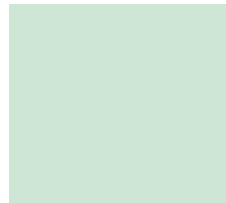
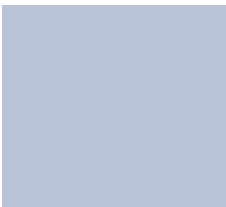


PROCEDURAL SAFEGUARDS: HANDBOOK ON PARENTS' RIGHTS

SEPTEMBER 2008



LOCAL EDUCATIONAL AGENCY (LEA) CONTACT

The local educational agency (LEA) is your local school system. This may be a county or city school system, public charter school or State-operated program. The acronym LEA is used throughout this document for your local school system.

It is important that you understand the Procedural Safeguards (legal rights) provided for you and your child with a disability. Staff is available to assist you in understanding your rights and will provide further explanation upon your request. If you have any questions or would like additional information, please contact the Exceptional Children (EC) Department in your local school, charter school, or State-operated program, or the LEA's EC Director.

LEA's EC Director

Telephone

Email

LEA EC Directors are listed at <http://www.ncpublicschools.org/ec/directory/district>
Charter Schools are listed at <http://www.ncpublicschools.org/charterschools/schools/>

State Educational Agency (SEA) The State Educational Agency is the North Carolina Department of Public Instruction (NCDPI). The acronym, NCDPI, is used throughout this document to refer to the SEA. The Exceptional Children (EC) Division is part of NCDPI.

State EC Director

Mary N. Watson
NC Department of Public Instruction
Exceptional Children Division
6356 Mail Service Center, Raleigh, NC 27699-6356
Telephone 919.807.3969 :: Fax 919.807.3243
<http://www.ncpublicschools.org/ec/>

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INTRODUCTION

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) is the federal law and Article 9, Section 115C of the North Carolina General Statutes is the State law concerning the education of students with disabilities. Part B of the IDEA refers to the part of the law for children with disabilities who are ages three (3) through 21.

Children with disabilities include those with autism, deaf-blindness, deafness, developmental delay, serious emotional disability, hearing impairment, intellectual disability, multiple disabilities, other health impairment, orthopedic impairment, specific learning disabilities, speech and/or language impairment, traumatic brain injury and visual impairment.

PURPOSE OF THIS DOCUMENT

The IDEA requires schools to provide parents of a child with a disability a notice containing a full explanation of the Procedural Safeguards (legal rights) available under the IDEA and the accompanying federal regulations.

The numbers listed after each heading in this document refer to the sections for the legal citations in the federal regulations. The numbers after some of the sub-headings refer to the legal citations in the North Carolina Policies Governing Services for Children with Disabilities (Policies) where you can find the information. (Examples: 34 CFR §300.300 and NC 1504-1.13)

This document replaces the 2004 Handbook on Parents' Rights. It reflects the mandates of the IDEA (2004), federal regulations (August 14, 2006) and Policies (November 1, 2007).

This document is located at:
<http://www.ncpublicschools.org/ec/policy/resources/>

INFORMATION IN THE PROCEDURAL SAFEGUARDS

The Procedural Safeguards document LEAs are required to give parents applies 13 rights of children with disabilities and their parents.

1. Parental Consent
2. Prior Written Notice
3. Independent Educational Evaluation
4. Confidentiality and Access to Records
5. Unilateral Placement of Children with Disabilities by Parents in Private Schools at Public Expense
6. Availability of Mediation
7. State Complaint Procedures
8. Filing a Due Process Petition
9. Hearings on Due Process Petitions
10. State-Level Appeals
11. Civil Actions
12. Attorney's Fees
13. Disciplinary Procedures

WHEN YOU WILL RECEIVE THE PROCEDURAL SAFEGUARDS

The Procedural Safeguards must be given to you **one time each school year** and at the following times:

- a. When your child is first referred for evaluation or when you request an evaluation;
- b. When you request a copy of the Procedural Safeguards;
- c. When your child is removed for disciplinary reasons and the removal results in a change in placement;
- d. Upon receipt of the first State complaint and/or the first due process petition in a school year, if you file a State complaint or request a due process hearing; and
- e. Upon each revision to the Procedural Safeguards.

