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PROCEDURAL SAFEGUARDS/PARENTS' RIGHTS

1.) General: Under the Individuals with Disabilities Education Act (IDEA), the term Procedural Safeguards: refers to procedures which direct specific required actions related to the following areas: [refer to 34 CFR 300.500 to 300.505]

- Personally Identifiable Information (see rule 160-4-7-.12 Confidentiality of Personally Identifiable Information);
- Evaluation/Re-Evaluation (see rule 160-4-7-.07 Evaluations and Eligibility Determinations);
- Mediation (see rule 160-4-7-.16 Mediation);
- Impartial Due Process Hearing (see rule 160-4-7-.18 Hearing Process);
- Surrogate Parents (see rule 160-4-7-.06 Surrogate Parents);
- Parental Consent (see this rule);
- Parental Examination of Records (see this rule);
- Parental Participation in Meetings (see this rule);
- Independent Education Evaluation (see this rule); and
- Notice (see this rule);

The term "Procedural Safeguards Notice" also refers to the document commonly identified as "Parents' Rights" which, at a minimum, shall be given to parent(s)/guardian(s)/surrogate(s) in the following circumstances:

- Upon initial referral for evaluation;

- Upon each invitation to an IEP meeting;
- Upon re-evaluation of the student; and
- Upon receipt of a request for mediation or for an impartial due process hearing
- Upon any proposed change in the eligibility or the educational placement of the student.

Each local school system and state-operated (LSS/SOP) shall establish and maintain procedures to provide an opportunity for the parent(s)/guardian(s)/surrogate(s) of a student with a disability to:

- Examine and obtain copies of all records relating to such student.
- Participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a free and appropriate public education (FAPE) to such student.
- Obtain an independent educational evaluation of the student.
- Receive notice before the school initiate or changes (or refuses to initiate or change) the identification, evaluation, educational placement of the student, or the provision of FAPE to the student.
- Receive notice of places to contact for assistance in understanding the procedural safeguards/parents' rights.
- Seek and secure mediation and/or mediation and/or impartial due process hearing, and during the course of such proceeding to secure the maintenance of the student's prior education placement and services.

PARENTAL OPPORTUNITY TO EXAMINE RECORDS

Each LSS/SOP shall establish and maintain procedures which afford the parent(s)/guardian(s)/surrogate(s) of a student with a disability an opportunity to inspect and review all education records with respect to the identification, evaluation, educational placement and provision of a FAPE to his/her/their student. All rights of

parent(s)/guardian(s)/surrogate(s) to examine education records shall transfer to the student at age 18, consistent with Rule 160-4-7-.12 Confidentiality of Personally Identifiable Information. [refer to 34 CFR 300.501 (a)]

PARENTAL PARTICIPATION IN MEETINGS

Each LSS/SOP shall establish and maintain procedures which affords the parent(s)/guardian(s)/surrogate(s) of a student with a disability an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a FAPE to his/her/their student, even if such meeting is not for the purpose of reaching a final decision or recommendation. [refer to 34 CFR 300.501(b)]

- A meeting does not include informal or unscheduled conversations involving LSS/SOP personnel and does not include conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not specifically addressed in the student's individualized education program (IEP). [refer to 34 CFR 300.501 (b)(2)]
- A meeting also does not include preparatory activities that LSS/SOP personnel engage in to develop a proposal or to respond to the parent's(s)/guardian's(s)/surrogate's(s) proposal that will be discussed in a later meeting. [refer to 34 CFR 300.501(b)(2)]
- If the parent(s)/guardian(s)/surrogate(s) cannot participate in a meeting in which a decision is to be made relating to the educational placement of his/her/their student, the LSS/SOP shall use other methods to ensure his/her/their participation, including individual or conference telephone calls or video conferencing. [refer to 34 CFR 300.501©(3)]
- A placement decision may be made by a group without the involvement of the parent(s)/guardian(s)/surrogate(s) if the LSS/SOP is unable to obtain his/her/their participation in the decision. In this case, the LSS/SOP must have a record of its attempts to ensure their involvement, including information that is consistent with Rule 160-4-7-.09 (Individualized Education Program) [refer to 34 CFR 300.501©(4)]
- The LSS/SOP shall make reasonable efforts to ensure that the parent(s)/guardian(s)/surrogate(s) understand(s), and is/are able to participate in any group discussions relating to the educational placement of his/her/their student, including arranging for an interpreter for parent(s)/guardian(s)/surrogate(s). [refer to 34 CFR 300.502 (3)(i) and (ii)]

