



**WINDHAM SCHOOL
DISTRICT**

NUMBER: OP-08.26
DATE: January 24, 2023
PAGE: 1 of 10
SUPERSEDES: N/A

OPERATING PROCEDURES

SUBJECT: SPECIAL EDUCATION PROCEDURAL SAFEGUARDS

AUTHORITY: *Individuals with Disabilities Education Act (IDEA) of 2004, 20 U.S.C. §1400 et seq., 34 C.F.R. Parts 300–301; Rehabilitation Act of 1973, §504, 29 U.S.C. §794, 34 C.F.R. Part 104; Tex. Educ. Code §§29.001–29.020; 19 Tex. Admin. Code §§89.1047–89.1195*

APPLICABILITY: Windham School District (WSD)

POLICY:

WSD establishes and maintains procedures to ensure that students with disabilities and their parents are guaranteed procedural safeguards that govern how WSD provides a free appropriate public education (FAPE).

PROCEDURES:

I. Legal Standard

WSD's established procedural safeguards include the following:

- A. an opportunity for the parent(s), guardian, or person standing in parental relation to a minor student (parent or an adult student to review all education records and to participate in meetings that involve the identification, evaluation, and educational placement of the student and the provision of FAPE to the student;
- B. an opportunity for a parent or adult students to obtain an independent educational evaluation of the student;
- C. protecting the rights of a student when no parent can be identified, when WSD cannot locate a parent, or when the student is a ward of the state, which may include the assignment of a surrogate parent;
- D. a requirement for WSD to provide prior written notice to a parent or adult student when WSD proposes or refuses to initiate or change the identification, evaluation,

or educational placement of the student or the provision of FAPE to the student;

- E. procedures that allow parties to resolve disputes through a mediation process;
- F. an opportunity for any party to file a due process complaint on any matter relating to the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; and
- G. procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint, which must remain confidential.

II. Consent

A. Consent means that:

- 1. the parent or adult student has been fully informed of all relevant information in his or her native language or through another mode of communication;
- 2. the parent or adult student understands and agrees in writing to the activity that requires his or her consent;
- 3. the consent form describes that activity and lists which records (if any) that will be released and who will receive them; and
- 4. the parent or adult student understands that the granting of consent is voluntary and may be revoked at any time; however, a revocation of consent is not retroactive.

- B. WSD is not required to amend the student's education records to remove references to his or her receipt of special education and related services if the parent or adult student revokes consent in writing after the student has been provided these services.

III. Procedural Safeguards Notice

A. Providing the Procedural Safeguards Notice

- 1. WSD provides the procedural safeguards notice to a parent or adult student only one time a year, except that a copy is also provided:
 - a. upon initial referral or parent request for evaluation;
 - b. when WSD receives the first State complaint in a school year;

- c. when WSD receives the first due process complaint in a school year;
 - d. on the date WSD decides to make a disciplinary removal that is a change in placement; and
 - e. upon request by a parent or adult student.
2. In addition to providing the procedural safeguard notice directly to a parent or adult student, WSD places a link to the current procedural safeguards notice on its public website.

B. Content of Procedural Safeguards Notice

The procedural safeguard notice includes a full explanation of the procedural safeguards relating to:

1. independent educational evaluations;
2. prior written notice (as described in III.C.);
3. parental consent;
4. access to educational records;
5. opportunity to resolve complaints through the due process complaint and State complaint procedures, including:
 - a. the time period in which to file a complaint;
 - b. the opportunity for WSD to resolve the complaint; and
 - c. the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, timelines for filing and decisions, and relevant procedures;
6. the availability of mediation;
7. the student's placement while any due process proceedings are pending;
8. procedures for students who are subject to placement in an interim alternative educational setting;
9. hearings on due process complaints, including requirements to disclose evaluation results and recommendations;

10. civil actions, including the time period in which to file such actions; and
11. attorneys' fees.

C. Prior Written Notice

1. Timing of Notice

WSD provides prior written notice to the parent(s) or adult students at least five school days before proposing or refusing to initiate or change the identification, evaluation, or educational placement of a student or the provision of FAPE to the student.

