

# A PEATC

Do You Know....



## Factsheet for Virginia's Parents – PROCEDURAL SAFEGUARDS

If your child has an Individualized Education Program (IEP) under IDEA, you have **important legal rights**. These *Procedural Safeguards* are given to you in writing by your child's school. Don't be afraid to ask questions. **This fact sheet does not list all of your rights**. Find out more in the Virginia Department of Education's *Parent's Guide to Special Education* or read the notice here: [http://www.doe.virginia.gov/special\\_ed/regulations/state/procedural\\_safeguards/english\\_procedural\\_safeguards.pdf](http://www.doe.virginia.gov/special_ed/regulations/state/procedural_safeguards/english_procedural_safeguards.pdf)

### Summary of Key Parent Rights

**Parent Participation.** You have the right to participate in meetings about your child's special education identification, evaluation, services and placement. The school will provide advance notice and work with you to schedule the meeting. You have the right to an interpreter if you need one. You have the right to request an IEP meeting if you are concerned about your child's services. Informal conversations between school staff about your child's education are not considered "meetings" and so notice is not required.

**Parent Consent.** Your written permission is required before the school can 1) conduct an initial evaluation or reevaluation, 2) decide eligibility or change your child's disability category; 3) provide special education and related services for the first time; 4) change your child's services; 5) end some or all services, unless your child is graduating with a standard or advanced diploma; 6) provide services when your child is coming from another agency or state; 7) use your child's public or private health insurance; and 8) invite someone to the IEP meeting who might pay for transition services during high school.

**Your Child's Records.** You have the right to review and have your child's school records explained, unless there is a legal order that says that you cannot see them. You can ask that records be corrected if you find something wrong. You can ask for copies if that is the only way you can review them, but there may be a charge. Under the Federal Educational Privacy Act (FERPA) these records are confidential (private), but they can be released in some instances. See: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

### When do parents receive Procedural Safeguards?

The Procedural Safeguards notice is required to be given to you once a school year and:

- If you request a copy,
- At your child's initial referral or your request for evaluation,
- The first time in a school year that you request a due process hearing or file a complaint with VDOE against the school, and
- If your child's placement is changed because of a disciplinary removal or because your child violated the school's code of student conduct.

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**Prior Written Notice.** You will receive written notice anytime a school wants to change your child's services, including adding or taking away a service. This *Prior Written Notice* has to say what the school wants to do and why and the options it considered. The school will describe tests or records that it used to make its decision. The notice must be in your native (primary) language.

**Independent Educational Evaluation (IEE).** If you disagree with the results of a school evaluation, you can ask for an IEE paid for by the school. An IEE is done by someone on an approved list who does not work for the school division. In most cases, the school will agree to an IEE, but it can ask for a legal hearing to show that its evaluation is correct. You can also pay for your own evaluations, but the IEP team only needs to **consider** outside evaluations.

**Dispute Resolution.** Sometimes, despite best efforts, you and the school will have a disagreement. If you cannot work it out, several options are available. Depending on the issue, you can file a complaint with VDOE, request voluntary mediation (where an independent third party helps negotiate a solution), or file for a formal due process (legal) hearing. You can contact VDOE or an advocate/attorney for more information if you face this situation. Your school division or VDOE will give you a list of independent resources that you can call for help or advice.

**Discipline and the Right to Services.** There are many safeguards related to discipline procedures such as suspension/expulsion. If your child is removed from school for more than 10 days during a school year because he/she is being disciplined for breaking school rules, your child must be given educational services that enable him/her to progress in his/her IEP, and receive a functional behavioral assessment (FBA) and a behavior intervention plan (BIP), if needed.

**There are many more Procedural Safeguards and rights that protect your child. Be sure to review the notice carefully when you receive it and anytime you are having a disagreement with the school.**

## Legal Requirements

Procedural safeguards are required under the federal Individuals with Disabilities Education Act <https://sites.ed.gov/idea/status-chart-33/subchapter-ii/1415>), and under

Virginia State regulations: [http://www.doe.virginia.gov/special\\_ed/regulations/state/reg\\_specs\\_disability\\_va.pdf](http://www.doe.virginia.gov/special_ed/regulations/state/reg_specs_disability_va.pdf), 8VAC20-81-170, Page 50.

In some instances, Virginia's procedural safeguards are better than your rights under federal law. For example, parent consent requirements are stronger in Virginia. So be sure you review information on Virginia specific rules.



PEATC's mission focuses on building positive futures for Virginia's children by working collaboratively with families, schools and communities to improve opportunities for excellence in education and success in school and community life.

For more information about us, please contact:

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