

SPECIAL EDUCATION IN NORTH DAKOTA

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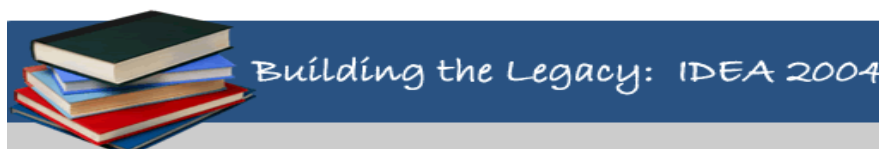
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Procedural Safeguards: Prior Written Notice and Parental Consent Procedures



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United States Department of Education, Office of Special Education Programs (OSEP)

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Introduction

These guidelines, prepared by the North Dakota Department of Public Instruction (NDDPI) Office of Special Education will assist special educators and administrators in providing prior written notice and parental rights, and in obtaining parent consent. Procedural safeguards ensure that parents are adequately informed of actions proposed or refused by the school and know the options for themselves and their children, including refusal to consent to evaluation, placement, or services.

Parental involvement provides a more global view of the child's learning or behavioral needs in school, home, and community environments. This involvement results in a more comprehensive evaluation and development of an educational plan addressing the student's unique needs and characteristics.

The Individuals with Disabilities Education Improvement Act, 2004, referred to as IDEA 2004, emphasizes improving results for children with disabilities. The IDEA 2004 also maintains the importance of the procedural safeguards that have been in place for children and their parents since 1975. This guidance document has been revised to reflect the most recent changes in the law.

The IDEA 2004 establishes the conditions under which parental prior written notice must be provided, what the notice must include, and when parental consent must be obtained. This document also contains instructions for preparing prior written notice of special education action and notice of meeting forms. Additionally, the table on page 4 "*Summary of Procedures Regarding Procedural Safeguards*" indicates when school personnel must take each of the four actions.

School District Responsibilities

Each school district is required to have specific procedures in place to implement federal requirements. These requirements are found in the *Summary of Procedures* (p. 4) which describes procedures regarding prior written notice, notice of meeting, procedural safeguards, and parental consent.

Procedural Safeguards

Federal regulations require "a full explanation of all of the procedural safeguards available to the parents..." as part of the prior notice. The *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards*, available through each special education unit, contains a complete listing of these safeguards. This document should be given annually and carefully explained to parents:

- at the time of referral for an initial assessment;
- upon receipt of the first State complaint;
- after the receipt of the first due process complaint;
- any time thereafter at a parent's request; or
- on the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct.

North Dakota's parent advocacy organizations have cited the "first contact" with parents as critical in helping families understand the process and their roles as active team members. The NDDPI has developed the *Parent Guide to Special Education* to more comprehensively explain parents' rights and the process for students to access special education services. The IEP team members should allow sufficient time and attention during the first meeting with parents for explanations.

Sec. 300.504 Procedural Safeguards Notice.

- (a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy also must be given to the parents--
 - (1) Upon initial referral or parent request for evaluation;
 - (2) Upon receipt of the first State complaint under 300.151 through 300.153 and upon receipt of the first due process complaint under 300.507 in a school year;
 - (3) In accordance with the discipline procedures in 300.530(h); and
 - (4) Upon request by parent.
- (b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its web site if a Web site exists.