TO ASSIST YOU:

There are some definitions provided after the Procedural Safeguards headings and sub-headings. Acronyms and additional definitions used often in special education are at the end of this document in Appendix I. Throughout this document, day means calendar day unless it is written as business day or school day.



Explanations in more reader-friendly language are beside the citations. These begin with ***In Other Words...***

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1. PARENTAL CONSENT 34 CFR §300.300 and NC 1503-1

DEFINITION

Consent means:

- You have been fully informed in your 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;
- You understand and agree 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
- You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

Your withdrawal of consent does not undo an action that has occurred after you gave your consent and before you withdrew it.

➔ In Other Words...

You have certain consent rights. There are times when the LEA must ask for your written permission. These are explained below.

➔ You can withdraw your permission, but cannot change what happened before you withdrew it.

CONSENT FOR INITIAL EVALUATION ➔ Form DEC2

Your LEA cannot conduct an initial evaluation of your child to determine whether your child is eligible under IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described in this section.

Your LEA 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 LEA to start providing special education and related services to your child.

If your child is enrolled in public school or you are planning to enroll your child in a public school, and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your LEA may, but is not required to, seek to conduct an initial evaluation of your child by requesting mediation or filing a petition for a due process hearing. Your LEA will not violate its obligations under Child Find to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

➔ You must be notified and give written permission before the LEA can evaluate your child for special education and related services for the first time.

➔ Giving permission to evaluate does not mean you have also given permission for special education services.

➔ If you do not give written permission, the LEA can request mediation or file a due process petition to test your child without permission, but it is not required to do this.

SPECIAL RULES FOR INITIAL EVALUATION OF WARDS OF THE STATE

Ward of the State in North Carolina means a child who, as determined by North Carolina law, is removed from the home and placed in custody with the Department of Social Services (DSS) or a person designated in a court order.

If a child is a ward of the State and is not living with you, the LEA does not need consent from you for an initial evaluation to determine if your child is a child with a disability if:

- Despite reasonable efforts to do so, the LEA cannot find you;
- Your rights have been terminated in accordance with NC law; or
- A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than you.

PARENTAL CONSENT FOR SERVICES ➔ Form DEC6

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

If you do not respond to a request to provide consent for your child to receive special education and related services for the first time or if you refuse to give such consent, your LEA may not use mediation or a due process hearing in order to obtain agreement or a ruling that the special education and related services may be provided without your consent.

➔ After the evaluation, if the IEP Team decides your child is eligible, you must give written permission before your child can receive special education and related services for the first time. (You are a member of the IEP Team.)

➔ If you do not give written permission for your child to receive special education after the initial evaluation, the LEA cannot use mediation or due process to provide the services without your permission.

If you refuse to give 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 and the LEA does not provide your child with the special education and related services for which it sought your consent, your LEA:

- a. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; and
- b. Is not required to have an Individualized Educational Program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

➔ ***In Other Words...***

You cannot file a State complaint or a due process petition against the LEA for failing to provide a free, appropriate public education (FAPE), if you did not give permission for your child to receive special education and related services.

PARENTAL CONSENT FOR REEVALUATIONS ➔ Form DEC2

Your LEA must obtain your informed consent before it tests your child as part of the reevaluation process, unless it can demonstrate that it took reasonable steps to obtain your consent for your child's reevaluation assessments; and you did not respond.

If you refuse to consent to testing as part of your child's reevaluation, the LEA may, but is not required to, use mediation or a due process hearing to override your refusal to provide consent. Your LEA does not violate its obligations under the IDEA if it does not pursue the reevaluation testing in this manner.

