MONTANA EMPOWERMENT CENTER, INC.

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Procedural Safeguards

- Under the Individuals with Disabilities Education Act (IDEA), you and your child have legal protections during the evaluation and IEP process.
- These protections are called ***procedural safeguards***.
- The school must provide you with a written explanation of your rights under IDEA.

Know Your Rights – The Procedural Safeguards are a vital part of the IDEA. They ensure parent participation in the special education process and protect your child's right to a free appropriate public education (FAPE).

Parents rights include:

- receiving in writing a Prior Written Notice (PWN) by the school district in order to notify you of the reason for a prosed or refused action such as identifying a child as a child with a disability, development or changes to an IEP, evaluations, or educational placement.
- confidentiality and the right to inspect and review all their child's educational records.
- participating in meetings related to identification, evaluation, placement and provision of FAPE to their child.
- having information presented in their native language.
- getting an independent educational evaluation (IEE).
- signing approval or refusing to sign and approve the IEP or to sign your approval "with exceptions".
- being notified, at least one year before it happens, of the transfer of parental rights."
- requesting help to resolve disputes such as facilitation mediation or filing a formal complaint.
- dispute resolution procedures under IDEA and the State of Montana to resolve any disputes with the school district.

KEY TAKEAWAYS

- One of the most important procedural safeguards is the right to participate in your child's education.
- If you disagree with a school's decision, you have several dispute resolution options, including due process.

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IDEAs that Work
Office of Special Education Programs
U.S. Department of Education

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Examples of Procedural and Substantive Violations made by School Districts

Two major types of IEP errors are most common, procedural and substantive. Procedural obligations compel school personnel to follow the specific requirements of the law when developing an Individualized Education Program (IEP). The substantive obligations of the Individuals with Disabilities Education Act (IDEA) require IEP teams to develop and implement a plan that is designed to provide educational benefits for the student.

Procedural violations occur when the school district does not comply with some procedure, process, or rule required under IDEA or did not provide the special education, related services, supplementary aids, and services or placement listed in a current IEP. Substantive violations are about the substance of a student's program.

Below are examples of procedural violations:

- Failure to give notice of rights, and planned meetings through prior written notice.
- Failure to adhere to state-mandated timelines.
- Failure to allow the parents to meaningfully participate in the IEP development process and educational decision-making.
- Failure to conduct and complete individualized evaluations.
- Failure to ensure that all the necessary team members attend IEP meetings.
- Failure to devise an appropriate IEP based on the child's individual needs.
- Failure to implement the IEP as written.
- Failure to provide education and services in the least restrictive environment, based on that child's individual needs.
- Failure to maintain proper records.
- Failure to train staff and aides in the child's areas of disability.
- Failure to train parents in the child's areas of disability.
- Predetermining placement and services before the IEP meeting.
- Failure to provide records within 45 days when requested by parents.
- Failure to offer extended school year services to the child, resulting in regression of skills during the summer vacation that cannot be recouped quickly.
- Failure to allow the child with a disability to participate in extracurricular activities to the same extent as his non-disabled peers when the child could participate with accommodations provided by the school.
- Failure of the school to prevent punishment of the child for actions or inactions that are manifestations of the child's disability (caused by the child's disability).
- Failure by the school to notice that the child was one in need of special education or services, despite evidence that the child was struggling academically or behaviorally.

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Below are examples of substantive violations:

- Failure to assess the student's academic and functional needs.
- Failure to conduct a complete evaluation of a student's needs. Failure to conduct a complete and individualized evaluation of student's needs.
- Failure to develop annual goals based on student needs.
- Failure to write goals that are complete, appropriate, and measurable. Failure to develop challenging, ambitious, and measurable annual IEP goals.
- Failure to provide special education and related services that are effective and based on peer-reviewed research.
- Failure to provide special education services that address all of the student's educational needs.
- Failure to monitor the student's progress toward their goals and make instructional changes when necessary.
- Failure to include all of the student's educational needs in the Present Levels of Academic Achievement and Functional Performance (PLAAFP).
- Failure to adhere to the continuum of alternative placements.
- Failure to implement the material aspects of an IEP.

https://personalizedlearningforall.com/examples-of-procedural-substantive-violations-committed-by-school-districts/

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