Summary of Procedures Regarding Procedural Safeguards

| Procedure | Notice of Meeting | Prior Written Notice of Special Education Action | Procedural Safeguards | Parent Consent* |
|--|---|--|-----------------------|------------------------------------|
| Universal screening: procedures used with all enrolled students to identify possible areas of difficulties that could interfere with learning. Examples include screening for vision or hearing, or review of records of all students to identify students at-risk academically. | Not required, but suggested parents be informed | Not required | Not required | Not required |
| Selective screening: procedures used with selected children who are referred due to identified risk factors. It is done to determine the significance of the risk factors impacting the child’s growth and development or academic performance. The result determines whether there is need for referral to BLT or for evaluation. | Not required, but suggested parents be informed | Required | Not required | Required |
| BLT: Building Level Team, is a team of school partners - teachers, parents, staff, and administrators - who work together as a team to help the school address the educational needs of students. All BLT members are considered equal partners in the process of school improvement. | Not required | Not required | Not required | Not required but involvement urged |
| Response to Intervention: RTI provides high-quality instruction and interventions matched to the student’s need in general education. | Not required | Not required | Not required | Not required but involvement urged |
| Initial evaluation: the first multidisciplinary evaluation of a student who is referred when BLT intervention fails to adequately address the student’s difficulties. If a student has received special education services, has been dismissed, and then is referred a second time, the procedures associated with initial evaluation must be followed. | Required | Required | Required | Required |
| Reevaluation: periodic reassessment (conducted every three years as required, or more frequently as requested) of students receiving special education services. | Required | Required | Not required | Required |
| Initial Individualized Education Program (IEP) development: preparation of an individual education program by a team of participants as required by regulations following an initial assessment. | Required | Required | Required | Not required |
| Initial placement: the first time a multidisciplinary team uses assessment data, analyzes and plans for a student’s unique educational needs, and concludes that specially designed instruction is required to meet those needs. Typically, the placement decision is made as part of the IEP meeting. If a student has received special education services and has been dismissed, the initial placement procedures must be followed if the student is subsequently assessed and determined to be in need of special education services again. | Required | Required | Required | Required |
| Annual IEP review: review of current IEP and preparation of a new or revised IEP at least every 12 months by a team of participants as required by regulations. Review of placement as well as plans for programming and services are included. | Required | Required | Required | Not required |
| Dismissal from program: termination of special education services because the student no longer needs them, or the parent or student requests termination of services. | Required | Required | Required | Not required |

| Procedure | Notice of Meeting | Prior Written Notice of Special Education Action | Procedural Safeguards | Parent Consent* |
|--|--|--|-------------------------------------|---------------------|
| <p>Registration of a due process complaint: If a parent disagrees with the identification, evaluation, educational placement or other aspects relating to their child’s free appropriate public education they may file a written complaint or request a due process hearing.</p> | <p>Required <i>(see page 12)</i></p> | <p>Not required</p> | <p>Required (sent by NDDPI)</p> | <p>Not required</p> |
| <p>Filing of a state complaint: If a parent believes that the school has violated a requirement of IDEA 2004 they may file a complaint with the state.</p> | <p>Not required</p> | <p>Not required</p> | <p>Required (sent by NDDPI)</p> | <p>Not required</p> |
| <p>Excusal of Required IEP Team Member(s): specific IEP team members are required to attend IEP meetings unless parents and the local education agency agree or consent in writing to the absence of a team member.</p> | <p>Not required</p> | <p>Not required</p> | <p>Not required</p> | <p>Required</p> |
| <p>Other agency invitation to Secondary Transition Meeting: If another agency is participating in the Secondary Transition Services needed by a student, parent consent must be given to invite them to the meeting.</p> | <p>Not required</p> | <p>Not required</p> | <p>Not required</p> | <p>Required</p> |

*Parent consent is required when information is collected on an individual child that is not being obtained for all individuals in the same school, grade, or class (Hatch Act, 1974, amended to General Education Provisions Act, 1984, 34 CFR 98).

Parental Consent for Special Education Services

The IDEA 2004 amended the requirement regarding parental consent. Previously, parent consent was required for initial evaluation and initial placement, but not for reevaluation. The IDEA 2004, however, requires parental consent for reevaluation. Consent must be obtained separately for each of these instances. For example, consent for initial evaluation may not be construed as consent for initial provision of special education services or for reevaluation.

Parental consent is required for the initial placement of a student in special education. The Consent for Initial Placement in Special Education form will be completed at the conclusion of the initial IEP meeting if the team, including parents, determines that the student needs special education and related services to benefit from general education.

A student who has been dismissed from special education services and is later suspected to have a disability must have a new Initial Consent for Evaluation form completed and, if found eligible, a new Consent for Initial Placement form must be completed.