➔ If the IEP Team decides your child needs any testing for a reevaluation and you do not respond to requests for your permission, the school can test your child without your permission.

➔ If you refuse to give permission, the LEA can request mediation or file a due process petition to test without your permission.

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 reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the LEA's attempts, such as:

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence sent to you and any responses received; and/or
- c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

➔ The LEA must keep records of the times it has tried to contact you about giving written permission for an evaluation of your child or to provide special education and related services to your child.

WHEN CONSENT IS NOT REQUIRED

Your consent is not required before your LEA may:

- a. Review existing data (records and information) as part of your child's initial evaluation or reevaluation; or
- b. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from the parents of all children.

Your LEA may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

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 consent for your child's initial evaluation or reevaluation, or you fail to respond to a request to provide your consent, the LEA cannot override your consent by using mediation or an impartial due process hearing.

➔ Before an evaluation or reevaluation, the IEP Team may review the data it already has and this does not require your permission.

➔ The LEA does not need your permission to give your child with a disability a test or other evaluation that it is giving other children in the school, unless permission is required from the other parents.

➔ The LEA cannot request mediation or file a due process to test without your permission if your child attends a private school that you pay for or is home schooled.

2. PRIOR WRITTEN NOTICE 34 CFR §300.503 and NC 1504-1.4

DEFINITION

Native language - When used with an individual who has limited English proficiency, native language means:

- The language normally used by that person, or, in the case of a child, the language normally used by the child's parents; and
- In all direct contact with a child (including evaluation), the language normally used by you in the home or learning environment.

For a person with deafness or blindness or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

NOTICE → Form DEC5

Your LEA must give you written notice (provide you certain information in writing) whenever it:

- 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
- Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

Note: Information about providing prior notice due to a disciplinary change in placement is located in Section 13 **Disciplinary Procedures**

CONTENT OF NOTICE

The written notice must:

- Describe the action that your LEA proposes or refuses to take;
- Explain why your LEA is proposing or refusing to take the action;
- Describe each evaluation procedure, assessment, record, or report your LEA used in deciding to propose or refuse the action;
- Include a statement that you have protections under the Procedural Safeguards provisions in Part B of the IDEA (Part B means services for children ages 3 through 21);
- Tell how you can obtain a description of the Procedural Safeguards if the action that your LEA is proposing or refusing is not an initial referral for evaluation;
- Include resources for you to contact for help in understanding IDEA;
- Describe any other options that your child's Individualized Education Program (IEP) Team considered and the reasons why those options were rejected; and
- Provide a description of the reasons why your LEA proposed or refused the action.



The prior written notice must clearly explain everything the LEA decided to do or refused to do, and why those decisions were made.

The prior written notice must clearly explain the other things the LEA considered, but decided against, and why it decided against them.

The prior written notice must clearly explain all the information used in making the decisions.

The prior written notice must have a statement that tells you about your protections in this document.

NOTICE IN UNDERSTANDABLE LANGUAGE

The notice must be:

- Written in language understandable to the general public; and
- 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, your LEA must take steps to ensure that:

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



If your native language is not one that can be written, the LEA will translate the notice for you orally.

ELECTRONIC MAIL

If your LEA offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

- Prior written notice;
- Procedural Safeguards notice (this document); and
- Notices related to a due process petition.



You can ask the LEA to send these three notices by e-mail if the LEA offers you a choice about how you receive the notices.

3. INDEPENDENT EDUCATIONAL EVALUATIONS (IEE) 34 CFR §300.502 and NC 1504-1.13

DEFINITIONS

Independent educational evaluation (IEE) - An evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of your child.

Public expense - The LEA either pays for the full cost of the evaluation or ensures that the evaluation is provided at no cost to you, consistent with the provisions 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 these requirements.

GENERAL

You have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was conducted by your LEA.

If you request an independent educational evaluation, the LEA must provide you with information about where you may obtain it and about the LEA's criteria that apply to independent educational evaluations.

In Other Words...