2. Content of Notice

The notice must include:

- a. a description of the action that WSD proposes or refuses to take;
- b. an explanation of why WSD proposes or refuses to take the action;
- c. a description of each evaluation procedure, assessment, record, or report WSD used as a basis for the proposed or refused action;
- d. a statement that a parent or adult student have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained;
- e. sources for a parent or adult students to contact to obtain assistance in understanding federal rules related to the Individuals with Disabilities Education Act (IDEA);
- f. a description of other options the admission, review, and dismissal (ARD) committee considered and the reasons why those options were rejected; and
- g. a description of other factors that are relevant to the proposal or refusal.

3. Psychological Examinations and Tests

- a. Before WSD obtains consent to administer a psychological examination or test as part of the evaluation of the student's need

for special education, WSD provides the following information to a parent if the parent requests it:

- i. the name and type of the examination or test; and
- ii. an explanation of how the examination or test will be used to develop an appropriate individualized education program (IEP) for the student.

- b. If WSD determines that an additional examination or test is required to evaluate a student's need for special education, WSD provides the information above (i and ii of section III.C.3.a.) for the additional examination or test and obtains parental consent for the additional examination or test.

D. Language of Notices

The procedural safeguards notice and the notices described in section III.C. must be written in language that is understandable to the general public. The notices must be 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.

E. Electronic Delivery of Notices

A parent or adult student may choose to receive the procedural safeguards notice, the notices described in section III.C., or notice of a due process complaint by email if WSD makes that option available.

IX. Consent

A. Consent to Initial Evaluation

Before conducting an initial evaluation to determine if a student has a disability, WSD must provide prior written notice as described in III.C., including a description of any evaluation WSD proposes to conduct, and obtains informed parental consent for the evaluation.

B. Consent to Services

WSD seeks informed parental consent before providing special education and related services to a student.

C. Consent to Reevaluation

WSD obtains informed parental consent before conducting a reevaluation of a student with a disability. However, consent is not required when WSD

demonstrates it took reasonable measures to obtain consent and the parent has failed to respond.

X. Dispute Resolution

A. Options for Dispute Resolution

Methods for resolving disputes that relate to the identification, evaluation, or educational placement of a student with a disability or the provision of FAPE include, but are not limited to:

1. ARD committee meetings, including IEP facilitation under 19 TAC §89.1196;
2. meetings or conferences with the student's teachers;
3. meetings or conferences, subject to WSD's policies;
4. requesting state IEP facilitation in accordance with 19 TAC §89.1197;
5. requesting mediation through the Texas Education Agency (TEA) in accordance with 19 TAC §89.1193;
6. filing a complaint with TEA in accordance with 19 TAC §89.1195; or
7. requesting a due process hearing through TEA in accordance with 19 TAC §§89.1151– 89.1191.

B. Due Process Complaints

When a due process complaint has been received, the parent(s) or adult student has an opportunity for a due process hearing which is conducted by an impartial hearing officer selected by TEA.

1. Timing

Unless an exception described below applies, the due process complaint must be filed no later than one year after the date a parent or adult student knew or should have known about the alleged action that forms the basis of the complaint.

2. Exceptions to Timing

The one-year timeline does not apply if a parent or adult student was prevented from requesting a hearing due to:

- a. a specific misrepresentation from WSD that it had resolved the problem forming the basis of the complaint; or
 - b. WSD's withholding information from the parent or adult student that was required by the federal IDEA rules.
3. Student's Status During Proceedings ("Stay Put")
- a. Unless an exception in section X.B.3.b. applies, the student remains in his/her current educational placement while any due process proceeding is pending (also known as the "stay put" rule).
 - b. The "stay put" rule does not apply:
 - i. when WSD and the parent or the adult student agree to a change of placement before the completion of all due process proceedings; or
 - ii. to proceedings that challenge a disciplinary change of placement or a manifestation determination. In these cases, the student remains in the interim alternative educational setting until the hearing officer makes a decision, the student's assignment to the alternative setting expires, or the 45-school-day limit for certain removals (if applicable) expires, whichever occurs first unless the parent or adult student and WSD agree otherwise.
4. Resolution Process for Due Process Complaints
- a. Within 15 calendar days after receiving notice of a parent's due process complaint, and before initiating a due process hearing, WSD convenes a meeting with the parent(s) or adult student and the relevant members of the ARD committee. The purpose of the meeting is for the parent(s) or adult student to discuss the complaint and the facts that form the basis of the request for a hearing so WSD has the opportunity to resolve the dispute.
 - b. The meeting is not required if a parent or adult student and WSD agree in writing to waive the meeting or if a parent or adult student and WSD agree to use the mediation process.
 - c. If WSD has not resolved the due process complaint to the satisfaction of a parent or adult student within 30 calendar days after receiving the complaint, the due process hearing may occur.