INDEPENDENT EDUCATIONAL EVALUATION

As used in this section, independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed in question. As used in this section, public expense means that the LSS/SOP pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent(s)/guardian(s)/surrogate(s). [refer to 34 CFR 300.502(3)(i) and (ii)]

- The parent(s)/guardian(s)/surrogate(s) has/have the right to an independent educational evaluation at public expense if the parent(s)/guardian(s)/surrogate(s) disagree(s) with an evaluation obtained by the LSS/SOP. However, the LSS/SOP may initiate an impartial due process hearing to show that its evaluation is appropriate. If the final decision is that the school system evaluation is appropriate, the parent(s)/guardian(s)/surrogate(s) still has/have the right to an independent educational evaluation may be obtained and the LSS/SOP criteria applicable for independent educational evaluations. [refer to 34 CFR 300.502(a)(2); 300.502(b)(1); 300.502 (b)(2)(i); 300.502(b)(3)]
- If the parent(s)/guardian(s)/surrogate(s) obtain(s) an independent educational evaluation at his/her/their expense, the results of the evaluation: [refer to 34 CFR 300.502©]
- Shall be considered by the LSS/SOP, if it meets state and LSS/SOP criteria, in any decision made with respect to the provision of a FAPE to the student; [refer to 34 CFR 300.502©(1)] and
- May be presented by either party as evidence at an impartial due process hearing under these rules regarding that student. [refer to 34 CFR 300.502©(2)]
- If a parent/guardian/surrogate requests an independent educational evaluation at public expense, the LSS/SOP shall, without unnecessary delay, initiate an impartial due process hearing to show that its evaluation is provided at public expense, unless the LSS/SOP demonstrates in an impartial due process hearing that the evaluation obtained by the parent/guardian/surrogate did not meet LSS/SOP criteria. [refer to 34 CFR 300.502(b)(2)(i,ii)]
- If the administrative law judge conducting the impartial due process hearing requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense. [refer to 34 CFR 300.502(d)]
- If a parent/guardian/surrogate requests an independent educational evaluation, the LSS/SOP may ask for the parent's(s')/guardian's(s)/surrogate's reason why he or she objects to the public evaluation. However, the explanation by the parent/guardian/surrogate may not be required and the LSS/SOP may not unreasonably delay either providing the independent education evaluation at

public expense or initiating an impartial due process hearing to defend the LSS/SOP evaluation. [refer to 34 CFR 300.502(b)(4)]

- Whenever the state or LSS/SOP pays for an independent educational evaluation, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the state or LSS/SOP uses when it initiates an evaluation. Except for the criteria described in this rule, an LSS/SOP may not impose conditions or timelines related to obtaining an independent education evaluation at public expense. [refer to 34 CFR 300.502(e)(1)(2)]

NOTICE TO PARENT(S)/GUARDIAN(S)/SURROGATE(S)