→ If you disagree with the school's evaluation, you can ask for the LEA to pay for an evaluation by someone not employed by the LEA. The LEA will give you names of qualified people who can do the evaluation.

EVALUATION AT PUBLIC EXPENSE

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child conducted by your LEA, subject to the following conditions:

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

You are entitled to only one independent educational evaluation of your child at public expense for each evaluation your LEA conducted with which you disagree.

→ If you request an IEE, the LEA has to decide if it will pay for it or file a due process petition to show that its evaluation is appropriate. If the judge decides the LEA's evaluation is appropriate, then the LEA does not have to pay for an IEE.

→ You must tell the school staff which assessments you disagree with and those are the only ones the LEA must pay for when you request an IEE. You do not have to tell the LEA why you disagree with its evaluation.

→ You may request only one IEE (paid for by the LEA) for each LEA evaluation you disagree with and if the LEA has not completed an evaluation, you cannot request an IEE.

PARENT-INITIATED EVALUATIONS

If you obtain an independent educational evaluation of your child at public expense or you share with the LEA an evaluation of your child that you obtained at private expense:

- a. Your LEA must consider the results of the evaluation of your child, if it meets the LEA's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
- b. You or your LEA may present the evaluation as evidence at a due process hearing about your child.

→ The IEP Team must consider the results of all IEEs that meet the LEA's criteria when making decisions. (See the sub-heading **LEA Criteria**.)

REQUESTS FOR EVALUATIONS BY HEARING OFFICERS

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

→ If a judge orders an IEE as part of a due process hearing, the LEA must pay for it.

LEA CRITERIA

When an LEA pays for an independent educational evaluation, the criteria for selecting an examiner for the independent evaluation must be the same criteria that the LEA uses when it arranges for an evaluation (as long as those criteria do not interfere with your right to an independent educational evaluation). Examples of the criteria are the location of the evaluation and the qualifications of the examiner.

Except for the criteria described above, an LEA may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.



In Other Words...

The LEA must require you to use the same criteria it uses when selecting someone to conduct an evaluation. However, it cannot require you to use the same criteria if it interferes with your right to an IEE.

4. ACCESS TO RECORDS 34 CFR §§ 300.610 - 300.625 and NC 1505-2

DEFINITIONS AS USED UNDER THIS SECTION

- a. **Destruction** - Physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- b. **Education records** - The type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act (FERPA). **Information about FERPA is located at** <http://ed.gov/policy/gen/guid/fpco/index.html>
- c. **Personally identifiable** - Information that includes your child's name, your name as the parent or the name of another family member; your child's address; a personal identifier such as your child's social security or student number, a list of personal characteristics; or other information that would make it possible to identify your child with reasonable certainty.

CONFIDENTIALITY – NOTICE TO PARENTS

The NC Department of Public Instruction must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

- a. A description of the extent to which the notice is given in the native languages of the various population groups in NC;
- b. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state uses in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- c. A summary of the policies and procedures that the LEA must follow about storage, disclosure to third parties, keeping records, and destruction of personally identifiable information; and
- d. A description of all of the rights of parents and children about this information, including the rights under the Family Educational Rights and Privacy Act (FERPA).

Before any major identification, location, or evaluation activity (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 the activity to locate, identify, and evaluate children in need of special education and related services.



You have the right to be told by NCDPI how information on your child will be used and kept confidential by the State.

ACCESS TO RECORDS

The local educational agency (LEA) must allow you to inspect and review any education records relating to your child that are kept or used by your LEA under IDEA. The LEA must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting about an IEP or any impartial due process hearing (including a resolution meeting or a hearing about discipline) and in no case more than 45 days after you have made a request. Your right to inspect and review education records includes:

- a. Your right to a response from the LEA to your reasonable requests for explanations and interpretations of the records;
- b. Your right to request that the LEA provide copies of the records if you cannot effectively inspect and review the records; and
- c. Your right to have your representative inspect and review the records.

