

- Conduct a functional behavioral assessment, if one has not already been done;
- Implement a behavior intervention plan; or
- If a behavior intervention plan is already in place, review and modify it as necessary to address the current behavior; and
- Return the child to the placement from which he or she was removed UNLESS:
 - The offense involved “special circumstances” (drugs, weapons, or serious bodily injury); or
 - The parents and school agree to a change of placement



MANIFESTATION DETERMINATION

If the behavior is **NOT** a manifestation of the child's disability, the school :

- May go forward with a regular disciplinary action
- Must continue to provide the student with a free appropriate public education (FAPE), although in another setting



SPECIAL CIRCUMSTANCES

School personnel may remove a student with a disability to an Interim Alternative Educational Setting (IAES) for not more than *45 school days*, regardless of whether the behavior is a manifestation of the student's disability under three "special circumstances."



SPECIAL CIRCUMSTANCES

- The child carries or possesses a **weapon** to or at school, on school premises, or to or at a school function
- The child knowingly possesses or uses **illegal drugs**, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function
- The child has inflicted **serious bodily injury** upon another person while at school, on school premises, or at a school function



DEFINITION OF “WEAPON”

A device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length

18 U.S.C. § 930



DEFINITION OF “SERIOUS BODILY INJURY”

This term does not apply to every assault, but applies in situations that do not involve a weapon, but that involve:

- A substantial risk of death
- Extreme physical pain
- Protracted and obvious disfigurement
- Protracted loss or impairment of the function of a bodily member, organ, or mental faculty

18 U.S.C. § 1365(h)



INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

An IAES is a temporary educational placement for a period of up to 45 school days, other than the student's original placement, where students may be sent:

- Under the “special circumstances” without initiating a due process hearing (principal may make determination)
- By initiating an expedited due process hearing, if school personnel can show that maintaining the student in his or her current placement is substantially likely to result in injury to self or others



INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

The IAES is determined by the IEP team, must be *appropriate*, and must:

- Enable to the student to continue to participate in the general curriculum (though in a different setting),
- Provide services and modifications described in the student's IEP that will enable the student to progress toward meeting the goals set out in his or her IEP
- Provide behavioral intervention services and modifications to address the behavior so that it does not recur



APPEALS

- IDEA allows a parent who disagrees with any decision regarding placement (IAES) or the manifestation determination to initiate an expedited due process hearing
- IDEA allows school personnel to initiate a due process hearing if they believe that maintaining the student's current placement is substantially likely to result in injury to self or others



PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION

A child who is not yet eligible under the IDEA, but who commits a violation of the student code of conduct, may assert the rights and protections of IDEA's disciplinary provisions if the school *had knowledge* that the child was a child with a disability before the behavior that precipitated the disciplinary action took place.



PRIOR KNOWLEDGE

A school will be deemed to “have knowledge” if, prior to the violation:

- The child’s parent expressed concern *in writing* to the school’s supervisory or administrative personnel, or to the child’s teacher, that the child is in need of special education services
- The parent had requested that the student receive an evaluation for special education
- The child’s teacher, or other school personnel, had expressed directly to the director of special education or to other supervisory personnel, specific concerns about a pattern of behavior demonstrated by the child



NO PRIOR KNOWLEDGE

A school will **NOT** be deemed to “have knowledge” if, prior to the violation:

- The parent refused to allow the school to evaluate the child or refused to allow the school to provide services to the child
- If the school had already evaluated the child and he or she was found ineligible
- If the parent has revoked consent for special education services



DISPUTE RESOLUTION OPTIONS

- MEDIATION
- COMPLAINTS
- DUE PROCESS



MEDIATION

The Individuals with Disabilities Education Act (IDEA) mandates that states establish procedures to allow parties to disputes involving any matter under IDEA to resolve those disputes through mediation.



MEDIATION

- Mediation is voluntary, informal, and is offered at no cost to either party.
- The Arizona Department of Education/ Dispute Resolution (ADE/DR) selects mediators, and evaluates and monitors the mediation system.



MEDIATION

- IDEA requires mediation agreements to be in writing and signed by the parent and a school representative with authority to bind the agency.
- The agreement must include a statement regarding confidentiality.
- The agreement is enforceable in a state court of competent jurisdiction or in federal court.



MEDIATION

Mediation is confidential, and nothing said in the mediation can be used as evidence in a due process hearing or civil proceeding.



