

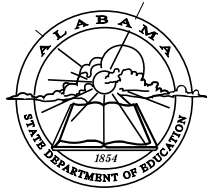


*Special Education Services | Alabama State Department of Education*

# **Alabama's Procedural Safeguards (Special Education Rights)**

ALSDE Approved January 2025





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The *Individuals with Disabilities Education Act* (IDEA), the Federal law concerning the education of children with disabilities, requires schools to provide parents with a notice containing a full explanation of the procedural safeguards available under Part B of IDEA and U.S. Department of Education regulations. A copy of this notice must be given to parents only one time a year, except that a copy must also be given to the parents:

1. upon initial referral or parental request for evaluation,
2. upon the first State complaint in a school year,
3. upon the first request for a due process hearing in a school year,
4. when a decision is made to take disciplinary action that constitutes a change of placement, and
5. upon request by a parent.

The following is a full explanation of the rights under the Part B regulations. If you would like a further explanation of any of these rights, you may contact your school principal, the special education coordinator in your school system, or your superintendent of schools. If you want another copy of your rights, have any questions, or wish to arrange a conference, please contact your local public agency.

### **Prior Written Notice** 34 C.F.R. § 300.503

Your local public agency must give you written notice (provide you with certain information in writing), within a reasonable amount of time before it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

The written notice must:

1. Describe the action that the local public agency proposes or refuses to take.
2. Explain why the local public agency is proposing or refusing to take the action.
3. Describe each evaluation procedure, assessment, record, or report the local public agency used in deciding to propose or refuse the action.
4. Include a statement that you have protections under the procedural safeguards provisions in IDEA, and if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained.
5. Include resources for you to contact for help in understanding the IDEA.
6. Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; and
7. Provide a description of other reasons why the local public agency proposed or refused the action.

### **NOTICE IN UNDERSTANDABLE LANGUAGE**

The prior written notice must be:

1. Written in language understandable to the general public; and
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, the educational agency must ensure that:

1. The notice is translated for you orally or by other means in your native language or other mode of communication;
2. You understand the content of the notice; and
3. There is written evidence that the requirements in paragraphs 1 and 2 have been met.

Parents may elect to receive notices required under these rules by an electronic mail communication if the local public agency makes that option available.

Written notice must be provided to you when your child graduates from high school with a regular diploma or exits because he or she has exceeded the age of eligibility for a free appropriate public education.

### ***The Individuals with Disabilities Education Act (IDEA)***

Part B of IDEA sets forth requirements for States and local educational agencies (school districts) in providing special education and related services to children with disabilities, ages 3 through 21.

## Parental Consent

34 C.F.R. § 300.300

### DEFINITION OF PARENTAL CONSENT

Consent means:

1. The parent has been fully informed in the native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. The parent understands and agrees in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
3. The parent understands that the consent is voluntary on the part of the parent and you may withdraw consent at any time.
4. If a parent revokes (cancels) consent after their child has begun receiving special education and related services, the parent must do so in writing.
  - a. The withdrawal of consent does not negate (undo) an action that has occurred after the consent was given, but before it was revoked.
  - b. The local public agency is not required to amend (change) the child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

### PARENTAL CONSENT FOR INITIAL EVALUATION

The local public agency cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent as described under the headings **Prior Written Notice** and **Parental Consent**.

The local public agency must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school to start providing special education and related services to your child.

If your child is enrolled in a public school or you are seeking to enroll your child in a public school, and you have refused to provide consent for an initial evaluation or failed to respond to a request to provide consent for an initial evaluation, the local public agency may but is not required to seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. The local public agency will not violate its obligations to locate, identify, and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

#### Consent for Initial Evaluation if the Child is a Ward of the State

If a child is a ward of the State and is not living with his/her parent - the local public agency does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the local public agency cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with state law; or a judge has assigned the right to make educational decisions to an individual other than the parent, and that individual has provided consent for an initial evaluation.

For initial evaluations only, if the child is a ward of the State and is not residing with his or her parent, the local public agency is not required to obtain informed consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the local public agency cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; or
3. A judge has assigned the right to make educational decisions to an individual other than the parent and that individual has provided consent for an initial evaluation.

The public agency must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a student with a disability.

*Ward of the State*, as used in the IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child;
2. Considered a ward of the State under State law; or
3. In the custody of a public child welfare agency.

*Ward of the State* does not include a foster child who has a foster parent who meets the definition of a parent as used in IDEA.

## PARENTAL CONSENT FOR SERVICES

The local public agency must obtain your informed consent before providing special education and related services to your child for the first time.