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



The LEA must not delay your review of your child's educational records and must let you review them before any IEP meeting or due process hearing. The LEA must let you review the records within 45 days of your request.



You have the right to review your child's education records, ask for an explanation of any records you do not understand, ask for copies if you cannot go to the school to review your child's records, and have someone who represents you review your child's records.

RECORD OF ACCESS

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

→ **In Other Words...**
The school must document who can see your child's record. If someone else reviews your child's record then that person must sign and date a form, and write why he/she reviewed the record.

RECORDS ON MORE THAN ONE CHILD

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.

→ If there is information about another child in your child's records, that child's parents can only see their child's information. They cannot see your child's information.

LIST OF TYPES AND LOCATIONS OF INFORMATION

On request, each LEA must provide you with a list of the types and locations of education records it collects, maintains or uses.

→ You can ask the LEA what kinds of records it keeps and where they are located.

FEES

Each LEA may charge a fee for copies of your child's special education records, if the fee does not effectively prevent you from exercising your right to inspect and review those records. An LEA may not charge a fee to search/retrieve the information.

→ The LEA can charge a fee to copy your child's record, but it must be a reasonable fee that you are able to pay. The LEA cannot charge for looking for and getting the records.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in the education records about your child collected, maintained and/or used under IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the LEA that maintains the information to change the information.

→ If you disagree with certain items in the records, you can ask for those items to be changed or removed from the record.

The LEA 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 LEA refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose, as described under the sub-heading **Opportunity for a Hearing**.

→ If the school decides not to change or remove these items, you can ask for a hearing that will be conducted by the LEA.

If the LEA refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the sub-heading **Opportunity for a Hearing**.

→ If the school decides not to change or remove these items, you can ask for a hearing that will be conducted by the LEA.

OPPORTUNITY FOR A HEARING

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

HEARING PROCEDURES

The LEA must conduct a hearing when you disagree with information in education records. The hearing is not a due process hearing. It is conducted according to the procedures under the Family Educational Rights and Privacy Act (FERPA).

Information about FERPA is at: <http://ed.gov/policy/gen/guid/fpco/index.html>

RESULT OF HEARING

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

→ If the decision from the hearing is that the information you disagreed with is not correct or violates your child's privacy or other rights, it must change the information.

If, as a result of the hearing, the LEA 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 LEA.

→ If the decision from the hearing is that the information is correct and does not violate your child's privacy and other rights, then you have the right to place a statement in the record about the information or telling why you disagreed with it.

Such an explanation placed in the records of your child must:

- a. Be maintained by the LEA as part of the records of your child as long as the records or contested portion is maintained by the LEA; and
- b. If the LEA discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

➔ **In Other Words...**

If the LEA makes a copy of the record for another party, then it must also copy your written statement.

CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

Unless the information is contained in education records and the Family Educational Rights and Privacy Act (FERPA) authorizes its release, your consent must be obtained before personally identifiable information is released to parties other than officials of the school system.

Your consent is not required before personally identifiable information is released to officials of the LEA for purposes of meeting a requirement of IDEA except when:

- a. Your consent, or the consent of your child who has reached the age of majority (18 years old), must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services; or
- b. If your child attends or is going to attend a private school that is not located in the same LEA in which you reside, your consent must be obtained before any personally identifiable information about your child is released between officials in the LEA where the private school is located and officials in the LEA where you reside.

➔ The LEA must get your written permission before it can give information that identifies your child to people not employed by the LEA. There are times that your permission is not required, such as, when officials of the LEA need the information as a requirement of the IDEA.

➔ Written permission is required to share information with other agencies assisting with post-secondary transition services.

➔ If your child attends a private school in another LEA, the LEA where you live must get your written permission to share the record with the LEA where the private school is located.

SAFEGUARDS

Each LEA must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official of each LEA 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 on policies and procedures about confidentiality under IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each LEA 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.

➔ The LEA must keep your child's records confidential and keep a list of all employees who can review your child's records without written permission.

