

Parent Rights/Procedural Safeguards

In Kansas, “parent” is defined as:

- A natural or biological parent – If parents are divorced, notify both parents unless a court order precludes this from happening. Consent from one parent is sufficient even if the other parent refuses to consent.
- An adoptive parent – If adoption is not final, an education advocate is needed; documentation is the ‘Decree of Adoption’.
- A person acting as a parent – In some cases a parent is unknown or unavailable and another person may act as a parent. This could be a grandparent, stepparent or other relative with whom a child lives, or a person other than a parent who is legally responsible of the welfare of the child.
- A legal guardian – Guardianship has been completed and is documented with “Letters of Guardianship” issued by a court.
- An education advocate - Appointment as an education advocate has been completed and is documented with a Letter of Appointment form Families Together. Contact the appropriate MAR-NEM COOP administrator if a student is in need of an advocate.
- A foster parent – Only if appointment as an education advocate has been completed and is documented with a Letter of Appointment.
- The student is 18 – At age 18 the student becomes his/her own educational decision-maker unless determined by a court to be incompetent.

and may give consent for educational decisions.

A copy of the Parent Rights in Special Education Notice must be provided to the parents:

- At least one time in a school year; and
- Upon a referral or parent request for initial evaluation;
- First formal complaint or due process complaint filed in a school year;
- Upon a disciplinary removal from school that constitutes a change in placement; and
- Upon parent request.

The Parent Rights Notice must include a full explanation of all of the procedural safeguards available. These forms are available at the MAR-NEM COOP office.

Procedural Safeguards include:

- Independent educational evaluations;
- Prior written notice;
- Parental consent;
- Access to education records;
- Opportunity to present and resolve complaints through the due process complaint and State complaint procedures;
- The availability of mediation;
- The child's placement during the pendency of any due process complaint;
- Procedures for students who are subject to placement in an interim alternative educational setting;
- Requirements for unilateral placement by parents of children in private schools at public expense;
- Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- State-level appeals
- Civil actions including the time period in which to file those actions; and
- Attorney's fees if awarded by the court system.

Prior Written Notice

- Prior written notice
 - Must be provided when the school proposes to initiate or change the
 - Identification,
 - Evaluation
 - Educational placement of their child,
 - Or the provision of special education and related services to their child, whether or not the change is substantial or material.
 - Also must be provided when the school refuses a parent's request to initiate or change the identification, evaluation or educational placement of the child, or to make a change to the provision of special education and related services to the child.

Parent Consent

Parent consent is required for the following actions:

- Conduct an initial evaluation
- Conduct a reevaluation
- Initial provision of services on the IEP – the school cannot use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child. Under these circumstances, the school does not violate its obligation for the provision of FAPE to the child for failure to provide the child with the special education and related services for which the public agency requested consent.
- Make substantial change in placement (more than 25% of the child's school day)
- Make material change in services (25% or more of any one service)
- Add a new service or delete a service completely
- Evaluation or services in private school
- Excuse an IEP team member from IEP team meeting (does not require prior written notice)
- Invite outside agency (does not require prior written notice)
- Use of private insurance and Medicaid (does not require prior written notice)

Parental consent is not required for:

Review of existing data as part of an initial evaluation or reevaluation
Administer test or other evaluation that is administered to all children unless is required of parents of all children

Any other proposed special education action where parental consent is not specifically required by special education statutes and regulations. In these situations, only Prior Written Notice to the parent of the action proposed and the parent's acknowledgement of the notice is required (e.g., less than a material or substantial change in placement, or the school refuses to conduct an initial evaluation or reevaluation).

Parental consent requested but not provided:

- Parents do not respond – The school must make and document reasonable attempts to obtain consent for each special education action as required. Reasonable attempts are defined as at least 2 contacts by 2 different methods and detailed documentation should be kept of telephone calls made and the results, copies of written correspondence sent to the parents and their response, if any, and visits made to the parents home or place of employment and the response, if any, from the parents. **Parental consent is required to conduct a reevaluation, or to make a material change in services or a substantial change in placement, however, parent consent is not required for these actions if the parent does not respond to the schools requests for consent and the school can document its attempts to obtain parental consent as outlined above. It is recommended that a copy of the completed IEP be mailed to the student's home with a request for a parent's signature.**
- Parents revoke consent – Parent consent is voluntary, and may be revoked by the parents at any time. The revocation is not retroactive but becomes effective on the date that it was revoked. The revoking of consent does not negate any action occurred after previous consent was given and before the consent was revoked. The school should meet with the parent to attempt to resolve the difficulty, seek mediation, or possibly initiate a due process proceeding to override the parent's objection. If the parent cannot be convinced to continue the services, the LEA may honor the parent's objection and cease provision of the services. The LEA should send written notice to the parent that it stands ready, willing and able to provide services to the child, if the parent reconsiders his or her objection to those services.

(Adapted from KSDE Process Handbook)