The local public agency must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, the local public agency:

1. May not use the procedural safeguards (including mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the local public agency does not provide your child with the special education and related services for which it sought your consent, your local public agency

1. Is not in violation of the requirement to make FAPE available to your child for its failure to provide those services to your child; and
2. Is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the local public agency:

1. May not continue to provide such services but must provide you with prior written notice, as described under the heading **Prior Written Notice**, before discontinuing those services.
2. May not use the procedural safeguards (including mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that special education and related services be provided to your child without your consent.
3. Is not in violation of the requirement to make FAPE available to your child for its failure to provide those services to your child.

## PARENTAL CONSENT FOR REEVALUATIONS

The local public agency must obtain your informed consent before it reevaluates your child unless the local public agency can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; and
2. You did not respond.

If you refuse to consent to your child's reevaluation, the local public agency may, but is not required to, pursue your child's reevaluation by using the mediation or due process complaint procedures to seek to override your refusal to consent to your child's reevaluation. The local public agency does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

## DOCUMENTATION OF REASONABLE EFFORTS TO OBTAIN PARENTAL CONSENT

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents of wards of the State for initial evaluations.

Your local public agency must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents of wards of the State for initial evaluations.

The documentation must include a record of the local public agency's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

### OTHER CONSENT REQUIREMENTS

Parental consent is not required before the local public agency may:

1. Review existing data as part of your child's evaluation or a reevaluation; or
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents of all children.

The local public agency may not use your refusal to consent to one service or activity related to the initial evaluation, initial provision of services, or reevaluations as a basis for denying the parent or child any other service, benefit, or activity, unless another requirement of IDEA requires the local public agency to do so.

If you have enrolled your child in a private school at your own expense or if you are home-schooling your child, and you do not provide your consent for your child's initial evaluation or the reevaluation, or you fail to respond to a request to provide your consent, the local public agency may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities) to override consent and is not required to consider your child as eligible to receive equitable services.

### Transfer of Parental Rights at Age of Majority

When a child with a disability reaches the age of majority under State law (age 19) that applies to all children (except for a child with a disability who has been determined to be incompetent under State law) the local public agency must provide any notice required by this part to both the child and the parents; all rights afforded to parents under Part B of IDEA transfer to the child; all rights afforded to parents under Part B of IDEA transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and whenever the rights have been transferred, the agency must notify the child and the parents of the transfer of rights.

## Independent Educational Evaluation

34 C.F.R. § 300.502

**Independent Educational Evaluation (IEE)** means an evaluation conducted by a qualified examiner who is not employed by the local public agency responsible for the education of your child.

**Public Expense** means that the local public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of the IDEA, which allow each state to use whatever state, local, federal, and private sources of support are available in the state to meet the requirements of Part B of the Act.

### IEE CRITERIA

If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the local public agency uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE).

Except for the criteria described above, the local public agency may not impose conditions or timelines related to obtaining an IEE at public expense.

## RIGHT TO EVALUATION AT PUBLIC EXPENSE

You have the right to an IEE of your child at public expense if you disagree with an evaluation of your child obtained by the local public agency. The local public agency must provide to parents, upon request for an IEE, information about where an IEE may be obtained, and the agency criteria applicable for IEEs.

An IEE is subject to the following conditions:

1. If you request an IEE of your child at public expense, the local public agency must, without unnecessary delay, either:
  - a. File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or
  - b. Provide an IEE at public expense, unless the local public agency demonstrates in a hearing that the evaluation of your child that you obtained did not meet the local public agency's criteria.
2. If the local public agency requests a hearing and the final decision is that the local public agency's evaluation of your child is appropriate, you still have the right to an IEE, but not at public expense.
3. If you request an IEE of your child, the local public agency may ask why you object to the evaluation of your child obtained by the local public agency. However, the local public agency may not require an explanation and may not unreasonably delay either providing the IEE of your child at public expense or filing a due process complaint to request a due process hearing to defend the local public agency's evaluation of your child.

You are entitled to only one IEE of your child at public expense each time the local public agency conducts an evaluation of your child with which you disagree.

## PARENT-INITIATED EVALUATIONS

If you obtain an IEE of your child at public expense or you share with the local public agency an evaluation of your child that you obtained at private expense:

1. The local public agency must consider the results of the evaluation of your child, if it meets the local public agency's criteria for an IEE, in any decision made with respect to the provision of a FAPE to your child; and
2. You or the local public agency may present the evaluation as evidence at a due process hearing regarding your child.

## REQUESTS FOR EVALUATIONS BY HEARING OFFICERS

If a hearing officer requests an IEE of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

## Dispute Resolution Options

### DIFFERENCE BETWEEN STATE COMPLAINT AND DUE PROCESS HEARING PROCEDURES

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a local public agency, the state department of education, or any other public agency. Only you or a local public agency may file a due process hearing request on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a FAPE to the child. While the staff of the state educational agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process hearing (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period unless the hearing officer grants a specific extension of the timeline at your request or the local public agency's request.