DESTRUCTION OF INFORMATION

Your LEA must inform you when personally identifiable information collected, maintained or used 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, address, phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

➔ When the LEA no longer needs personally identifiable information to provide services to your child, it must inform you. You have the right to ask for your child's record to be destroyed when it is no longer needed, but the LEA can keep directory information.

5. REQUIREMENTS FOR UNILATERAL PLACEMENT OF CHILDREN WITH DISABILITIES BY THEIR PARENTS IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

34 CFR §300.148 and NC 1501-6 through NC 1501-8

PLACEMENT OF CHILDREN BY PARENTS IF FAPE IS AT ISSUE

IDEA does not require an LEA 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 LEA made a free appropriate public education (FAPE) available to your child and you chose to place your child in a private school or facility. However, the LEA where the private school is located must include your child in the population whose needs are addressed in the section of IDEA about children whose parents placed them in a private school.



In Other Words...

If the LEA made a FAPE available to your child and you decided to enroll your child in a private school, then the LEA is not required to pay for the private school. The LEA where the private school is located may provide some services through a private school service plan if those services are part of the services the LEA provides to parentally placed private school students.

REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT

If your child previously received special education and related services under the authority of an LEA and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the LEA, a hearing officer or court may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (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 NCDPI and LEAs.



If a hearing officer or court decides the LEA did not make a FAPE available for your child, then the LEA may have to pay for private school placement, if it is an appropriate placement.

LIMITATION ON REIMBURSEMENT

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

- a. If 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 LEA 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** 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 LEA of that information;
- b. If, prior to your removal of your child from the public school, the LEA 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 your child available for the evaluation; **or**
- c. Upon a court's finding that your actions were unreasonable.



If you decide to enroll your child with a disability in a private school and ask the LEA to pay, you must have told school officials at the last IEP Team meeting you attended **or** 10 business days before withdrawing your child that you were going to enroll your child in a private school. In this situation, business day includes any holidays that fall on Monday through Friday. You must have also told school officials what your concerns were about the public school program. The court may decide the LEA does not have to pay or the court may lower the costs if you did not tell school officials, did not bring your child to an evaluation the LEA wanted to conduct, or acted without reason.

However, the cost of reimbursement:

- a. Must not be reduced or denied for failure to provide the notice if:
 - The school prevented you from providing the notice;
 - You had not received notice of your responsibility to provide the notice described above; or
 - Compliance with the requirements above would likely result in physical harm to your child; **and**
- b. 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:
 - The parent is not literate or cannot write in English; or
 - Compliance with the above requirement would likely result in serious emotional harm to your child.



The court cannot deny or reduce the payment if the school kept you from providing the notice, did not give you the Procedural Safeguards that tell you about providing the notice or if following the requirements might result in physical harm to your child.



If you did not provide the notice because you cannot read, you cannot write in English, or if following the requirements might result in serious emotional harm to your child then the court cannot reduce or deny the payment.

6. AVAILABILITY OF MEDIATION 34 CFR §300.506 and NC 1504-1.7

DEFINITION

Mediation is an informal meeting of the parent and the school led by a neutral third party, the mediator. Mediation is a voluntary process, which the parties themselves control. The mediator helps the parents and school resolve disagreements concerning the child's identification, evaluation, program, or placement. Mediation can help the parties reach agreement about specific issues, as well as build a better working relationship for the future. Mediation can help resolve differences between parents and schools efficiently and effectively.

More information about mediation is at: <http://www.ncpublicschools.org/ec/policy/dispute/mediation/>

➔ **Note:** Mediation is a service offered free of cost to you and the LEA and can be requested by sending a completed request form to:

Mediation Coordinator
NCDPI EC Division
6356 Mail Service Center
Raleigh, NC 27699-6356
Fax: to 919.807.3755.

GENERAL

The EC Division of NCDPI makes mediation available to allow you and the LEA to resolve disagreements involving any matter under IDEA, including matters arising prior to the filing of a due process petition.

