

Middleton School District #134

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SPECIAL EDUCATION RIGHTS STATEMENT

The individuals with Disabilities Education Act (IDEA) entitles all eligible students with disabilities to a free appropriate public education (FAPE). As a parent of a student with a disability, or an adult student with a disability if rights have transferred to you, IDEA and state law provide you with specific procedural safeguards or rights. This *Special Education Rights Statement* gives you an explanation of the following rights:

Section	Title
A.	Consent
B.	Written Notice
C.	Evaluation/Reevaluation Procedures
D.	Independent Educational Evaluation
E.	Individualized Education Program/Least Restrictive Environment
F.	Resolving Disagreements About the Education Program
G.	Mediation
H.	Formal Written Complaint
1.	Due Process Hearing
J.	General Provisions for Discipline under the IDEA
K.	Procedures for Disciplinary Placement in an Interim Alternative Educational Setting
L.	Expedited Due Process Hearing
M.	Attorneys' Fees
N.	Requirements for Unilateral Placement in a Private School/Facility at Public Expense
O.	Education Records
P.	Using Public and Private Insurance Funds to Provide FAPE

Your school district can provide more information on these rights. If you have questions, you should speak to the

special education teacher, school principal, director of special education, or superintendent in the district.

Additional

sources of information on your rights can be found at the end of this rights statement.

Abbreviations

CAP	corrective action plan
ECR	early complaint resolution
FAPE	free appropriate public education
FERPA	Family Educational Rights and Privacy Act
IAE	interim alternative educational setting
IDEA	Individuals with Disabilities Education Act
IEE	independent educational evaluation
IEP	individualized education program
IFSP	individual family service plan
LRE	least restrictive environment
SDE	Idaho State Department of Education

A. Consent

Consent, indicated by your signature, means that you have been fully informed, understand, and agree to certain educational activities before they take place. The request for consent will describe the activity and list records, if any, that will be released and to whom. Your consent is voluntary and may be revoked at any time prior to the action.

You have the right to:

1. Provide written consent before assessments take place when the district evaluates or reevaluates.
2. Provide written consent before special education services are provided for the first time.
3. Provide written consent before personally identifiable information is disclosed to unauthorized persons. Refer to Section O, Education Records, for a list of exceptions to this right.
4. Provide written consent before private insurance is accessed by the district.
5. Provide written consent to use an individual family service plan (IFSP) instead of an individualized education program (IEP) when a child is transitioning from Part C services to Part B services.
6. Refuse or withhold consent.
7. Revoke consent if the action has not already taken place.

If you refuse to give written consent for an initial assessment or for special education services for the first time, the district may ask for mediation or a due process hearing. If you fail to respond to reasonable measures by the district to obtain your consent for assessments during a reevaluation, personnel may proceed with the assessments.

B. Written Notice

You have the right to:

1. Receive written notice a reasonable time before the district initiates or changes the identification, evaluation, educational placement, or the provision of FAPE. If you ask the district to initiate or change any of these matters, the district must consider your request and give you written notice within a reasonable amount of time informing you that the district will grant or refuse your request. Reasonable time has generally been defined as 10 calendar days. The notice will include:
 - a. A description of the action proposed or refused.
 - b. An explanation of why the district proposes or refuses to take the action.
 - c. A description of other options the district considered and the reasons why those options were rejected.
 - d. A description of each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action.
 - e. A description of any other factors, which are relevant to the district's proposal or refusal.
 - f. A statement informing you of your rights under the IDEA and how to obtain a copy of this *Special Education Rights Statement*.
 - g. Sources for you to contact to obtain assistance in understanding your rights.
2. Receive the notice in writing most people can understand. If you cannot read, the notice can be read to you. If you do not understand English, the notice may be translated for you. The district must have written evidence that these requirements were met.
3. File a written objection if you disagree with an IEP change or placement change proposed by the district. If your written objection is postmarked or hand delivered within 10 calendar days of receiving the district's written notice of a proposed change, the proposed change that you object to cannot be implemented. However, the

district may request another IEP team meeting, voluntary mediation, or a due process hearing to resolve the disagreement. The written objection cannot be used to prevent the district from placing a student in an interim alternative educational setting (IAES) in accordance with IDEA procedures for discipline of a student with a disability.