You are entitled to only one IEE of your child at local public expense each time the local public agency conducts an evaluation of your child with which you disagree.

Only you or a local public agency may file a due process hearing request.



## STATE COMPLAINT PROCEDURES 34 C.F.R. § 300.151

The state educational agency must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another state;
2. The filing of a complaint with the state educational agency; and
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

## REMEDIES FOR DENIAL OF APPROPRIATE SERVICES

In resolving a State complaint in which the state educational agency has found a failure to provide appropriate services, the SEA will address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
2. Appropriate future provision of services for all children with disabilities.

## MINIMUM STATE COMPLAINT PROCEDURES

The state educational agency must include in its State complaint procedures a time limit of 60-calendar-days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the state educational agency determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the local public agency or other public agency with the opportunity to respond to the complaint, including, at a minimum:
  - (a) at the option of the local public agency, a proposal to resolve the complaint; and (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the local public agency or other public agency is violating a requirement of Part B of IDEA; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; and (b) the reasons for the state educational agency's final decision.

## Time Extension; Final Decision; Implementation

The state educational agency's procedures described above also must:

1. Permit an extension of the 60-calendar-day limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; or (b) you and the local public agency voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution.
2. Include procedures for effective implementation of the state educational agency's final decision, if needed, including (a) technical assistance activities; (b) negotiations; and (c) corrective actions to achieve compliance.

## State Complaints and Due Process Hearings

If a written State complaint is received that is also the subject of a due process hearing as described under the heading Filing a Due Process Complaint, or the State complaint contains multiple issues of which one or more are part of such a hearing, the State will set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the State complaint that is not a part of the due process hearing will be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the local public agency), then the due process hearing decision is binding on that issue and the state educational agency must inform the complainant that the decision is binding.

A State complaint alleging the local public agency's failure to implement a due process hearing decision will be resolved by the state educational agency.

The state educational agency must have written procedures for resolving any complaint, including a complaint filed by an organization or individual from another state.

## **FILING A STATE COMPLAINT** 34 C.F.R. § 300.153

An organization or individual may file a signed written State complaint under the procedures described previously.

The State accepts electronic filings of State complaints, and digital signatures are needed. When an electronic State complaint is submitted, the state educational agency will:

1. Identify and authenticate a particular person as the source of the consent and indicate such person's approval of the information contained in the electronic consent;
2. Be sufficient enough to ensure that a party filing a State complaint electronically understands that the complaint has the same effect as if it were filed in writing; and
3. Ensure that the same confidentiality requirements that apply to written State complaints apply to State complaints filed electronically.

Address written complaints to the ALSDE, SES, at:

E-mail address: [sesdr@alsde.edu](mailto:sesdr@alsde.edu)

Mailing Address: SES WRITTEN COMPLAINT  
Special Education Services  
Alabama State Department of Education  
P.O. Box 30201  
Montgomery, AL 36130

The State complaint must include:

1. A statement that the local public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 C.F.R. Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific child:
  - a. The name of the child and address of the residence of the child;
  - b. The name of the school the child is attending;
  - c. In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - d. A description of the nature of the problem of the child, including facts relating to the problem; and
  - e. A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading **Adoption of State Complaint Procedures**.

The party filing the State complaint must forward a copy of the complaint to the local public agency or other public agency serving the child at the same time as the party files the complaint with the state educational agency.

The state educational agency will not issue written decisions in response to anonymous complaints. However, depending upon the nature of the anonymous complaint, the Department may consider the information as part of the general supervisory responsibilities through the monitoring system.

## **State Complaint Model Form** 34 C.F.R. § 300.509

The state educational agency developed a model form to help with the filing of a State complaint. However, the State does not require the use of this model form to file a State complaint. You can use the model form or another form, as long as it contains the required information for filing a State complaint. The State's model form to file a State complaint may be found at: [Dispute Written State Complaint](#) or [www.alabamaachievers.org](http://www.alabamaachievers.org) > Families and Students > Special Education > Dispute Resolution > Dispute Written State Complaint

The state educational agency will not issue written decisions in response to anonymous complaints.

## STATE MEDIATION PROCEDURES 34 C.F.R. § 300.506

The state educational agency makes mediation available to allow you and the local public agency to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve any disputes under Part B of IDEA.

### Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the local public agency's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights provided under Part B of IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The local public agency may develop procedures that offer parents and schools that choose not to use the medication process, an opportunity to meet at a time and location convenient with a disinterested party who:

1. Is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; and
2. Would explain the benefits of, and encourage the use of, the mediation process to you.

The state educational agency has a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services.

Mediators are selected on a rotational or other impartial basis.

The State is responsible for the cost of the mediation process, including the costs of the meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the local public agency.