- The parent(s)/guardian(s)/surrogate(s) shall be provided notice written in language understandable to the general public a reasonable time before the LSS/SOP proposes to initiate or change the identification, an evaluation or educational placement of a student or the provision of a FAPE to the student. Written notice shall also be provided if the LSS/SOP refuses to take such action. After rights have been transferred to a student who has reached the age of majority, any written notice covered under this rule shall be provided to both the student and to the parent(s)/guardian(s)/surrogate(s) of the student. [refer to 34 CFR 300.503(a)(i,iii)]
- LSSs/SOPs shall provide a full explanation of all procedural safeguards/parents' rights available to the parent(s)/guardian(s)/surrogate(s) shall include a description of the action proposed or refused by the LSS/SOP, an explanation of why the LSS/SOP proposes or refuses to take action, and a description of any options the LSS/SOP considered and the reasons why those options were rejected. Communication to the parent(s)/guardian(s)/surrogate(s) shall include a description of each evaluation procedure, test, record, or report the LSS/SOP used as a basis for the proposed or refused action. Also included shall be a description of any other factors which are relevant to the LSS's/SOP's proposal or refusal, a statement that the parent(s)/guardian(s)/surrogate(s) of a student with a disability has protection under the procedural safeguards/parents' rights, a statement of the means by which a copy of the procedural safeguards/parents' rights may be obtained, and information providing places to contact for assistance in understanding the procedural safeguards/parents' rights. [refer to 34 CFR 300.503 (b)(1-6)]

NOTE: In most cases, the above **NOTICE** requirements can be addressed by providing the parent(s)/guardian(s)/surrogate(s) with a copy of documents such as the evaluation report, eligibility report, invitation to a meeting, the full individualized education program (IEP) (with minutes), and other relevant documents, as appropriate. However there may be circumstances when a parent/guardian/surrogate makes a request but these items have not yet been

generated for the student. In such case, especially if the LSS plans to refuse the request, the LSS must respond to the request through an alternative manner, such as through a letter to the parent(s)/guardian(s)/surrogate(s), which provides all of the required elements identified in this rule, including provision of parents' rights.

- If the notice related to an action proposed by the LSS/AOP that also requires parental/guardian/surrogate consent, the LSS/SOP may give notice at the same time that it requests such consent. [refer to 34 CFR 300.503(a)(2)]
 - Graduation from high school with a regular education diploma constitutes a change placement and requires written prior notice, in accordance with paragraphs (5)(a) and (b) above. [refer to 34 CFR 300.122(a)(3)(iii)]
 - Language Understandable to the General Public.
1. Each LSS/SOP shall ensure that all communications made to the parent(s)/guardian(s)/surrogate(s) are in both English and the primary language of the home, if such primary language is other than English, unless it is clearly not feasible to do so. Such communications shall be made in language understandable to the general public. [refer to 34 CFR 300.503(b)(7)(ii) and 300.503(c)(7)(i)]
 2. If written notice is not in the native language of the parent(s)/guardian(s)/surrogate(s), the LSS/SOP shall take necessary steps to ensure that the notice is translated into his/her/their native language or other mode of communication used by the parent(s)/guardian(s)/surrogate(s) and that there is written evidence that the parent(s)/guardian(s)/surrogate(s) understand(s) the notice. [refer to 34 CFR 300.503©(2)(I-iii)]
 3. If the native language or other mode of communication of the parent(s)/guardian(s)/surrogate(s) is not a written language, the LSS/SOP shall take steps to ensure that (a) the notice is translated orally, or by other means, to the parent(s)/guardian(s)/surrogate(s) in his or her/their native language or other mode of communication, and (b) there is written evidence of the translation and of the parent's(s')/guardian's(s')/surrogate's(s') understanding of the content of the notice. [refer to 34 CFR 300.503(c)(2)(i-iii)]
 4. At a minimum, a copy of procedural safeguards/parents' rights must be given to the parent(s)/guardian(s)/surrogate(s) at the time of (a) initial referral for evaluation, (b) each invitation to an IEP/Placement meeting, (c) re-evaluation, and (d) the filing of a request for a due process hearing. [refer to 34 CFR 300.504(a)(1-4)]