C. Evaluation/Reevaluation Procedures

A full and individual evaluation of educational needs must be conducted before a student can be found eligible for, and receive, special education. A referral to consider a special education evaluation can be made by anyone, including you.

After the referral is made, an evaluation team, which includes you, will be formed. This team will review existing evaluation data on the student and input from you to decide whether an evaluation is needed. The team will also decide what additional information, if any, is needed to conduct the evaluation.

In conducting an evaluation, the district will gather information related to the student's involvement and progress in the general education curriculum through observations, interviews, tests, a review of records, and information provided by you. All of this information will be used by the evaluation team to determine whether the student is eligible for special education and then by the IEP team to develop the IEP.

Once a student is eligible for special education, a reevaluation must be completed every 3 years, or sooner if you or the student's teacher have concerns and request one. Before any reevaluation, the evaluation team will review existing information and determine if additional information is needed to decide if the student is still eligible. If no additional assessments are required, you will be provided written notice of that decision. However, you have the right to request any assessment to determine whether the student is still eligible. A reevaluation must be conducted before determining that a student is no longer eligible, except when a student receives a diploma for completing regular graduation requirements or completes the semester in which he or she turns 21 years old.

As a member of the evaluation team, you have the right to:

1. Review existing evaluation data and give input for the evaluation.
2. Participate in deciding what additional data is needed or request assessments to determine eligibility.
3. Participate in determining eligibility for special education services.
4. Participate in meetings with respect to identification and evaluation, if convened by the district.
5. Request a meeting.
6. Receive a copy of the eligibility report and any additional eligibility documentation.

D. Independent Educational Evaluation

If you disagree with an evaluation conducted by the district, you have the right to an independent educational evaluation (IEE) by a qualified examiner(s) who does not work for the district. The IEE might be provided to you at no cost, but first the district must have had the opportunity to complete an evaluation. If you believe additional assessments or procedures are needed beyond those conducted by the district to determine eligibility, you are not automatically entitled to them. You should ask the district for further assessments, and if the district refuses, you may request mediation or a due process hearing.

If you request an IEE, the district may ask why you disagree with the district's evaluation but you do not have to provide an explanation. The district must either provide you with information about where an IEE may be obtained or initiate a due process hearing without unnecessary delay to show that its evaluation is appropriate. If a hearing decision is that the district's evaluation is appropriate, you still have the right to an IEE, but at your own expense.

Whenever you request or obtain an IEE, the district must also give you the criteria it uses when an evaluation is conducted. This includes:

1. location for the evaluation;
2. required qualifications of the examiner;
3. state eligibility criteria for special education; and
4. maximum allowable charges for specified evaluations to eliminate unreasonably excessive fees, including travel costs for necessary services not available in the community.

If you can demonstrate that unique circumstances justify an IEE that falls outside the district's cost criteria, then it will be publicly funded. A hearing officer may order that an IEE be conducted as part of a hearing. In that case, the IEE must be publicly funded.

If you obtain an IEE that meets the district's IEE criteria and make the evaluation available, the district must consider the results in any decision made about providing FAPE. You may also present the results of an IEE at a due process hearing. This is true regardless of whether the IEE was at your expense or public expense.

E. Individualized Education Program/Least Restrictive Environment

The individualized education program (IEP) is the written educational plan for special education and related services to be provided by the district. You and the district design the IEP together. It is reviewed and revised at least once each year.

The IEP becomes the basis for determining placement in the least restrictive environment (LRE). LRE provisions require that the student be enrolled in the school he or she would attend if nondisabled unless the IEP requires another arrangement. If the student cannot be educated in the neighborhood school, the LRE placement should be as close to the student's home as possible. The district's reassignment of a student to another classroom or school is not a change in LRE placement when the IEP goals remain unchanged and the degree of interaction with nondisabled peers remains the same. Removal from the general educational environment occurs only when the disability is such that education with the use of supplementary aids and services cannot be achieved satisfactorily. A student may not be removed from education in age-appropriate classrooms solely because of needed modifications in the general education curriculum. To the maximum extent appropriate, students with disabilities should be educated with students of similar chronological age who are nondisabled.