If you and the local public agency resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); and
2. Is signed by both you and a representative of the local public agency who has the authority to bind the local public agency.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

The SEA will allow other state enforcement mechanisms (a State complaint, mediation, or a due process hearing) to seek enforcement of mediation agreements. The use of those mechanisms are not mandatory and must not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States. AAC 290-8-9.08(13)

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal or State court of a state receiving assistance under Part B of IDEA.

However, parties are not required to sign a confidentiality pledge before mediation begins.

The state educational agency makes mediation available to allow you and the public agency to resolve any disputes under the IDEA.

Discussions during the mediation process are confidential and cannot be used as evidence in any future due process hearing or civil proceeding of any Federal Court or State Court.

### Impartiality of Mediator

The mediator:

1. May not be an employee of the state education agency or the local public agency that is involved in the education or care of your child; and
2. Must not have a personal or professional interest that conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of the state educational agency solely because he or she is paid by the State to serve as a mediator.

### Mediation Request Form

The state educational agency developed a mediation request form to help with requesting mediation. However, the State does not require the use of this form to request mediation. The State's mediation request form may be found at: [Dispute Mediation Request](#) or [www.alabamaachievers.org](http://www.alabamaachievers.org) > Families and Students > Special Education > Dispute Resolution > Dispute Mediation Request.

## DUE PROCESS HEARING PROCEDURES 34 C.F.R. § 300.507

### Filing a Due Process Complaint

You or the local public agency may file a due process complaint on any matter relating to:

1. A proposal or a refusal to initiate or change the identification, evaluation, or educational placement of your child, or
2. The provision of a FAPE to your child.

The due process complaint must allege a violation that happened not more than two (2) years before you or the local public agency knew, or should have known, about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you cannot file a due process complaint within the timeline because:

1. The local public agency specifically misrepresented that it had resolved the issues identified in the complaint; or
2. The local public agency withheld information from you that it was required to provide you under the IDEA.

The local public agency must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or the local public agency files a due process complaint.

#### Alabama Disabilities Advocacy Program (ADAP)

P.O. Box 870395 · Tuscaloosa, AL 35487-0395 · (800) 826-1675 · [www.adap@adap.ua.edu](mailto:www.adap@adap.ua.edu)

#### Alabama Parent Education Center (APEC)

10520 US Highway 231 · Wetumpka, AL 36092 · (866) 532-7660 · [www.alabamaparentcenter.com](http://www.alabamaparentcenter.com)

#### Legal Services Alabama

2567 Fairlane Drive, #300 · Montgomery, AL 36116 · (866) 456-4995 · [www.legalservicesalabama.org](http://www.legalservicesalabama.org)

A referral to an attorney specializing in special education law may be obtained by contacting the Alabama State Bar Association at (800) 392-5660.

### Due Process Complaint 34 C.F.R. § 300.508

To request a hearing, you or the local public agency (or your attorney or the local public agency's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

A referral to an attorney specializing in special education law may be obtained by contacting the Alabama State Bar Association at (800) 392-5660.

### Content of a Due Process Complaint

The due process complaint must include the following:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the local public agency) at the time.

### Notice Required Before a Hearing on a Due Process Complaint

You or the local public agency may not have a due process hearing until you or the local public agency files a due process complaint that includes the information listed in the previous section.

### Sufficiency of Complaint

For a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the local public agency) notifies the hearing officer and the other party in writing within 15 calendar days of receiving the complaint, that the receiving party believes the due process complaint does not meet the requirements listed above.

Within five (5) calendar days of receiving the notification that the receiving party considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above and notify you and the local public agency in writing immediately.

### Complaint Amendment

You or the local public agency may amend the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described under the heading **Resolution Process**; or
2. By no later than five (5) days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

### Public Agency Response to a Due Process Complaint

If the local public agency has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the local public agency must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the local public agency proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the local public agency used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the local public agency's proposed or refused action.

Providing the information in items 1-4 above does not prevent the local public agency from asserting that your due process complaint was insufficient.

For a due process complaint to go forward, it must be considered sufficient.

A model due process hearing request form can be found at [alabamaachieves.org](http://alabamaachieves.org).

### Other Party Response to a Due Process Complaint

Except as stated under the subheading immediately above, **Local Public Agency Response to a Due Process Complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

### Due Process Complaint Model Form 34 C.F.R. § 300.509

The state educational agency developed model forms to help you file a due process complaint. However, the State does not require the use of this model form. You may use the model form or another form, as long as it contains the required information for filing a due process complaint.

A model due process hearing request form can be found at: [Dispute Due Process Complaint](#) or [www.alabamaachieves.org](http://www.alabamaachieves.org) > Families and Students > Special Education > Dispute Resolution > Dispute Due Process Complaint.

## RESOLUTION PROCESS 34 C.F.R. § 300.510

### Resolution Meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the local public agency must convene a meeting with you and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in your due process complaint.