Parental Revocation of Consent for Special Education & Related Services

If, at any time after the initial provision of special education and related services, the parents decide to revoke consent for special education and related services, they must do so in writing. Once the parents revoke consent, the school district may not continue to provide special education and related services to the student, and it may not use dispute resolution procedures (including mediation) in order to obtain agreement or a ruling that the services may be provided to the student. In this case, the school will not be required to provide FAPE and is not obligated to convene an IEP meeting or develop an IEP for the student. The school is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

IEP Meeting Excusal

The IDEA 2004 defines two situations and processes to follow when a required IEP team member is unable to attend a student's IEP meeting. The IDEA 2004 states that the attendance of specific IEP team members is required unless parents and the local education agency (LEA) agree or consent in writing to the occasional absence of a team member. The required members of the IEP team that would necessitate excusal if they were unable to attend are:

- General Education Teacher;
- Special Education Teacher;
- LEA Representative; and
- Individual who can interpret the instructional implications of evaluation results.

The IDEA 2004 defines the two situations regarding excusal with the following:

1. The parent and school district may agree in writing to excuse an IEP team member whose area of curriculum or related service is not being modified or discussed at the meeting.
2. The parent and the school district may consent in writing to excuse an IEP team member whose area of curriculum or related service is being modified or discussed at the meeting, if the member submits input in writing to the IEP team before the meeting.

A decision tree for completing the IEP Excusal Meeting Form is found in Appendix A of this document.

Prior Written Notice of Special Education Action

Prior written notice is intended to inform parents whenever:

- the school proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or
- the school refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of free appropriate public education to the student.

Prior notice must be provided to a student and the parents at the time the student reaches the age of majority. This written notice must be provided at the time the student reaches the age of majority, age 18, which may or may not be at the time of the annual review.

Parents are expected to participate in decisions where the school proposes actions that affect identification, evaluation, placement, and programming for their child. Parents must be informed of proposed actions and their rights prior to implementation. The Special Education Unit must provide the Prior Written Notice of Special Education Action form with the *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards*.

If a due process complaint is filed by the parent and the school has not already sent the parent a prior written notice regarding the subject matter contained in the complaint, the school must, within 10 days, send a response that includes:

- an explanation of why the school proposed or refused to take action on the issues raised in the due process hearing request;
- a description of other options the IEP team considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the school used as the basis for their decision; and
- a description of other factors relevant to the school's proposed or refused action.

If the school requests a due process hearing from the NDDPI and the parent receives a copy of the due process complaint notice, the parent or the parent's legal counsel would be required to send the school a response that addresses the issues raised in the due process complaint within 10 calendar days of receiving the complaint notice.

The district must inform the parent in writing of important decisions regarding their child's special education, and must be notified before those decisions are put into place.

The Prior Written Notice of Special Education Action form must include:

- a description of the action proposed or refused by the school;
- an explanation of why the school proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the school used as a basis for their decision;
- a statement that the parents of a student with a disability have protection under the procedural safeguards and, how the parents can obtain a copy of them;
- sources for parents to obtain assistance in understanding these provisions;
- a description of other options that the IEP Team considered and the reasons why those options were rejected; and
- a description of other factors relevant to the school's proposal or refusal.

The Prior Written Notice of Special Education Action must also include resources parents can utilize for help in understanding these procedural safeguards. This Notice must also include a description of how parents can file a complaint. Prior Written Notice of Special Education Action must be provided in the parent's native language, unless doing so is clearly not feasible. If the parent's native language or other mode of communication is not a written language, the school must take steps to ensure:

- that the prior written notice is translated orally (or by other means) to the parent in his or her native language or other mode of communication; and
- that the parent understands the content of the prior written notice.

The parents may also receive this Notice by email upon their request.

If the parents revoke consent for special education services, the school must discontinue the provision of special education and related services as well as send them a Prior Written Notice of Special Education Action.

Exception!

Prior written notice is not required when using procedures intended for all children as part of general education activities. Examples of exempted situations would include mass/universal screenings which involve all students in a class or the Building Level Team (BLT) process where interactions are typically between a general classroom teacher and teams. BLT activities, which may still include a special education teacher, help the classroom teacher address learning or behavior difficulties.

Preparing the Prior Written Notice of Special Education Action Form

When preparing the Prior Written Notice of Special Education Action form, enter the date (month, day, year) the notice is being sent, the student's name, and the parents' names. If the purpose of the meeting will be to develop post-secondary goals and transition services, jointly address the prior written notice to parents and a student 16 years of age or younger if appropriate, or who will be 16 by the time of the proposed action.