You have the right to:

1. Participate as a member of the IEP team to develop the IEP and determine the LRE placement either in person or by other means.
2. Be informed of the time, date, location, who is invited, and the purpose of IEP team meetings.
3. Receive a copy of the *Special Education Rights Statement* before IEP meetings.
4. Bring someone (advocate, friend, service coordinator) to the meeting if you wish.
5. Receive a copy of the IEP.
6. Have an array of LRE placements available to meet the student's needs.

F. Resolving Disagreements About the Educational Program

At times, you and the district may disagree with the identification, evaluation, placement, or the provision of FAPE. You are encouraged to contact the district and use various methods to resolve any differences as soon as they arise. You also have the right to file a written objection if the district proposes an IEP change or placement change that you disagree with. (See Section B of this statement.) If you are unable to resolve disputes with the district, you may

contact the district or call the SDE, 208/332-6910, about four state-administered options. These options include mediation, a formal complaint, a due process hearing, and an expedited due process hearing. Each of these options is explained in the following sections.

G. Mediation

Mediation is a structured yet informal process for resolving conflict. It is voluntary and is provided at no cost to you or the district. An SDE mediator is an impartial person, not employed by the district, who is trained in communication and mediation skills. He or she will meet with you and the district to try to reach a mutual written agreement. If you have already requested a due process hearing or filed a complaint, you may also request mediation. Mediation does not interfere with the rights or the timelines for a complaint or hearing. To request mediation, contact your district or the Dispute Resolution Coordinator at the State Department of Education, 208/332-6912.

H. Formal Written Complaint

If you believe the district has violated a requirement of the IDEA, you may file a formal complaint with the SDE. The complaint must be in writing and signed. A complaint filed by electronic mail will not be accepted. It must include the current date and the name, address, and telephone number of the student and the person making the complaint. It must include one or more allegations (statements) that the district has violated IDEA requirements and the facts to support the allegation(s). The alleged violations may not be older than one year from the date the complaint is filed unless the violation is considered to be ongoing or you are requesting compensatory services for a violation that occurred not more than 3 years ago.

The SDE's resolution of a formal complaint may be achieved through any combination of the following:

1. meeting with the parties and facilitating a mutually agreed to Early Complaint Resolution (ECR);
2. reviewing and approving a Corrective Action Plan (CAP) proposed by the district that addresses one or more allegations in the complaint;
3. conducting an investigation of the complaint; and
4. verifying information from the district that documents that one or more allegations have been resolved.

A written decision will be issued within 60 days and will include the findings of fact, conclusions, and procedures for implementation of the SDE's final decision, if needed. The SDE will set aside any part of a complaint that is being addressed by a due process hearing until the conclusion of the hearing. Mail complaints to the Dispute Resolution Coordinator, Idaho State Department of Education, Bureau of Special Education, P.O. Box 83720, Boise, ID 83720-0027.

I. Due Process Hearing

There are two different types of due process hearings.

- A regular due process hearing may be requested by you or the district on any matter relating to identification, evaluation, educational placement, or the provision of FAPE. A decision will be made within 45 calendar days, unless otherwise extended.
- An expedited due process hearing is used only for behavior and disciplinary issues. (See Section L of this statement.)

Due process hearing requests must be in writing and include the student's name, address, school, a description of the nature of the problem, relevant facts, and a proposed answer to the problem. A due process hearing request filed by electronic mail will not be accepted. A model form for requesting a hearing can be obtained from the district or the SDE. The SDE will provide reasonable accommodations to individuals who need assistance in filing a written request. The request may be sent to your district's superintendent, director of special education, or the Dispute Resolution Coordinator, State Department of Education, Bureau of Special Education, P.O. Box 83720, Boise, ID 83720-0027.