The meeting:

1. Must include a representative of the local public agency who has decision-making authority on behalf of the local public agency; and
2. May not include an attorney of the local public agency unless you are accompanied by an attorney.

You and the local public agency determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint so that the local public agency has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the local public agency agree in writing to waive the meeting; or
2. You and the local public agency agree to use the mediation process, as described under the heading **Mediation**.

### Resolution Period

If the local public agency has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar day timeline for issuing a final due process hearing decision, as described under the heading **Hearing Decisions**, begins at the expiration of the 30-calendar day resolution period, with certain exceptions for adjustments made to the 30-calendar day resolution period, as described below.

Except where you and the local public agency have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If the local public agency has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.



If after making reasonable efforts and documenting such efforts, the local public agency is not able to obtain your participation in the resolution meeting, the local public agency may, at the end of the 30-calendar day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the local public agency's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the local public agency fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint or fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar day due process hearing timeline.

### Adjustments to the 30-Calendar Day Resolution Period

If you and the local public agency agree in writing to waive the resolution meeting, then the 45-calendar day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar day resolution period, if you and the local public agency agree in writing that no agreement is possible, then the 45-calendar day timeline for the due process hearing starts the next day.

If you and the local public agency agree to use the mediation process but have not yet reached an agreement, at the end of the 30-calendar day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the local public agency withdraws from the mediation process during this continuation period, then the 45-calendar day timeline for the due process hearing starts the next day.

### Written Settlement Agreement

If a resolution to the dispute is reached at the resolution meeting, you and the local public agency must enter into a legally binding agreement that is:

1. Signed by you and a representative of the local public agency who has the authority to bind the local public agency; and
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.

If you and the local public agency enter into an agreement as a result of a resolution meeting, either party may void the agreement within three (3) business days of the time that both you and the local public agency signed the agreement.

### IMPARTIAL DUE PROCESS HEARING 34 C.F.R. § 300.511

Whenever a due process complaint is filed, you or the local public agency involved in the dispute must have an opportunity for an impartial due process hearing, as described in the **Due Process Complaint** and **Resolution Process** sections.

The procedural safeguards notice provided to parents should identify the agency that is responsible for convening hearings (e.g., the school district, the state educational agency, or another State-level agency or entity).

The state educational agency is responsible for convening due process hearings, and an appeal from a due process hearing decision is filed directly with a court.

If you and the local public agency agree in writing to waive the resolution meeting, then the 45-calendar day timeline for the due process hearing starts the next day.

The state educational agency keeps a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

### Impartial Hearing Officer

At a minimum, a hearing officer:

1. Must not be an employee of the local public agency or any state educational agency that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts; and
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The state educational agency must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

### Subject Matter of Due Process Hearing

The party that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint unless the other party agrees.

### Timeline for Requesting a Hearing

You or the local public agency must request an impartial hearing on a due process complaint within two (2) years of the date you or the local public agency knew or should have known about the issue addressed in the complaint.

### Exceptions to the Timeline

The above timeline does not apply to you if you cannot file a due process complaint because:

1. The local public agency specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or
2. The local public agency withheld information from you that it was required to provide to you under Part B of IDEA.

### Hearing Rights 34 C.F.R. § 300.512

You have the right to represent yourself at a due process hearing. In addition, any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the due process hearing by an attorney
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
6. Obtain written, or, at your option, electronic findings of fact and decisions.

The party initiating the due process complaint has the burden of proof or responsibility of proving the allegations of the complaint.

### Additional Disclosure of Information

At least five (5) business days prior to a due process hearing, you and the local public agency must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the local public agency intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

You must be given the right to: have your child present at the hearing; open the hearing to the public; and have the record of the hearing, the findings of fact, and the decisions provided to you at no cost.



### Parental Rights at Hearings

You must be given the right to:

1. Have your child present at the hearing;
2. Open the hearing to the public; and
3. Have the record of the hearing, the findings of fact, and the decisions provided to you at no cost.

### Hearing Decisions 34 C.F.R. § 300.513

A hearing officer's decision on whether your child received FAPE must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to FAPE;
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; or
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering the local public agency to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 C.F.R. §§ 300.500 through 300.536).

### Separate Request for a Due Process Hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 C.F.R. §§ 300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

### Findings and Decision Provided to the Advisory Panel and General Public

The state educational agency, after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing to the state Special Education Advisory Panel (SEAP); and
2. Make those findings and decisions available to the public.

### Finality of Decision and Appeal 34 C.F.R. § 300.514

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing may appeal the decision by bringing a civil action, as described under the heading **Civil Actions**.