COMPLAINTS

Complaints must meet the following criteria:

- Must be signed and must include contact information
- Must include a statement that a public agency has violated a requirement of Part B of the IDEA or a state special education statute
- Must clearly identify the issue and state sufficient facts
- Must include the name and address of the child and the name of the school the child is attending (if alleging a violation with respect to a specific child,
 - If the child is homeless (as defined by the McKinney-Vento Homeless Assistance Act), the complaint must include available contact information.
- Must include a proposed resolution



COMPLAINTS

WHO CAN FILE A COMPLAINT?

Anyone can file a complaint, including:

- Parents
- Advocates
- Teachers
- Students
- An organization
- An individual from another state



COMPLAINTS

- Complaints must allege a violation that occurred not more than **one year** prior to the date the complaint was filed.
- The ADE/DR has **60 calendar days** to investigate a complaint and issue a formal report outlining the findings of fact, determination of compliance or non-compliance, and corrective action, if necessary.
 - ❖ **Holidays and school vacations do not affect these timelines.**



COMPLAINTS

The 60-day timeline may only be extended if:

- Exceptional circumstances exist with respect to the particular complaint; or
- The complainant and the school agree to extend the time in order to engage in mediation.



COMPLAINTS

During the 60-day investigation period, an ADE/ESS complaint investigator will:

- Review all relevant information
- Carry out an on-site investigation if determined to be necessary
- Give the complainant the opportunity to submit additional information, either verbally or in writing, about the complaint allegations
- Provide the school the opportunity to respond to the complaint allegations (which may include a proposal to resolve the complaint)
- Provide the complainant and the school the opportunity to voluntarily engage in mediation
- Issue a written decision



COMPLAINTS

**Letters of Findings
are final and
are not subject to appeal.**



COMPLAINTS

If the school is found out of compliance, corrective action must address:

- The needs of the child, such as the need for compensatory services or monetary reimbursement
- Appropriate future provision of services for all children with disabilities



CORRECTIVE ACTION PLANS

- School may be required to provide compensatory services to a student.
- School may be required to create a written action plan to remediate noncompliance.
- School may be ordered to receive training.



ENFORCEMENT

Failure to comply with a corrective action plan can result in the following enforcement actions:

- Interruption of federal funds.
- Redirection of federal funds to ensure the child receives a free appropriate public education (FAPE).
- Violations reported to the sponsoring entity and remedies sought through the appropriate Board, if applicable.



COMPLAINTS

The ADE/ESS does not have the authority to investigate:

- Matters involving Section 504 of the Rehabilitation Act
 - Civil rights violations
 - Allegations of abuse or neglect
 - Allegations involving immoral or unprofessional conduct by certificated individuals
 - Issues that have already been resolved in a due process hearing or issues currently the subject of a due process hearing
- 

DUE PROCESS

Due process provides a means for parents and schools to resolve any matter relating to identification, evaluation, placement, or the provision of a free appropriate public education.



DUE PROCESS

Parents, students who have reached the age of majority, or a school may request due process.



DUE PROCESS

Since August of 2005, Arizona operates under a **one-tier due process system** and all hearings are conducted by the Arizona Office of Administrative Hearings (OAH) by an Administrative Law Judge (ALJ).



DUE PROCESS

IDEA requires that a request for a due process hearing be made within **two (2) years** of the date the complainant knew or should have known about the alleged action, unless the parent was prevented from requesting the hearing due to specific misrepresentations by the school that the problem was resolved, or if the school withheld information requested by the parent.



DUE PROCESS

Due process complaint notice:

- Must be filed with the Arizona Department of Education **and** the other party.
- Must be “sufficient.”
- May be amended only with written consent of the other party, or with permission from the due process hearing officer, but not later than five (5) days before the hearing.



DUE PROCESS

The party against whom due process has been filed has 10 days to respond to the complaint.



DUE PROCESS

Before a hearing may occur, the IDEA requires a mandatory “resolution period” of 30 days:

- Parties can attempt resolution in a “resolution session”

OR

- Parties may agree to mediation



RESOLUTION SESSION

- Part of the mandatory resolution period built in to the due process system
- A meeting that must occur after a parent has filed a due process hearing request and before the due process hearing timeline begins
- Provides the parents the opportunity to discuss their due process complaint and the facts that form the basis of the complaint
- Provides the public education agency (PEA) is the opportunity to resolve the parents' complaint



DUE PROCESS HEARING TIMELINE

The standard 45-day due process hearing timeline begins at the end of the 30-day resolution period, or the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting
- After either the mediation or the resolution session starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible
- Both parties agree in writing to continue mediation at the end of the 30-day resolution period, but later, the parent or PEA withdraws from the mediation process
 - ❖ If one of the above occurs, immediately notify the administrative law judge and the ADE/DR.