CONSENT

At a minimum, informed parental/guardian/surrogate consent shall be obtained before: [refer to 34 CFR 300.505(a)]

- Conducting a pre-placement evaluation, other than evaluations routinely administered to all students at some point in their school year, [refer to 34 CFR 300.505(a)(i)]
 - Conducting assessment for the purpose of re-evaluation, [refer to 34 CFR 300.505(a)(i)]
 - Providing initial special education and related services to a student with a disability and [refer to 34 CFR 300.505(a)(ii)]
 - Disclosing personally identifiable information under conditions described in Rule 160-4-7-.12 Confidentiality of Personally Identifiable Information. [refer to 34 CFR 300.571(b)]
 - Except for an initial evaluation, initial placement, and re-evaluation, consent is not required as a condition of any benefit to the parent(s)/guardian(s)/surrogate(s) or student.
 - Consent for initial evaluation shall not be interpreted as consent for initial placement. [refer to 34 CFR 300.505(a)(2)]
 - If the parent(s)/guardian(s)/surrogate(s) of a student with a disability refuses consent for initial evaluation or re-evaluation, the LSS/SOP may continue to pursue the evaluation by using the impartial due process hearing procedures described in Rule 160-4-7-.18 Hearing Process or the mediation procedures described in Rule 160-4-7-.16 Mediation, if appropriate. [refer to 34 CFR 300.505(b)]
 - An LSS/SOP may not use a parent's/guardian's/surrogate's refusal to consent to one service or activity discussed in this section of the rule to deny the parent/guardian/surrogate or student any other service, benefit, or activity of the LSS/SOP, except as required in these rules. [refer to 34 CFR 300.505(e)]
 - Consent: Initial Evaluation
1. After a student is referred for a special education initial evaluation, the LSS shall send to the parent(s)/guardian(s)/surrogate(s) of such

student, consent form which contains the following: [refer to 34 CFR 300.503]

- A statement that a referral has been made including the name and position of the person making such referral, referring party, and the reason why the evaluation is deemed necessary.
 - A description of the type of each evaluation procedure statement describing the evaluation process including time lines, type(s) of test(s) to be used, and a list of possible tests to be administered, and purpose of such test(s).
 - A statement that the parent(s)/guardian(s)/surrogate(s) may be present at all individualized education program (IEP) committee meetings where the educational placement will be determined and that such meetings will be held at pre-announced times. [refer to 34 CFR 300.444]
 - A statement indicating that the parent(s)/guardian(s)/surrogate(s) may grant or refuse consent for an initial evaluation of his/her/their child. The parent's(s')/guardian's(s')/surrogate's(s') decision must be clearly indicated on the form, signed by the parent(s)/guardian(s)/surrogate(s) and placed on file in the LSS.
 - A statement that no change will be made in the students' educational program until proper notification is given to the parent(s)/guardian(s)/surrogate(s) and procedural safeguard requirements are fulfilled.
 - A statement that either party (parent/guardian/surrogate or LSS) may request mediation and/or impartial due process hearing regarding lack of parental/guardian/surrogate consent. [refer to 34 CFR 300.505(b)]
2. The impartial due process hearing procedures described in these rules are the procedures to be used in the event that the parent(s)/guardian(s)/surrogate(s) refuse(s) to provide consent under this part. [refer to 34 CFR 300.505 (b)]
- Consent: Re-evaluation
 1. Informed parental/guardian/surrogate consent for re-evaluation shall be obtained prior to conducting assessment for the purpose of re-evaluation. [refer to 34 CFR 300.505(a)(i)]

2. Informed parental/guardian/surrogate consent for re-evaluation is not required before reviewing existing data as part of re-evaluation or before administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of all students. [refer to 34 CFR 300.505(a)(i)]