Enter the date the action will be effective. Allow time for parents to consider the proposed action. All sections of the Prior Written Notice of Special Education Action form must be completed.

Indicate the actions the district is proposing or refusing by checking the items listed in the areas of evaluation, identification, educational placement and the provision of Free and Appropriate Public Education (FAPE).

1. Explanation of why the district proposed or refused to take action.

Provide specific reasons for the team's decisions to propose or reject the action checked above. For example, a proposed action may be the initiation of an IEP goal that the team discussed and agreed to delay until another goal could first be accomplished. In this case, the reason for action (initiating the new goal) would be that "a previous goal has been completed and the student is ready to work on the new goal agreed upon by the IEP team." An example for rejection may be a parent's request for an amendment to the student's record because of perceived inaccuracies. The school believes the records to be accurate. In this situation the reason for rejection might be stated as "review of records and interviews with persons creating the records verified the accuracy."

2. Description of the evaluation procedures, tests, records and reports used to make the decision.

The action stated in item 1 is based on the following assessment procedures, tests, records, or reports. List the documentation used to assist in making this decision.

3. Description of options considered prior to the decision and the reason each option was declined.

List all options considered before the proposed action was selected. For example, prior to a referral for evaluations, options might have included consultation with the BLT and several trial interventions such as different seating, school-home journal regarding assignments, or monitoring behaviors. Describe why the options stated were not appropriate for the student at this time.

4. Description of other relevant factors that contributed to this decision.

List and describe those factors considered in proposing the action(s) applied to this notice but which may not be specific to evaluation or reports. Examples include changes in schedules, personnel changes, medical issues, and other factors.

Address the Prior Written Notice of Special Education Action form to students 18 or older, or who will be 18 by the time of the proposed action. If the student grants written permission, a copy may be sent to the parents. The IDEA 2004 and the Family Educational Rights and Privacy Act (FERPA) require this transfer of rights at 18 years of age.

Exception!

Continue to address Prior Written Notice of Special Education Action form(s) to parents if they have obtained legal guardianship for their child who is 18 or older.

Preparing the Notice of Meeting Form

The Notice of Meeting form serves as an invitation to the meeting and is designed to ensure participation. The Notice of Meeting form must be provided before the IEP meeting is held. This written notice contains the elements such as, purpose, time, location and attendees

Reason Notice of Meeting is Given

From the listing below, check all applicable reasons the Notice of a Meeting is being given. For example, a meeting to discuss results of an initial evaluation and determine eligibility for special education services might reasonably be expanded into a meeting to develop the IEP. If so, check both items 1 and 6.

1. Initial evaluation

If the interventions tried by the parent(s) and school or agency personnel do not assist the student in addressing the difficulty experienced, the process of collecting additional information should be initiated through a referral for a comprehensive evaluation.

2. Graduation

Special education services are no longer necessary when the parent or student requests termination of services, the student graduates, or exceeds the age of eligibility.

3. Additional evaluation to determine student needs/programming.

The student is currently receiving special education services and further assessment is needed to determine his or her unique needs for appropriate services. For example, school personnel or parents may desire additional assessment information if new medical conditions appear after the student began receiving special education services. Another example occurs when a teacher is working with a student and concerns arise that are influencing educational performance and need to be assessed.

4. Three year reevaluation to review continued need for special education services.

Reevaluation is required every three years, more frequently if conditions warrant it or if the student's parent or teacher requests it. As part of the student profile, the parent and public agency will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the student's educational program. After the completion of a student profile, the parent and school district may agree that a reevaluation is not necessary.

5. Discussion of evaluation results, development of the Integrated Written Assessment Report, and determination if there is a disability under IDEA.

Reevaluation information must be reviewed with the full team. This includes review of evaluation information when dismissal from special education services is being considered. Complete the Proposed Meeting Arrangements section at the end of the form when scheduling an IEP meeting.

6. Development of an initial Individualized Education Program (IEP). This will include a transition plan if your child is 16 years of age within the coming year or is 16 or older.

