

MINIGUIDE 2

Parent/Caregiver Rights in Special Education



The Oregon Department of Education created this series of miniguides for Indigenous families with children in special education.

Miniguide 2 shares one family's experience understanding their rights in the special education process. It may be similar to what you have encountered or will go through. At the end of the guide, we include some common questions and answers on this topic.

*This series supports a comprehensive guide that has specific details and legal information to help you navigate the education system and get the right support for your child. For more detail, see **The Journey to a Free Appropriate Public Education for Students with Disabilities: A Guide for Indigenous Families**.*

Understanding and Asserting Talia's Rights

Talia sat at her kitchen table, staring at the stack of papers. Her son Eli had been struggling in school for months. The school had finally sent a referral letter and recommended a special education evaluation. Talia felt overwhelmed. She wanted the best for Eli, but the documents were confusing and made her feel lost.

Her first meeting with the school was a blur. The staff members were kind, but they spoke quickly and used unfamiliar language. They used terms like "IEP," "504 plan," and "MTSS," but Talia did not know what they meant. She nodded along, hesitant to ask questions and look uninformed.

Talia's first concern arose when she asked for a copy of her rights—known as procedural safeguards. The team brushed off her request, saying it was not necessary yet. Talia wanted to support Eli as soon as possible, so she gave her consent to begin the evaluation.

As the process unfolded, Talia noticed her voice was not being heard. She had valuable insights into Eli's learning preferences: She had watched him learn traditional skills like hunting and fishing with her father and brothers. But when Talia shared these observations, they were dismissed. In one meeting, she tried to explain how Eli's Indigenous heritage was being overlooked in the classroom and how that might be affecting his performance. The team moved on without acknowledging her concerns.

Later, when the school shared the evaluation report, Talia was not given enough time to review it. She felt pressured to agree with the recommendations without fully understanding them. When she asked for a clearer explanation, the responses were vague. This left her more confused and concerned that her right to understand and question the process was being ignored.

Eli was identified as having a specific learning disability, and the team created an individualized education program, or IEP. It included accommodations like extended time on assignments, access to audiobooks, and small group reading instruction.

But Talia was not sure how to move forward. She did not know what rights she and Eli truly had. She felt uncertain about how to advocate for the support he needed.

Summary

Parents and caregivers have important rights in the special education process:

- **To receive your rights (procedural safeguards) in writing** when your child is referred for evaluation, once each year, and anytime you ask for them.
- **To give or deny consent** for evaluations and services, in writing and in your preferred language.
- **To fully participate in all meetings**, scheduled at times that work for you, with virtual options available if needed.
- **To bring others with you**—such as grandparents, aunties, Elders, or advocates—to support you in meetings.
- **To access your child's school records** and request corrections if needed.
- **To challenge decisions** through mediation, filing a complaint, or requesting a formal hearing.

Q&A. Parent/Caregiver Rights¹

Q. In Talia's scenario, did the school have a responsibility to make sure Talia understood the terms they used (like "MTSS" and "504 plan")?

A. The school does not have to explain the terms to Talia by law. However, since Talia is part of the team that will decide how to support Eli, she has the right to stop the meeting and ask any questions. In the meeting described above, the team was deciding if a special education evaluation would help Eli. The school cannot start this evaluation without written consent from a parent/caregiver. Talia has the right to have all her questions answered and understand everything clearly before giving consent.

Q. Since Talia had no experience with special education, should the school have given her a copy of her rights before the evaluation process began?

A. Parents/caregivers must be given a copy of their rights (procedural safeguards) any time they ask for them. Parents/caregivers must also receive a copy, without having to ask, at the same time they receive an official letter that their child was referred for special education, and at least once per year each year their child is supported by a special education program in a public school. In Talia's case, the referral had already taken place, so she should have already received a copy of her procedural safeguards.

Q. What are the procedural safeguards?

A. The procedural safeguards describe specific parent/caregiver rights that are guaranteed by the federal Individuals with Disabilities Education Act (IDEA). Parents/caregivers should receive a copy of the procedural safeguards at the time of their child's first referral, once a year every year their child receives special education services, and any time that:

- They file a written complaint regarding their child.
- They submit a written request for a due process hearing regarding their child's education.
- Their child is suspended (in school or out of school) or expelled, or if their child accumulates 10 or more days of suspension or expulsion during a school year.
- The parent/caregiver asks for it.

¹ Answers to questions related to procedural safeguards come from Oregon Department of Education guidance: <https://www.oregon.gov/ode/rules-and-policies/pages/procedural-safeguards.aspx>

The notice of procedural safeguards must:

- Include a full explanation of the rights of parents/caregivers.
- Be written in the native language of the parents/caregivers.
- Be easy to understand.

Q. What rights exactly are covered by the procedural safeguards?

A. The procedural safeguards detail parent/caregiver rights in several key areas:

1. Participation and ability to get information

- Parents/caregivers have the right to participate in all IEP meetings. These meetings may focus on special education identification and evaluation and/or components of the IEP.
- Parents/caregivers have the right to a full explanation of their rights and the procedures involved in special education. They can get a copy of all their child's educational records upon request.

