Notice of Procedural Safeguards

Parent Rights and Responsibilities in Special Education

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide you, the parents of a child with a disability, with a notice containing a full explanation of the procedural safeguards available under IDEA and U.S. Department of Education regulations.

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North Carolina Department of PUBLIC INSTRUCTION

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IDEA Part B: Procedural Safeguards Notice

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide you, the parents of a child with a disability, with a notice containing a full explanation of the procedural safeguards available under IDEA and U.S. Department of Education regulations. A copy of this notice must be given to you only one time a school year, except that a copy must also be given to you: (1) upon initial referral or your request for evaluation; (2) upon receipt of your first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of your first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action against your child that constitutes a change of placement; and (4) upon your request. [34 CFR §300.504(a)]

This procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148 (unilateral placement of a child in a private school at public expense), §§300.151 through 300.153 (State complaint procedures), §300.300 (parental consent), §§300.502 and 300.503 (IEP and prior written notice), §§300.505 through 300.518 (other procedural safeguards, e.g., mediation, due process complaints, resolution process, and impartial due process hearing), §§300.530 through 300.536 (procedural safeguards in Subpart E of the Part B regulations), and §§300.610 through 300.625 (confidentiality of information provisions in Subpart F).

34 CFR §300.503 - Prior Written Notice

Notice

Your public school unit must give you written notice (provide you 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.

Content of Notice

The written notice must:

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

Notice in Understandable Language

The 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, your public school unit 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.

34 CFR §300.29 - Native Language

Native language, when used regarding an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child 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).

34 CFR §300.505 - Electronic Mail

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

1. Prior written notice;
2. Procedural safeguards notice; **and**
3. Notices related to a due process complaint.

34 CFR §300.9 - Parental Consent: Definition

Consent

Consent means:

1. 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.
2. 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**
3. You understand that the consent is voluntary on your part and that you may withdraw your consent at any time.

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the public school unit is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

34 CFR §300.300 - Parental Consent

Consent for Initial Evaluation

Your public school unit 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.***

Your public school unit 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 public school unit to start providing special education and related services to your child.

Your public school unit may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the public school unit to do so.

If your child is enrolled in public school or you are seeking 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 public school unit 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. Your public school unit 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.

Special Rules for Initial Evaluation of Wards of the State

If a child is a ward of the State and is not living with his or her parent —

The public school unit 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 public school unit 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.

Ward of the State, as used in 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.

There is one exception that you should know about. *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

Your public school unit must obtain your informed consent before providing special education and related services to your child for the first time.

The public school unit 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, your public school unit may not use the procedural safeguards (i.e., 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) may 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 public school unit does not provide your child with the special education and related services for which it sought your consent, your public school unit:

1. 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**
2. Is not required to have an individualized education program (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 public school unit 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.

Parental Consent for Reevaluations

Your public school unit must obtain your informed consent before it reevaluates your child, unless your public school unit 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 public school unit may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your public school unit 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. The documentation must include a record of the public school unit'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

Your consent is not required before your public school unit 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.

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 your child's reevaluation, or you fail to respond to a request to provide your consent, the public school unit 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).

34 CFR §300.502 - Independent Educational Evaluations

General

As described below, 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 obtained by your public school unit.

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

Definitions

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public school unit responsible for the education of your child.

Public expense means that the public school unit 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 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.

Right to 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 obtained by your public school unit, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your public school unit 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 independent educational evaluation at public expense, unless the public school unit demonstrates in a hearing that the evaluation of your child that you obtained did not meet the public school unit's criteria.
2. If your public school unit requests a hearing and the final decision is that your public school unit's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the public school unit may ask why you object to the evaluation of your child obtained by your public school unit. However, your public school unit may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the public school unit's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your public school unit conducts an evaluation of your child with which you disagree.

Parent-initiated Evaluations

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

1. Your public school unit must consider the results of the evaluation of your child, if it meets the public school unit'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**
2. You or your public school unit may present the evaluation as evidence at a due process hearing regarding your child.