Mediation is available to resolve disputes under IDEA, whether or not you have filed a due process petition to request a due process hearing as described under the heading **Filing a Due Process Petition**.

➔ **In Other Words...**

You and/or the LEA may request mediation any time you and the LEA cannot resolve a dispute. You do not have to file a due process petition in order to request mediation.

REQUIREMENTS

The procedures must ensure that the mediation process:

- Is voluntary on your part and the LEA's part;
- Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under IDEA; and
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The EC Division maintains a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The EC Division must select mediators on a random, rotational or other impartial basis. The EC Division is responsible for the cost of the mediation process.

Note: The cost of the mediation process does not include any attorneys' fees, if you and/or the LEA bring attorneys to the mediation.

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 LEA.

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

- 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; and
- Is signed by both you and a representative of the LEA who has the authority to bind the LEA. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction (a state court that has the authority to hear this type of case), federal court, or through a State complaint investigation.

➔ A **mediator** is an impartial person who does not tell you or the LEA what to do, but assists you and the LEA to resolve differences and disputes.

➔ If you and the LEA resolve the dispute, then the mediator writes an agreement for all parties to sign and it is legally binding.

➔ Discussions that happen during the mediation process must be kept confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any federal or state court.

IMPARTIALITY OF MEDIATOR

The mediator:

- May not be an employee of the NCDPI or the LEA that is involved in the education or care of your child; and
- 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 an LEA or the EC Division solely because he or she is paid by the LEA or the EC Division to serve as a mediator.

➔ The mediator does not work for NCDPI or the LEA where your child goes to school.

➔ The State pays the mediator, but that does not make the mediator a State employee. The LEA may provide and pay for an impartial mediator, but that does not make the mediator an employee of the LEA.

7. STATE COMPLAINT PROCEDURES 34 CFR §300.152 and NC 1501-10

DEFINITION

State Complaint - A State complaint is a signed written statement that alleges a school or local educational agency is not following special education law and regulations found in IDEA, Article 9 of Section 115C in the NC General Statutes. This statement is a formal request for the EC Division to investigate the allegation(s) of noncompliance.

More information about State complaints is located at <http://www.ncpublicschools.org/ec/policy/dispute/complaints/>

In Other Words...

FILING A COMPLAINT

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

The State complaint must include:

- a. A statement that an LEA or other public agency has violated, Federal regulations, NC General Statutes 115C (Article 9), and/or Policies;
- b. The **facts** on which the statement is based;
- c. The signature and contact information for the complainant; and
- d. If alleging violations about a specific child:
 - The name and address of the residence of the child;
 - The name of the school the child is attending;
 - 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;
 - A description of the problem, including facts relating to it; and
 - 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.

→ If the complaint does not have all the required items, it will be returned to you. If this happens, NCDPI will send you a letter and tell you what you need to do if you choose to change the complaint and file it again. It is important for you to include specific facts about what you believe the school did not do that the law says it must do. Send any documents (forms, papers, etc.) that support your complaint.

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 sub-heading **Adoption of State Complaint Procedures**.

→ You must file a complaint within one year of the date you believe the school did not follow federal regulations, Article 9, or the *Policies*.

The party filing the State complaint must forward a copy of the complaint to the LEA or other public agency serving the child at the same time the party files the complaint with the EC Division.

→ You must send a copy to the other party (the LEA or other public agency).

Note: Issues that are not part of federal regulations, Article 9, or the *Policies* will not be investigated. Examples are: promotion, retention, personnel issues, and discrimination.

ADOPTION OF STATE COMPLAINT PROCEDURES

NCDPI has written procedures for:

- a. Resolving any complaint, including a complaint filed by an organization or individual from another state;
- b. The filing of a complaint with the NCDPI; and
- c. 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.

→ **Note:** Before filing a complaint, you should talk with your child's teacher, principal, the local EC Director, or other personnel in the LEA.