2. Parental permission/consent

- Before asking for permission to evaluate a child or provide special education services, schools must explain to parents/caregivers what they plan to do—in the family's native language and in an understandable way. Parents/caregivers must give consent before the first evaluation and any special education support can happen.
- Parents/caregivers can take back their consent for special education and related services at any time.

3. Written notice before something happens

- Schools must give parents/caregivers a notice in writing before:
 - Making a change to special education services.
 - Refusing to start or change special education services.
 - Conducting a special education evaluation.
 - Changing the amount of time a student in special education spends in specific classrooms during the day.

4. Independent educational evaluations (IEEs)

- Parents/caregivers have the right to obtain an IEE if they disagree with the school's evaluation of their child.
- In some, but not all, situations, parents/caregivers may be able to have the school pay for the IEE.

5. Dispute resolution options

- Parents/caregivers have the right to challenge decisions made by the school regarding their child's special education.
- A parent/caregiver can dispute or file a complaint at any time. Federal law provides options for solving disputes, including:
 - *Facilitated IEP meetings.* A trained person who is not associated with the family or the school leads the meeting to help find a solution. The school district or state provides the facilitator and pays any associated costs for this process.
 - *Mediation.* A trained neutral mediator helps parents/caregivers and the school solve the problem. The school district or state provides the mediator and pays any associated costs for this process.
 - *Complaints.* A written letter to the state, district, or school stating that a violation of special education law has occurred. The agency accused of the violation will respond, saying if they will investigate the violation and look to correct it or not. The cost for any investigation is paid for by the school district or the state.
 - *Due process.* A formal legal process where the complaint is heard before a court that seeks to determine a plan for solving the issue.
 - Parents/caregivers can ask for an impartial due process hearing to resolve disagreements with the school regarding their child's special education.
 - The hearing must be led by an impartial hearing officer who knows about state and federal special education law.
 - The school district, state, and parents/caregivers pay their own costs for legal representation. Depending on the outcome of the hearing, the group that loses the complaint may have some additional costs.
 - During a dispute, a student will usually stay in their current educational placement ("stay put") while everyone works to solve the problem, unless the parents/caregivers and the school agree on a change in placement.
 - Visit the [Oregon Department of Education Dispute Resolution website](#) for more information.

6. Confidentiality of records

- Parents/caregivers have the right to keep their child's school records private.

7. Access and amendment rights

- Parents/caregivers have the right to look at all their child's educational records and ask for changes if they think the records are not correct or misleading.

Q. It says that parents/caregivers have the right to participate in IEP meetings. What if the school does not tell a parent/caregiver about an IEP meeting or holds it at a time when the parent/caregiver cannot attend?

A. Schools must notify parents/caregivers of IEP meetings. The notification must happen early enough that parents/caregivers have the opportunity to attend. The notice must explain the purpose of the meeting and list everyone who will attend. The meeting must also be scheduled at a time and place agreed upon by the school and the parents/caregivers. It is possible to attend IEP review meetings by phone or video conference.

Q. Who is considered a “parent” under special education law and can make educational decisions for a student?

A. Under the federal IDEA law, a “parent” is defined as:

1. A biological or adoptive parent of a child.
2. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent.
3. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the state if the child is a ward of the state).
4. An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.
5. A surrogate parent who has been appointed by the school.²

Q. What if a student lives with their grandparents?

A. If the child lives with their grandparents and the grandparents act in the place of a biological parent, then the grandparents are defined as a “parent” under the federal IDEA law and can make educational decisions for the child. However, this does not impact parental rights. If a birth or adoptive parent wants to act on behalf of the child and still has the legal rights and responsibilities for the child, then that parent—not the grandparents—would legally be considered the “parent.”

Q. I'm not the biological parent but am acting in place of the parent.

How can I get more information?

A. www.Grandfamilies.org is a national legal resource for grandfamilies within and outside the child welfare system.

² Title 34 of the Code of Federal Regulations (CFR) at section 300.30(a).

The Grandfamilies & Kinship Support Network (www.GKSnetwork.org) is a national assistance center for government agencies and nonprofit organizations in states and Tribes who serve grandfamilies and kinship families.

Q. The school IEP team did not seem to consider Talia's ideas to support Eli. Do parents/caregivers have any rights to make sure the school considers their ideas?

A. Parents have a legal right to participate in developing their child's special education evaluation and IEP. The IEP team must allow for and consider parent/caregiver input. If there is disagreement, parents/caregivers have the right to ask the school to provide documented evidence to support their claims or arguments. Whenever IEPs are developed, there should be documentation of information from both parents/caregivers and the school about what they see in a child's performance and behavior as well as any parental concerns. Parents/caregivers must give permission before schools can begin special education services (the first IEP). However, once services are initiated, schools can revise and implement IEPs without parent/caregiver approval.