3. Informed parental/guardian/surrogate consent need not be obtained for re-evaluation if the LSS/SOP can demonstrate that it has taken reasonable measures to obtain that consent and the student's parent(s)/guardian(s)/surrogate(s) has/have failed to respond. Local school systems shall have documentation of the reasonable measures taken, such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parent(s)/guardian(s)/surrogate(s) and any responses received; and/or detailed records of visits made to the parent(s)/guardian(s)/surrogate(s) home or place of employment and the results of those visits. [refer to 34 CFR 300.505© and 300.345(d)]

5. If the student's parent(s)/guardian(s)/surrogate(s) refuse(s) consent for re-evaluation, the LSS may continue to pursue the evaluation(s) by using the impartial due process hearing procedures described in Rule 160-4-7-.18 Hearing Process. [refer to 34 CFR 300.505(b)]

- Consent: Placement

1. If the determination is made that the student is eligible and needs special education and/or related services, an IEP shall be developed. IEP Committee decisions shall be based on the student's IEP. All students who are recommended by the IEP Committee for initial placement in a special education program shall have signed, informed parental/guardian/surrogate consent on file within the local school system before placement can occur. [refer to CFR 300.505(a)(ii)]

2. After a student has been recommended for placement, the LSS shall provide information to the parent(s)/guardian(s)/surrogate(s) of the student, including a form requesting consent, and appropriate documents which provides the following: [refer to 34 CFR 300.503(b)(1-5)]

- A description of the action proposed (or refused) by the LSS/SOP;
- An explanation of why the LSS/SOP proposes (or refuses) to take the action;

- A description of other options considered and the reasons why those options were rejected.
- A description of each evaluation procedure, test, record, or report the LSS/SOP used as a basis for the proposed or refused action.
- A description of others factors that are relevant to the LSS's/SOP's proposal or refusal.
- A statement indicating that the parent(s)/guardian(s)/surrogate(s) may accept or reject the placement recommendation. The parent's(s')/guardian's(s')/surrogate's(s') decision shall be clearly indicated o the form, signed by the parent(s)/guardian(s)/surrogate(s), and placed on file in the LSS.
- A statement that either party may appeal the IEP Committee decision and request mediation and/or impartial due process hearing regarding the parent(s)/guardian(s)/surrogate(s) signed negative response or lack of response to the parental/guardian/surrogate Consent for Placement from.
- A statement explaining that the child's and parent's rights to maintain the last agreed upon placement and services if mediation and/or impartial due process hearing procedures are sought; and
- A statement that the IEP documents, including all minutes of meetings and all assessments and evaluations, has been provided to the family, and that all other records concerning the student are available upon request.
- Consent: Disclosure of Personally Identifiable Information. All LSSs and SOPs shall establish and maintain procedures consistent with Rule 160-4-7-.12 Confidentiality of Personally Identifiable Information.

PARENTAL TRAINING AND AWARENESS

It is the policy of the State Board that fully informed parents will improve the operation and management of the delivery of services. Therefore, the

Department of Education shall develop and implement an on-going system designed to train parents in and make them aware of their and their children's rights and responsibility under these Rules, IDEA and the regulations thereunder, shall develop the contents of materials which will include but not be limited to the following items and topics:

- Information explaining the programs and procedures under these Rules and the rights and responsibilities of all parties during the process definitions, categories of eligibility, FAPE, parental rights, the evaluation process, eligibility, LRE, alternatives including private schools and institutions, and in particular the IEP process, the full continuum of available aids and services and delivery models, and the complaint and dispute resolution process.
- This information will be developed in multiple formats (I.e., print materials, on-line/web based delivery methods, etc.).
- All local school systems and the Georgia Department of Education will make the information available to parents, at a minimum, at their child's school. Local libraries, local school system's Board of Education office(s) and administrative office(s), GLRS sites, RESA sites, and the Georgia Department of Education.
- Local school systems shall disseminate the information in subparagraph above to parents of students with disabilities, using format preferable to the parents, at the time of their child's initial referral and at least once annually while their child continues to be a child with a disability.

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