### Timelines and Convenience of Hearings 34 C.F.R. § 300.515

The state educational agency must ensure that not later than 45 calendar days after the expiration of the 30-calendar day period for resolution meetings or, as described under the subheading **Adjustments to the 30-Calendar Day Resolution Period**, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar day time period described above at the request of either party. Each extension shall be for no more than 45 days. For consideration for an extension, a hearing officer shall consider the following:

1. The negative effects of extending the time in which a child's education is delayed due to the extension;
2. The requesting party's ability to avoid requesting for an extension;
3. If the extension request is from the petitioner, whether the petitioner had the opportunity to adequately prepare before filing for a hearing;
4. The negative effects of denying the request for an extension;

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

5. The intent of IDEA 2004 is to expedite an informal administrative proceeding; and
6. Whether granting the request for an extension will override the intent of the law in favor of the convenience of the parties.

The hearing officer shall respond in writing to each request for an extension. Each response shall include findings of fact and conclusions as to why good cause exists. Each response shall become a part of the records. If an extension is granted, the hearing officer shall set a new date for the hearing and notify the parties in writing of the date.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

### **CIVIL ACTIONS** 34 C.F.R. § 300.516

Any party who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

#### **Time Limitation**

The party bringing the action shall have 30 calendar days from the date of the decision of the hearing officer to file a civil action.

The party bringing the civil action must file a notice of intent to file a civil action within 30 days after receipt of the hearing decision. The party must file the civil action within 30 days of the filing of the notice of intent. (AAC 290-8-9.08(9)(c)16)

#### **Additional Procedures**

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the local public agency's request; and
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

### **JURISDICTION OF DISTRICT COURTS**

The district courts of the United States have the authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

### **RULE OF CONSTRUCTION**

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of IDEA.

### **THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING** 34 C.F.R. § 300.518

Except as provided below under the heading **Discipline**, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the local public agency agree otherwise, your child must remain in his/her current educational placement.

The party bringing the action shall have 30 calendar days from the date of the decision of the hearing officer to file a civil action.

The district courts of the United States have the authority to rule on actions brought under the IDEA without regard to the amount in dispute.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because the child has turned three, the local public agency is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the local public agency must provide those special education and related services that are not in dispute.

If a hearing officer in a due process hearing conducted by the state educational agency agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement, where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

### **ATTORNEYS' FEES** 34 C.F.R. § 300.517

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you if you prevail (win).

If you decide to have an attorney present and participate in resolution meetings or mediation meetings, the attorney's fees you are charged may not be reimbursed or covered by the local public agency.

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing State Educational Agency or the local public agency, to be paid by your attorney, if the attorney:

- a. Filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or
- b. Continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or in any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing State Educational Agency or the local public agency, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).

### **Award of Fees**

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than 10 calendar days before the proceeding begins;
  - b. The offer is not accepted within 10 calendar days; and
  - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.
3. Fees may not be awarded relating to any meeting of the IEP Team unless the meeting is held as a result of an administrative proceeding or court action.

If you decide to have an attorney present and participate in resolution meetings or mediation meetings, the attorney's fees you are charged may not be reimbursed or covered by the local public agency.

A resolution meeting, as described under the heading **Resolution Process**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide to the local public agency the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the local state or public agency unreasonably delayed the final resolution of the action or proceeding or if there was a violation under the procedural safeguards provisions of Part B of IDEA.

## Access to Records 34 C.F.R. § 300.613

### Confidentiality Of Information 34 C.F.R. § 300.611

- **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- **Education records** means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- **Participating agency** means any school district, agency, or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

### Personally Identifiable Information (PII) 34 C.F.R. § 300.32

Personally identifiable means information that includes:

1. Your child's name, your name as the parent, or the name of another family member;
2. Your child's address;
3. A personal identifier, such as your child's social security number or student identification number; or
4. A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

### Notice To Parents 34 C.F.R. § 300.612

The state educational agency must give notice that is adequate to fully inform parents about the confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
4. A description of all of the rights of parents and children regarding this information, including the rights under FERPA and its implementing regulations in 34 CFR Part 99.

**Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

**Education Records** means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the FERPA of 1974, 20 U.S.C. 1232g).

**Participating Agency** means any school, agency, or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under the IDEA.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as "child find"), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of these activities.

### **Access Rights** 34 C.F.R. § 300.613

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the educational agency under Part B of IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing (including a hearing regarding discipline), or resolution session, and in no case more than 45 calendar days after you have made the request.

Your right to inspect and review education records includes:

1. Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; and
3. Your right to have your representative inspect and review the records.

The participating agency may presume that you have the authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

### **Record of Access** 34 C.F.R. § 300.614

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

### **Records on More Than One Child** 34 C.F.R. § 300.615

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

### **List of Types and Locations of Information** 34 C.F.R. § 300.616

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the participating agency.