Requests for Evaluations by an Administrative Law Judge

If an administrative law judge 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.

Public School Unit Criteria

If an independent educational evaluation 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 public school unit uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

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

Confidentiality of Information

34 CFR §300.611 - Definitions

As used under the heading **Confidentiality of Information**:

- 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 public school unit, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

34 CFR §300.32 - Personally Identifiable

Personally identifiable means information that includes:

(a) Your child's name, your name as the parent, or the name of another family member;

(b) Your child's address;

(c) A personal identifier, such as your child’s social security number or student number; **or**

(d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

34 CFR §300.612 - Notice to Parents

The State Educational Agency must give notice that is adequate to fully inform parents about 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 the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

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.

34 CFR §300.613 - Access Rights

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your public school unit 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 individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a 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 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.

34 CFR §300.614 - Record of Access

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of 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.

34 CFR §300.615 - 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.

34 CFR §300.616 - List of Types and Locations of Information

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 agency.

34 CFR §300.617 - Fees

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.

34 CFR §300.618 - Amendment of Records at Parent's Request

If you believe that information in the education records regarding your child 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 that maintains the information to 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***.

34 CFR §300.619 - Opportunity for a Hearing

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.

34 CFR §300.621 - Hearing Procedures

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

34 CFR §300.620 - Result of Hearing

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.

34 CFR §300.622 - Consent For Disclosure of Personally Identifiable Information

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (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 participating 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 public school unit you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the public school unit where the private school is located and officials in the public school unit where you reside.

34 CFR §300.623 - Safeguards

Each participating agency must protect the confidentiality of personally identifiable information at 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 your State's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (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.

34 CFR §300.624 - Destruction of Information

Your public school unit 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, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Differences Between the Procedures for Due Process Complaints and Hearings and for State Complaints

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a public school unit, the State Educational Agency, or any other public agency. Only you or a public school unit may file a due process complaint 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 free appropriate public education (FAPE) to the child. While 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 administrative law judge must hear a due process complaint (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, as described in this document under the heading Resolution Process, unless the administrative law judge grants a specific extension of the timeline at your request or the public school unit's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The State Educational Agency must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading ***Model Forms***.

34 CFR §300.151 - Adoption of State Complaint Procedures

General

Each 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;
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 State Educational Agency must 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.

34 CFR §300.152 - Minimum State Complaint Procedures

Time Limit; Minimum Procedures

Each 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 public school unit or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the 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 public school unit 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 time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) you and the public school unit or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
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 must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a

part of the due process hearing must 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 public school unit), 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 complaint alleging a public school unit's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

34 CFR §300.153 - Filing a State Complaint

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

The State complaint must include:

1. A statement that a public school unit or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR 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 provide a copy of the complaint to the public school unit or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

Due Process Complaint Procedures

34 CFR §300.507 - Filing a Due Process Complaint

General

You or the public school unit may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than one year before you or the public school unit 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 could not file a due process complaint within the timeline because:

1. The public school unit specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The public school unit withheld information from you that it was required to provide you under Part B of IDEA.

Information for Parents

The public school unit 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 public school unit file a due process complaint.

34 CFR §300.508 - Due Process Complaint

General

In order to request a hearing, you, or the public school unit (or your attorney or the public school unit'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. Whoever files the complaint must also provide the State Educational Agency with a copy of the complaint.

Content of the Complaint

The due process complaint must include:

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 action, 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 public school unit) at the time.

Notice Required Before a Hearing on a Due Process Complaint

You or the public school unit may not have a due process hearing until you or the public school unit (or your attorney or the public school unit's attorney) files a due process complaint that includes the information listed above.

Sufficiency of Complaint

In order 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 public school unit) notifies the administrative law judge and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or the public school unit) considers a due process complaint insufficient; the administrative law judge must decide if the due process complaint meets the requirements listed above and notify you and the public school unit in writing immediately.