You have the right to:

1. Have the hearing conducted by a trained impartial hearing officer who is not employed by any agency involved in the education or care of the student.
2. Receive all evaluations completed by the district and the recommendations based on such evaluations at least 5 days before the hearing. Similarly, you are required to provide evaluations that you will use in the hearing to the district.
3. Be informed of any free or low-cost legal services and other relevant services, e.g., names of expert witnesses.
4. Have the hearing at a time and place that allows you to attend. During the hearing, you have the right to:
 - a. Attend with, and be advised by, legal counsel and by persons with special knowledge or training about students with disabilities.
 - b. Present evidence and confront, cross-examine, and compel the attendance of witnesses.
 - c. Prohibit the introduction of any evidence at the hearing that was not disclosed to you at least 5 days before the hearing.
 - d. Obtain a written transcript of the hearing or an electronic verbatim record.
 - e. Open the hearing to the public if you wish.
 - f. Have the student present during the hearing, if appropriate.
5. Receive a written decision with findings of fact and conclusions of law, or an electronic version, no later than 45 calendar days after your hearing request was received. The hearing officer may extend this timeline if requested.
6. Maintain the student's current educational placement while the due process hearing is proceeding unless you agree in writing to other arrangements. If the complaint involves a student seeking initial admission to school, the school-age student must be placed in a school until the proceedings are over.
7. Appeal the hearing officer's decision by initiating a civil action in district court. An appeal to civil court must be filed within 42 calendar days from the date of issuance of the hearing officer's decision.

8. If you are successful in a hearing and file a request in district court, you may be awarded reasonable attorneys' fees. (See Section M of this statement for more information.)

J. General Provisions for Discipline under IDEA

The district may use disciplinary removals for students with disabilities, but only to the extent they would be applied to students without disabilities. School personnel may:

1. Suspend a student for not more than 10 consecutive school days. Special education services may cease during this time.
2. Order additional short-term suspensions if they do not constitute a change of placement. A series of suspensions becomes a change of placement when it exceeds 10 cumulative school days in a school year and if a pattern is established by their proximity to one another and the total amount of time. Special education services must be provided after removal for 10 cumulative school days in the same school year.
3. Order a student's removal to an interim alternative educational setting (IAES) for not more than 45 calendar days if the student (1) possesses or carries a weapon to school or a school function, (2) knowingly possesses or uses illicit drugs, or (3) sells or solicits the sale of a controlled substance while at school or a school function. Special education services must be provided.
4. Request an expedited hearing to place a student in an IAES for up to 45 calendar days if the district can demonstrate that maintaining the student in the current placement is substantially likely to result in injury to the student or others. Special education services must be provided.
5. Seek to obtain a court order to remove a student from the current placement. Special education services must be provided during this time.
6. Expel the student for behavior that is not a manifestation of the disability. Special education services must be provided after 10 cumulative school days of removal in a school year.

K. Procedures for Disciplinary Placement in an Interim Alternative Educational Setting

If school personnel order a disciplinary removal to an IAES, you have the right to:

1. Be notified of the disciplinary action to be taken and to receive a *Special Education Rights Statement* no later than the date on which the decision to take disciplinary action is made.
2. Participate in the selection of the IAES that meets the following criteria:
 - a. enables the student to continue to participate in the general education curriculum, although in another setting;
 - b. allows the student to continue to receive services and modifications included in the current IEP in order to meet the goals; and
 - c. includes services designed to prevent the behavior from recurring.
3. Participate in an IEP team meeting either before or within 10 business days following the disciplinary

placement change. The purpose of the meeting is to consider the problem behavior and to:

- a. review and modify the behavioral intervention plan as needed to address the problem behavior; or
 - b. develop an assessment plan to address the problem behavior if the district has not previously conducted a functional behavioral assessment and implemented a behavioral intervention plan. Upon completing the assessments, the IEP team will meet to develop and implement appropriate behavioral interventions.
4. No later than 10 school days after the date the district decides to order an IAES, participate in a meeting to review the relationship between the disability and the behavior; this review is called a manifestation determination. The meeting can be held at the same time the IEP team considers a functional behavioral assessment and/or behavioral intervention plan. The student cannot be expelled for behavior that is related to his or her disability.
 5. Request an expedited due process hearing if it is determined that the behavior was not related to the disability and you disagree with that decision or any decision regarding a change in placement, including placement in an IAES. (See Section L of this statement.)

L. Expedited Due Process Hearing

An expedited due process hearing involves disciplinary issues, and shortened timelines apply. You have the right to request an expedited hearing if you disagree with a determination that the behavior was not a manifestation of the disability or the district's discipline decision resulting in a change of placement.