### **Fees** 34 C.F.R. § 300.617

Each participating agency may charge a fee for copies of records that are made for you under Part B of IDEA if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

### **Amendment of Records at Parent's Request** 34 C.F.R. § 300.618

If you believe that information regarding your child in the education records collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency change the information.

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the heading

### **Opportunity for a Hearing.**

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the educational agency under Part B of IDEA.



**Opportunity for a Hearing** 34 C.F.R. § 300.619

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

**Hearing Procedures** 34 C.F.R. § 300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA.

**Result of Hearing** 34 C.F.R. § 300.620

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency. Such an explanation placed in the records of your child must:

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; and
2. If the participating agency discloses the records of your child or the challenged information to any party, the explanation must also be disclosed to that party.

**Consent for Disclosure of Personally Identifiable Information** 34 C.F.R. § 300.622

Unless the information is contained in education records, and the disclosure is authorized without parental consent under FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of agencies providing or paying for transition services.

If your child is in or is going to go to a private school that is not located in the same local public agency you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the local public agency where the private school is located and officials in the school district where you reside.

**Safeguards** 34 C.F.R. § 300.623

Each participating agency must protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.

One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures regarding confidentiality under Part B of IDEA and the FERPA.

Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

**Destruction of Information** 34 C.F.R. § 300.624

The local public agency must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name,

The parent/guardian's consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies.

address, and phone number, his/her grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitation.

## Children's Rights

### TRANSFER OF PARENTAL RIGHTS

The state educational agency has, in effect, policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and the type or severity of the disability.

Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the child at age 18.

If the rights afforded to parents under the IDEA are transferred to a child who reaches the age of majority, consistent with 34 C.F.R. § 300.520, the rights regarding educational records in 34 C.F.R. §§ 300.613 through 300.624 must also be transferred to the child. However, the local public agency must provide any notice required under section 615 of the Act to the child and the parents.

### CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FREE APPROPRIATE PUBLIC EDUCATION IS AT ISSUE

34 C.F.R. § 300.148

Part B of IDEA does not require the local public agency to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the local public agency made FAPE available to your child and you choose to place the child in a private school or facility. However, the local public agency where the private school is located must include your child in the population whose needs are addressed under Part B of IDEA provisions regarding children who have been placed by their parents in a private school under 34 C.F.R. §§ 300.131 through 300.144.

#### Reimbursement for Private School Placement

If your child previously received special education and related services under the authority of the local public agency, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the local public agency, a court or a hearing officer may require the local public agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the local public agency had not made FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the local public agency.

#### Limitation on Reimbursements

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. If:
  - a. At the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the public agency to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or
  - b. At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the public agency of that information;
2. If, prior to your removal of your child from the public school, the public agency provided prior written notice to you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; or
3. Upon a court's finding that your actions were unreasonable.

Part B of IDEA does not require the local public agency to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the local public agency made FAPE available to your child and you choose to place the child in a private school or facility.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if:
  - a. The school prevented you from providing the notice;
  - b. You had not received notice of your responsibility to provide the notice described above; or
  - c. Compliance with the requirements above would likely result in physical harm to your child; and
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for your failure to provide the required notice if:
  - a. You are not literate or cannot write in English; or
  - b. Compliance with the above requirement would likely result in serious emotional harm to your child.

## Discipline

### AUTHORITY OF SCHOOL PERSONNEL 34 C.F.R. § 300.530

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

To the extent that they also take such action for children without disabilities, school personnel may, for not more than 10 school days in a row, remove a child with a disability who violates a code of student conduct from his/her current placement to an appropriate interim alternative educational setting, another setting, or suspension.

Once a child with a disability has been removed from his/her current placement for a total of 10 school days in the same school year, the local public agency must, during any subsequent days of removal in that school year, provide services to the extent required under the sub-heading **Services**.

After a child with a disability has been removed from his or her current placement for 10 school days in that same school year, and if the current removal is for 10 school days in a row or less, and if the removal is not a change of placement (see definition below), then school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

### Additional Authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see the subheading **Manifestation Determination**) and the disciplinary change of placement would exceed 10 school days in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described under **Services**. The child's IEP Team determines the interim alternative educational setting for such services.

### SERVICES

The local public agency may provide services to a child with a disability who has been removed from his/her current placement for 10 school days or less in that school year. The child may be provided with an alternate educational option (such as homework, projects, or class assignments), and services may be provided in an interim alternative educational setting.

A child with a disability who is removed from the child's current placement for more than 10 school days in a school year and whose behavior is not a manifestation of the child's disability (see subheading **Manifestation Determination**) or who is removed under special circumstances (see the subheading **Special Circumstances**) must:

1. Continue to receive educational services (have available FAPE) to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; and

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a child with a disability who violates a school code of student conduct.