DUE PROCESS

During the hearing, the child “**stays put**” in his or her current placement.



DUE PROCESS

In 2005, the United States Supreme Court issued a decision that the burden of proof in a due process hearing lies with the party seeking relief.

Schaffer v. Weast



EXPEDITED DUE PROCESS

- A due process hearing relating to disciplinary matters involving a student with a disability.
- Parties have seven (7) days from the date the hearing is requested to hold a resolution meeting, and 15 days to reach resolution.
- If resolution is unsuccessful, the hearing must be conducted within 20 school days of the date the request was received.
- The hearing officer has 10 days following the hearing to issue a decision.



EXPEDITED DUE PROCESS

The student remains in the interim alternative educational setting (IAES) pending the hearing officer's decision or until the disciplinary period expires, whichever occurs first, unless the parties agree otherwise.



DUE PROCESS

- Either party may appeal the hearing officer's final decision to a state court of competent jurisdiction or federal court.
- In Arizona, the party bringing the action must file for an appeal within 35 days of receipt of the hearing officer's written decision.



DUE PROCESS

IDEA has long allowed parents to recover attorney's fees from schools under certain circumstances.



DUE PROCESS

- Fees may be recovered *from the parent's attorney* for filing a complaint, or continuing litigation that is frivolous, unreasonable, or without foundation.
- Fees may be recovered from the *parent or the parent's attorney* for filing a complaint or otherwise continuing litigation for an improper purpose such as harassment, to cause unnecessary delay, or to needlessly increase the cost of litigation.



CONFIDENTIALITY UNDER FERPA

- The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy interests of parents and “eligible” students, which are students who have turned 18 or attend postsecondary institutions.
- Schools must annually notify parents and eligible students of their rights under FERPA .



CONFIDENTIALITY UNDER FERPA

FERPA has two main components:

- Parents have the right to inspect and review their children's education records maintained by the school.
- With few exceptions, schools are prohibited from releasing confidential student records without prior parental consent.



CONFIDENTIALITY UNDER FERPA

FERPA allows the release of records without prior consent to certain parties under certain conditions:

- School officials with legitimate interest
- Other schools to which a student is transferring
- Specified officials for audit or evaluation purposes
- Appropriate parties in connection with financial aid
- Organizations conducting certain studies for/on behalf of the school
- Accrediting organizations
- In compliance with a judicial order or lawfully issued subpoena
- Appropriate officials in cases of health and safety emergencies
- State and local authorities within juvenile justice

Without consent, schools may disclose “directory information” including name, address, phone number, date and place of birth, honors/awards, dates of attendance.

- Schools must give notice to parents/eligible students about directory information and give them reasonable time to request that directory information not be disclosed.



CONFIDENTIALITY UNDER THE IDEA

- The IDEA incorporates FERPA into its regulations and also imposes additional requirements regarding confidentiality of student records:
 - State Educational Agencies must provide parents/eligible students with:
 - A description of the extent that the notice is given to various populations in the state
 - A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods used to gather information, and how the information will be used
 - A summary of the procedures that schools must use regarding storage, disclosure, and retention of information
 - A description of all rights of parents and children regarding this information, including FERPA rights



CONFIDENTIALITY UNDER THE IDEA

- Parents/eligible students or their representatives have the right to inspect and review all education records pertaining to identification, evaluation, placement, and the provision of FAPE.
- Schools must comply with a request by a parent/eligible student to review records within 45 days as well as before any IEP meeting or meeting related to a special education due process hearing.
- The right to review records includes a response to reasonable requests for explanations of the records.
- Parents/eligible students may request that schools provide copies of the records.
 - Schools may charge for copies of records if the fee doesn't interfere with the right to review the records.



CONFIDENTIALITY UNDER THE IDEA

- If education records include information on more than one child, a parent/eligible student only has a right to review the information pertaining to his or her child/him or herself.
- Schools must maintain a record of parties who accessed the student's records.
- If a parent/eligible student believes that information contained in a record is inaccurate or misleading, he or she can ask for the record to be amended.
 - If the school decides not to amend the record the parent/eligible student has a right to a formal hearing regarding the requested amendment.
 - If following the hearing the school still decides not to amend the record the parent/eligible student may place a statement in the record commenting on the contested information.



CONTACT INFORMATION

Kacey Gregson

ADE/DR

Director of Dispute Resolution

Kacey.Gregson@azed.gov

Shannon Chavez

ADE/DR

Complaint Investigator/Corrective Action

Compliance Monitor

Shannon.Chavez@azed.gov

Dispute Resolution main number: 602-542-3084