In an expedited hearing, the due process hearing procedures described in Section I of this statement will be used except for the following changes:

1. The hearing officer's written decision must be available within 20 calendar days of the request for a hearing unless an extension, not to exceed 25 calendar days, is agreed to by both parties.
2. The student must remain in the IAES until the hearing officer makes a decision or the IAES time limit runs out unless you and the district agree to another placement during the pendency of the hearing or the appeal.

If the IAES timeline runs out during the hearing, the setting prior to the IAES becomes the placement. However, if school personnel maintain that returning the student to that placement would be dangerous, they may request an expedited hearing to ask a hearing officer to continue the IAES or seek a court injunction. This expedited hearing procedure may be repeated, as necessary.

M. Attorneys' Fees

1. If you have participated in a due process hearing or civil court action against the district, you may be able to recover reasonable attorneys' fees and related costs if:
 - a. The hearing officer or court determines that you are the prevailing party.
 - b. A district court orders the district to pay fees and costs according to prevailing rates in your community for the kind and quality of legal services you received.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed after the time of a written offer of settlement to you by the district if:
 - a. The district's offer is made at least 10 days before a due process hearing or civil proceeding begins.
 - b. You do not accept the offer within 10 days after it is made.

- c. A court or due process officer finds that the relief you finally obtained from the hearing officer or court action was not more favorable to you than the offer of settlement.
 - d. An award of attorneys' fees and related costs may be made to you as a prevailing party if you were justified in rejecting the settlement offer.
3. Attorneys' fees may not be awarded:
- a. for legal representation at an IEP meeting unless such a meeting is convened as a result of a due process hearing or judicial action; or
 - b. for a mediation that is conducted before a request for a due process hearing.
4. A court may reduce an award for attorneys' fees if:
- a. During the course of the action or proceeding, you unreasonably extended the final resolution of the controversy.
 - b. The amount of the request unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience.
 - c. The time spent and legal services rendered were excessive considering the nature of the action.
 - d. The attorney representing you did not provide all of the information required in a due process hearing request.
 - e. The amount of attorneys' fees will not be reduced if the court finds that the district or SDE unreasonably extended the final resolution of the action or proceeding.

N Requirements for Unilateral Placement in a Private School/Facility at Public Expense

1. If the district has made FAPE available in a timely manner and you unilaterally (on your own and without the district's consent) place the student in a private school, the district is not required to pay for tuition, special education, or related services at the private school. However, the district must meet with representatives of private schools to determine how a proportion of the district's federal funds will be spent on providing some type of special education services to private school students with disabilities residing in its jurisdiction.
2. A court or hearing officer may order the district to reimburse you for the costs of a unilateral placement in a private school only if the student previously received special education services from the district and the court or hearing officer determines that the district did not make FAPE available in a timely manner. However, the cost of reimbursement may be denied or reduced if:
 - a. Prior to removal from public school, you did not cooperate with the district if it notified you of the intent to conduct an evaluation of the student.
 - b. There is a judicial finding of unreasonableness with respect to your actions.
 - c. Before removal from public school, you did not notify the district that you rejected its proposed placement to provide FAPE and did not state your concerns and intent to enroll the student in a private school at district expense by either:
 - (1) notifying the IEP team at the most recent IEP team meeting before removal from public school; or
 - (2) notifying the district in writing at least 10 business days (including any holidays that occur on a business day) before removal from public school.

3. A court or hearing officer will not deny or reduce reimbursement for failure to provide the notice specified in 2c above if:
 - a. The district did not notify you of your obligation to provide the notice specified in 2c above.
 - b. The district prevented you from providing such notice.
 - c. You cannot write in English or you have a disability that prevents you from providing a written statement.
 - d. The court or hearing officer determines that the placement proposed by the district would result in physical or serious emotional harm to the student.

O. Education Records

The IDEA and the Family Educational Rights and Privacy Act (FERPA) contain provisions that protect the confidentiality of student records. These laws also provide for your right to review and inspect records. The district will assume you have the right to inspect and review the student's education records unless the district has received legal documents limiting access to those records. A minor child's address can be deleted from any record, if requested in writing by the custodial parent, to prohibit a noncustodial parent from learning a home address simply by having access to school records. If you are a parent in this situation, be prepared to verify custody of your child.