An IEP meeting is called to develop the student's initial IEP. After completing the IEP, the team will determine whether the student requires special education and/or related services. When applicable, address secondary transition services at the IEP meeting. Indicate this purpose in the Prior Written Notice of Special Education Action form.

7. Review or revision of your child's Individualized Education Program (IEP). This will include a transition plan if your child is 16 years of age within the coming year or is 16 or older.

An IEP meeting is called to review or revise an already developed IEP, or a significant change is needed in a student's program. Significant changes may include addition or deletion of goals; an increase or decrease in the amount of services; or a proposed or refused change in the type of service delivery. An example would be moving from direct instruction to consultation to support reading instruction in the general education classroom. This meeting may also require discussion of secondary transition services when applicable.

Reviews of an IEP are typically done within 12 calendar months of the previous IEP meeting. An IEP can never extend beyond 12 calendar months however, it can be reviewed sooner or written for shorter periods (e.g., one month, one semester).

8. Manifestation Determination Review (MDR) Required by IDEA when considering the exclusion of a student with a disability that constitutes a disciplinary change of placement.

Within 10 school days of the decision to remove a student from his/her current placement, the parent, the school district and relevant members of the IEP team must convene a meeting to make a manifestation determination.

9. Transfer of IEP. Review the incoming IEP of a new student or student returning to the district.

An IEP meeting is conducted when a student with an active IEP moves into a school building or district and changes are made if necessary.

10. Extended School Year Services. Annually, school district must determine if the student qualifies for extended school year services.

An IEP meeting is conducted to determine if extended school year services must be provided for a student with a disability for the student to receive FAPE.

11. Other (specify)

Describe unique situation(s) where a meeting is needed.

Contact information

Enter the name and contact information for the person responsible for coordinating meeting plans and answering parents' questions. This is usually the same individual.

Proposed meeting arrangements

Complete this section when a meeting is proposed. Meetings with parents are required for certain procedures (e.g., development or revision of the IEP).

Because parents are an integral part of the team process, they must be included and informed of school actions and findings. If parents object to a proposed action and request a meeting, the school cannot carry out the proposed action until the meeting is held and a decision is made.

Date, time, location, and meeting participants

Record specific meeting arrangements. Enter the name and position/title of each person expected to participate in the meeting. Federal regulations do not require including the individual's position or title. However, to ensure that parents are fully aware of other team members and their roles, this information is strongly recommended. For example, parents may not know the school counselor, school psychologist, administrators, or others simply by their names.

As indicated earlier, any IEP meeting must include consideration of transition services for a student 16 years of age or older at the time of the proposed action, or for a younger student, if determined appropriate. The school must invite this student.

The school must take steps to encourage the student to attend the IEP meeting. If the student is unable or chooses not to attend, the school must ensure that the student's preferences and interests are considered and documented in the planning process (See discussion of this requirement in *Guidelines: Individualized Education Program Planning Process*).

With parental consent, the school must also invite a representative of any other agency responsible for providing or paying for transition services. See *Guidelines: Individualized Education Program Planning*. Required participants for evaluation meetings are identified in *Guidelines: Evaluation Process*. Other required IEP meeting participants are identified in *Guidelines: Individualized Education Program Planning Process*.

