

PROCEDURAL SAFEGUARDS

SAU #3 shall provide a copy of New Hampshire Procedural Safeguards in Special Education (December 2011 edition) to the parents of a child with a disability one time per year. This is typically done at each annual IEP team meeting. A copy shall also be given to the parents:

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first request for a due process hearing filed in a school year;
3. Upon receipt of the first State complaint in a school year;
4. Upon request by a parent.

NOTE: SAU #3 distributes the Procedural Safeguards document, provided by the NHDOE in December 2011 that complies with the NH Rules that went into effect June 30, 2008. See a full copy in the Appendix and a copy of Low-Cost or Free and Other Relevant Services in New Hampshire.

SAU #3 shall ensure that the parents of children with disabilities are afforded all of the rights and procedural safeguards contained in federal law and described in the NH Rules (Ed 1120.0 – 1124.02) including, but not limited to, the right to:

- Receive written prior notice of any action regarding their child which SAU #3 proposes or refuses
- Grant or refuse consent for any District action regarding their child
- Obtain an independent educational evaluation
- Appeal specific proposals of SAU #3 regarding their child
- File a complaint

All of the rights and guarantees included under procedural safeguards shall apply to parents, adult students, and public agencies, which includes the district of SAU #3. These rights shall be transferred to children with disabilities who are emancipated minors or who have attained the age of 18 years and have not been adjudicated as incompetent by a court.

NOTE: A parent or adult student may authorize an individual to act on their behalf pursuant to a duly executed power of attorney (Ed 1120.01 (c)).

Written Prior Notice

Parents will be officially notified in writing any time SAU #3:

- proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child; or
- refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child

The notification shall include:

1. A description of the action proposed or refused by SAU #3

2. An explanation of why the agency proposes or refuses to take the action
3. A description of each evaluation, procedure, assessment, record or report SAU #3 used as basis for the proposed or refused action;
4. A statement that the parents of the child with disabilities have protection under the procedural safeguards of IDEA. If this notice is not an initial referral for evaluation, the means by which a copy of the description of the procedural safeguards can be obtained;
5. Resources for parents to contact to obtain assistance in understanding the provisions of the law; a description of the other options that the IEP team considered and the reasons why those options were rejected and
6. A description of other options that the IEP team considered and the reasons why those options were rejected; and
7. A description of other factors relevant to SAU #3 proposal or refusal.

Informed Consent

SAU #3 shall obtain informed, written consent from the parent of a child with a disability prior to:

- conducting an initial evaluation,
- initial provision of special education and related services to a child with a disability, annual renewal of the IEP and placement of a child with a disability,
- determining or changing the disability classification,
- changing the nature or extent of the special education or special education and related services, or
- conducting a re-evaluation
- annual access to public insurance or when changes in services paid by public insurance are made; and
- each time SAU #3 proposes to access public insurance

Parents of children with disabilities shall have 14 days after the receipt of written prior notice to sign documents included with the notice to indicate consent, consent with conditions, or denial of consent. The 14-day time limit shall be extended if SAU #3 and parent mutually agree to an extension.

SAU #3 shall advise the parent in writing of the necessity of signing documents that describe actions requiring the parent's consent for the purpose of ensuring the timely provision of appropriate services. Additionally, SAU #3 shall advise the parent of the right to access all of the rights and procedures outlined in this section if the parent disagrees with a proposal that SAU #3 makes.

SAU #3 shall take reasonable measures to obtain consent including, but not limited to phone contact, and letters. SAU #3 shall document all contacts made or attempted and the results of these contacts. Copies of all letters and responses received shall be kept in the student's confidential file.

The parent shall be provided a copy of any document the parent requests in writing and a copy of such document shall also be placed in the child's educational records.

Should a parent either deny consent or does not respond to a request for written consent, SAU #3 are required to respond in the following ways:

Initial Evaluation

The LEA is required to obtain informed consent for the initial evaluation. If the parent fails to respond to a request for consent for an initial evaluation, the LEA may, but is not required to, use alternative dispute resolution procedures to obtain consent including filing for due process. (Ed 1120.05(c))

Initial Provision of Services

The LEA is required to obtain informed consent for the initial provision of services. If a parent fails to respond or refuses consent, the LEA may not use the alternative dispute resolution or request a due process hearing. The LEA may not provide special education services and the LEA will not be considered in violation of the obligation to make FAPE available to the child.

Revocation

If a parent revokes consent for all special education, in writing, the school district:

1. Must provide a Written Prior Notice that the school district will be discontinuing all special education services.
2. Must discontinue all special education services.
3. Must not use mediation or due process procedures to obtain an agreement.
4. Shall not be considered in violation of the requirements to provide FAPE.
5. Shall not be required to convene an IEP team meeting.

When a parent revokes consent in writing the district is prohibited from providing all special education services.

Re-evaluation and Continuation of Services

The LEA is required to obtain informed consent for both the re-evaluation and continuation of services. If the parent fails to respond to the request for consent, the LEA shall implement the proposed changes after the LEA has taken reasonable measures to obtain informed written consent. If the parent refuses consent for a re-evaluation or the continuation of services, the LEA shall pursue the reevaluation or continuation of services through dispute resolution processes.

Other Consent Areas

Public or Private Insurance - The LEA must obtain informed consent from the parent each time access to public insurance or private insurance is sought. The LEA must notify the parents that the refusal to allow access to their public or private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. SAU #3 may not initiate dispute resolution processes if a parent refuses to grant consent.

Release of Records - The LEA must obtain informed consent for the release of education records. If the parent refuses consent, the LEA may initiate a court proceeding to obtain a court order for the release of information.

Independent Educational Evaluation

Parents shall have the right to request an independent evaluation at the SAU #3's expense if they disagree with an evaluation conducted by SAU #3. If parents request an independent educational evaluation at public expense, SAU #3 shall either initiate a due process hearing to show that its evaluation is appropriate or ensure that an independent educational evaluation is provided at public expense, unless it has demonstrated at a hearing that the evaluation obtained by the parent does not meet SAU #3's criteria.

SAU #3 may ask for the reason why parents object to SAU #3's evaluation; however, the explanation shall not be required and SAU #3 shall not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend SAU #3's evaluation.

If a parent obtains an independent educational evaluation at private expense, SAU #3 shall consider the results of the evaluation if it meets SAU #3's criteria. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that SAU #3 uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Results of an independent evaluation obtained at parents' expense may be presented as evidence at a hearing regarding the child.

Appeal Decisions

The parent shall have the right to appeal any decision of SAU #3 or IEP team regarding the referral, evaluation, determination of eligibility, IEP, provision of a free and appropriate public education, or placement of a child with a disability using the procedures detailed in the NH Rules - Ed 1122.

A due process hearing can be initiated by either party at any time and will be conducted in accordance with the NH Rules - Ed 1122. Alternative dispute resolution shall be voluntary and available to parents and SAU #3 in accordance with the NH Rules - Ed 215.

File Complaint

The parent shall have the right to file a complaint, in accordance with the NH Rules - Ed 1121.01(a), to report actions taken by SAU #3 that are contrary to the provisions of state and federal requirements regarding the education of children with disabilities.

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