You have the right to:

1. Request a list of the kinds of education records the school collects, maintains, or uses, and where those records are kept.
2. Inspect and review the student's education records. If you cannot do so at the school, you may ask the district to give you a copy of the records. The district may charge for the copies unless the charge would keep you from looking at the records. The district may not charge a fee to search for or to collect the records. The district must honor your request:
 - a. without delay but no later than 45 calendar days after the request;
 - b. before any meeting regarding an IEP; and
 - c. at least 5 business days before a due process hearing.
3. Have someone explain or interpret the records for you.
4. Give or refuse written consent to allow other people access to the education records. The request for consent must say what specific information has been requested, the purpose of the request, and who will access the records. However, consent is not required to release records when:
 - a. School employees have a legitimate educational interest in the records.
 - b. A representative of the Federal Comptroller General, the U. S. Department of Education, or the SDE accesses records for evaluation of a federal program or for enforcement or compliance with federal regulations.
 - c. A student transfers from one school with the intent to enroll in another school.
 - d. There is an emergency to protect the health and safety of the student or other individuals.
 - e. A disclosure concerns the juvenile justice systems' ability to effectively serve the student or to comply with court orders or subpoenas, as specified in state law. The district must make a reasonable effort to notify you of the order or subpoena in advance of compliance unless the subpoena specifically states that the request is not to be disclosed.
 - f. Organizations conduct studies on behalf of school districts or institutions specified under FERPA criteria.
 - g. When the district has designated information as "directory information" through its annual notification.
5. Review a district log of requests for and access to education records if the disclosure is not to the parent, adult

student, a school employee with a legitimate interest, or a party seeking directory information. This log includes the name, agency affiliation, date, and purpose for accessing the records.

6. Look only at information about the student in question if the record contains information about another student.
7. Ask the district to amend information in the record if you believe that it is incorrect, misleading, or violates privacy or other rights. If the district refuses to amend the record, you may request a district hearing. If the decision is against the district, the district must amend the record and inform you in writing. If the decision is for the district and the record is not amended, you may place a statement in the record saying why you disagree with the district's record. This statement will be maintained as part of the education record and will be released any time the record is released.
8. Be notified before the district destroys education records that are more than 5 years old and no longer needed to provide educational services. The notice must describe the information that will be destroyed after 45 days and include the procedure to formally object to the destruction of any information and have the records sent to you.

A permanent record of a student's name, address, phone number, grades, classes, immunization, test scores, attendance, grade level and year completed may be maintained by the district without a time limitation.

P. Using Public and Private Insurance Funds to Provide FAPE

The district may use Medicaid funds to pay for special education and related services. However, the district may not require you to sign up or enroll in Medicaid in order for the student to receive FAPE. If the district bills Medicaid for services, you must be notified of the frequency, amount, and type of services that the district will be submitting for reimbursement. If the district uses Medicaid, it must not result in:

1. Your family incurring out-of-pocket expense;
2. Your family paying for services required for your child outside of school that would otherwise be paid for by Medicaid;
3. A decrease in available lifetime coverage or any other insured benefit for your child;
4. An increase in premiums or lead to discontinued insurance coverage; or
5. The risk of loss of eligibility for home and community-based waivers.

The district may access your private insurance to bill for services only if you provide informed consent. Each time the district proposes to access your private insurance, the district must obtain your written consent and must inform you that a refusal to access your private insurance will not relieve the district of its responsibility to ensure that all required services are provided at no cost to you. If you consent to use private insurance, the district may use Part B funds to pay the cost of the deductible or co-pay amounts to avoid a financial cost to you.

For further explanation on any of these rights you may also contact:

State Department of Education	Idaho Parents Unlimited, Inc. (IPUL)	Comprehensive Advocacy, Inc. (Co-Ad)
Bureau of Special Education	4696 Overland Road, Suite 478	4477 Emerald St. Suite B-100
P.O. Box 83720	Boise, Idaho 83705	Boise, Idaho 83706
Boise, Idaho 83720-0027	800/242-4785	V/TT: 208/336-5353
208/332-6910	V/TT: 208/342-5884	V/TT: 800/632-5125
800/432-4601		