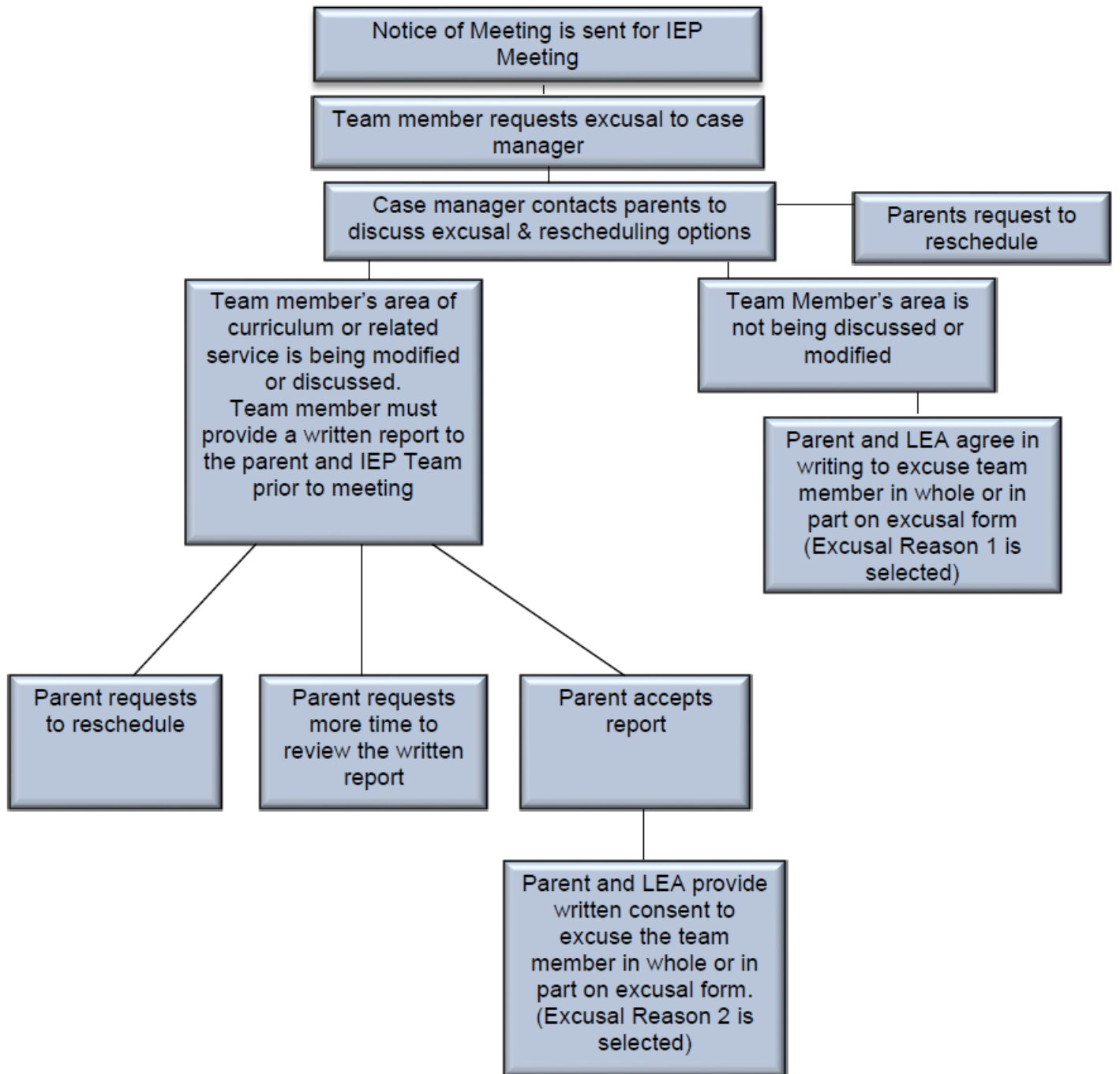
Appendices

Appendix A: Excusal of Required IEP Team Members Decision Tree Form

Appendix B: Other Resources

Appendix A

Excusal of Required IEP Team Members Decision Tree



Appendix B

Other Resources

Other Resources

The publicly funded organizations listed here may be able to assist you in understanding the procedural safeguards and other provisions of the IDEA.

Your local school district _____

Pathfinder Parent Center

Minot: (701) 837-7500
Toll Free: 1-800-245-5840
Website: pathfinder-nd.org/
FAX: 1-701-837-7548

North Dakota Protection & Advocacy (P & A) Project

Bismarck: (701) 328-2950
Toll Free: 1-800-472-2670

North Dakota Department of Public Instruction - Office of Special Education

Bismarck: (701) 328-2277
Website:

<https://www.nd.gov/dpi/education-programs/special-education>

The IDEA Advisory Committee meets several times each school year. This representative group of parents, administrators, university personnel, general and special educators makes recommendations about special education in North Dakota. Information about the advisory committee and its meeting schedule are available from the NDDPI Office of Special Education by calling (701) 328-2277 or at

<https://www.nd.gov/dpi/parentscommunity/idea-advisory-committee>