2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his/her current placement for 10 school days in that same school year, if the current removal is for 10 consecutive school days or less and if the removal is not a change of placement (see definition below), then school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see the heading **Change of Placement Because of Disciplinary Removals**), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that maybe an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

### MANIFESTATION DETERMINATION

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local public agency, you, and other relevant members of the IEP Team (as determined by you and the local public agency) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was the direct result of the local public agency's failure to implement the child's IEP.

If the local public agency, you, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the local public agency, you, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the local public agency's failure to implement the IEP, the local public agency must take immediate action to remedy those deficiencies.

If the local public agency, you, and other relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the local public agency had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
2. If a behavioral intervention plan has already been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the subheading **Special Circumstances**, the local public agency must return your child to the placement from which your child was removed, unless you and the local public agency agree to a change of placement as part of the modification of the behavioral intervention plan.

### SPECIAL CIRCUMSTANCES

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than 45 school days, if your child:

1. Carries a weapon (see definition at right) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the SEA;

**Controlled Substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

**Illegal Drug** means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

**Serious Bodily Injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

**Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

2. Knowingly has or uses illegal drugs (see definition at right), or sells or solicits the sale of a controlled substance (see definition at right), while at school, on school premises, or at a school function under the jurisdiction of the SEA; or
3. Has inflicted serious bodily injury (see definition at right) upon another person while at school, on school premises, or at a school function under the jurisdiction of the SEA.

## NOTIFICATION

On the date the local public agency makes the decision to make a removal that is a change of placement of your child because of a violation of a code of student conduct, the local public agency must notify you of that decision and provide you with a procedural safeguards notice.

## CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

34 C.F.R. § 300.536

A removal of your child with a disability from your child's current educational placement is a change of placement if:

1. The removal is for more than 10 school days in a row; or
2. Your child has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year;
  - b. Your child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - c. Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

## DETERMINATION OF SETTING 34 C.F.R. § 300.531

The IEP Team determines the interim alternative educational setting for removals that are changes of placement and removals under the subheadings **Additional Authority** and **Special Circumstances**.

## EXPEDITED DUE PROCESS 34 C.F.R. § 300.532

You may file an expedited due process complaint (see the heading **Due Process Complaint Procedures**) to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; or
2. The manifestation determination is described under the subheading **Manifestation determination**.

The public agency may file an expedited due process complaint to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

## Authority of Hearing Officer

A hearing officer that meets the requirements described under the subheading **Impartial Hearing Officer** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading **Authority of School Personnel**, or that your child's behavior was a manifestation of your child's disability; or
2. Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated if the public agency believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

You or the local public agency may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings.

Whenever you or the public agency files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings **Due Process Complaint Procedures and Hearings on Due Process**

**Complaints**, except as follows:

1. The SEA must arrange for an expedited due process hearing, which must occur within 20 school days of the date the hearing request is filed and must result in a determination within 10 school days after the hearing.
2. Unless you and the local public agency agree in writing to waive the meeting or agree to use mediation, a resolution meeting must occur within seven (7) calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.
3. The timeline for disclosure of evidence and evaluations may be less than five (5) business days and must be set by the hearing officer at the pre-hearing conference.

You or the local public agency may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings (see the heading **Expedited Due Process**).

#### **Placement During the Expedited Due Process** 34 C.F.R. § 300.533

When you or the public agency file a due process complaint related to disciplinary matters, your child must (unless you and the public agency agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period of removal as provided for and described under the heading **Authority of School Personnel**, whichever occurs first.

#### **PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES** 34 C.F.R. § 300.534

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the local public agency had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may assert any of the protections described in this notice.

The local public agency will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under the IDEA; or
3. Your child's teacher or other local public agency personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the director of special education of the agency or to other supervisory personnel of the agency.

#### **Exception**

The local public agency would not be deemed to have such knowledge if:

1. You have not allowed an evaluation of your child or have refused special education services; or
2. Your child has been evaluated and determined not to be a child with a disability under the IDEA.

#### **Conditions that Apply if There is No Basis of Knowledge**

If prior to taking disciplinary measures against your child, the local public agency does not have knowledge that your child is a child with a disability, as described above under the subheadings **Protections For Children Not Yet Eligible For Special Education And Related Services** and **Exception**, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

If your child is determined to be a child with a disability, the local public agency must provide special education and related services in accordance with the IDEA, including the disciplinary requirements.

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the local public agency, and information provided by you, the local public agency must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

### **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES** 34 C.F.R. § 300.535

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and state law to crimes committed by a child with a disability.

#### **Transmittal of Records**

If the local public agency reports a crime committed by a child with a disability, the local public agency:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by FERPA.

Part B of IDEA does not:  
Prohibit agencies from reporting crimes by children with disabilities to authorities.

Prevent law enforcement and judicial authorities from applying laws to crimes committed by children with disabilities.



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