- d. If WSD is unable to obtain the participation of a parent or adult student in the resolution meeting after reasonable efforts have been made and documented, WSD may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's request for a hearing.

IX. Transfer of Rights to Adult Students

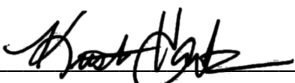
- A. Not later than one year before the 18th birthday of a student with a disability, WSD:
 1. provides to the student and the student's parent:
 - a. written notice regarding the transfer of rights; and
 - b. information and resources regarding guardianship, and alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, and other supports and services that may enable the student to live independently; and
 2. ensures that the student's IEP includes a statement that WSD provided the required notice, information, and resources.
- B. When a student reaches age 18, WSD provides written notice to the student and the student's parents of the transfer of parental rights. The notice must include the information required in section IX.A.1.b.. This notice is separate from the requirement that, beginning at least one year before the student reaches age 18, the student's IEP includes a statement about the transfer of parental rights.
- C. If a student with a disability or the student's parent requests information about guardianship or alternatives to guardianship, WSD provides to the student or parent information and resources on supported decision-making agreements under Chapter 1357, Estates Code.
- D. A student with a disability who is age 18 or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, has the same right to make educational decisions as a student without a disability. All other rights accorded to parents under 20 USC §1415 or Chapter 29, Subchapter A, Education Code, transfer to the student.

X. Appointment of Surrogate Parent for Certain Students

- A. WSD appoints an individual to serve as the surrogate parent for a student with a disability when:

1. Department of Family and Protective Services (DFPS) is appointed as the temporary or permanent managing conservator of the student;
 2. the rights and duties of DFPS to make decisions regarding the student's education under Section 153.371, Family Code, have not been limited by court order; and
 3. WSD is unable to identify or locate a parent or the foster parent is unwilling or unable to serve as a parent.
- B. A surrogate parent may not be an employee of DFPS, WSD, or any other agency involved in the education or care of the student or have any interest that conflicts with the interests of the student.
- C. A surrogate parent must:
1. be willing to serve in that capacity;
 2. exercise independent judgment in pursuing the student's interests;
 3. ensure that the student's due process rights under applicable state and federal laws are not violated;
 4. complete a training program that complies with minimum standards established by TEA rule within the time specified in Section 29.015(b), Education Code;
 5. visit the student and the school where the student is enrolled;
 6. review the student's educational records;
 7. consult with any person involved in the student's education, including the student's:
 - a. teachers;
 - b. caseworkers;
 - c. court-appointed volunteers;
 - d. guardian ad litem;
 - e. attorney ad litem;
 - f. foster parent; and

- g. caregiver; and
 - 8. attend meetings of the student's ARD committee.
- D. WSD may appoint a person who has been appointed to serve as a student's guardian ad litem or as a court-certified volunteer advocate, as provided under Section 107.031(c), Family Code, as the student's surrogate parent.
- E. If a court appoints a surrogate parent for a student with a disability under Section 263.0025, Family Code, and WSD determines that the person is failing to perform or is not properly performing the duties of a surrogate parent, WSD will:
 - 1. consult with DFPS and appoint another person to serve as the surrogate parent; and
 - 2. provide written notice to DFPS of the failure of the appointed surrogate parent to properly perform the duties required of a surrogate parent.



Kristina J. Hartman, Ed.S.
Superintendent
Windham School District