Complaint Amendment

You or the public school unit may make changes to 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 days before the due process hearing begins, the administrative law judge grants permission for the changes.

If the complaining party (you or the public school unit) 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 School Unit Response to a Due Process Complaint

If the public school unit 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 public school unit must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

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

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

Other Party Response to a Due Process Complaint

Except as stated under the sub-heading immediately above, ***Public School Unit 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.

34 CFR §300.509 - Model Forms

The State Educational Agency must develop model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. However, your State or the public school unit may not require the use of these model forms. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint.

34 CFR §300.506 - Mediation

General

The public school unit must develop procedures that make mediation available to allow you and the public school unit 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 disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading ***Filing a Due Process Complaint***.

Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the public school unit'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 public school unit may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who 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. Who would explain the benefits of, and encourage the use of, the mediation process to you.

The State must keep 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 State Educational Agency must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the costs of the mediation process, including the costs of 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 public school unit.

If you and the public school unit 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 public school unit who has the authority to bind the public school unit.

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.

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 court or State court of a State receiving assistance under Part B of IDEA.

Impartiality of Mediator

The mediator:

1. May not be an employee of the State Educational Agency or the public school unit that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

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

34 CFR §300.510 - Resolution Process

Resolution Meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the public school unit must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

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

You and the public school unit 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 public school unit has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

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

Resolution Period

If the public school unit 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 public school unit 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 after making reasonable efforts and documenting such efforts, the public school unit is not able to obtain your participation in the resolution meeting, the public school unit may, at the end of the 30-calendar-day resolution period, request that an administrative law judge dismiss your due process complaint. Documentation of such efforts must include a record of the public school unit'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 public school unit 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 an administrative law judge to begin the 45-calendar-day due process hearing timeline.

Adjustments to the 30-Calendar-day Resolution Period

If you and the public school unit 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 public school unit 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 public school unit agree to use the mediation process but have not yet reached 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 public school unit 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 public school unit must enter into a legally binding agreement that is:

1. Signed by you and a representative of the public school unit who has the authority to bind the public school unit; **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 or by the State Educational Agency if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement Review Period

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

34 CFR §300.511 - Impartial Due Process Hearing

General

Whenever a due process complaint is filed, you or the public school unit 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.

In North Carolina, state law has delegated the authority to convene due process hearings to the North Carolina Office of Administrative Hearings.

Impartial Administrative Law Judge

At a minimum, an administrative law judge:

1. Must not be an employee of the State Educational Agency or the public school unit 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 an administrative law judge;
2. Must not have a personal or professional interest that conflicts with the administrative law judge'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.

Subject Matter of Due Process Hearing

The party (you or the public school unit) 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 public school unit must request an impartial hearing on a due process complaint within one year of the date you or the public school unit 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 could not file a due process complaint because:

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

34 CFR §300.512 - Hearing Rights

General

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 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.

Additional Disclosure of Information

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

An administrative law judge 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.

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 decisions provided to you at no cost.

34 CFR §300.513 - Hearing Decisions

Decision of the Administrative Law Judge

An administrative law judge's decision on whether your child received a free appropriate public education (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"), an administrative law judge may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (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 an administrative law judge from ordering a public school unit to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§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 CFR §§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 or appeal to the State special education advisory panel; **and**
2. Make those findings and decisions available to the public.

34 CFR §300.514 - Finality of Decision

Finality of Hearing Decision

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 (you or the public school unit) may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions***.

34 CFR §300.515 - Timelines and Convenience of Hearings and Reviews

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 sub-heading ***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.

An administrative law judge may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the public school unit).

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

34 CFR §300.516 - Civil Actions, Including the Time Period in Which to File Those Actions

General

Any party (you or the public school unit) 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 (you or the public school unit) bringing the action shall have 30 calendar days from the date of the decision of the administrative law judge to file a civil action in State court or 90 calendar days to file a civil action in federal court.

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 public school unit'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 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. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

34 CFR §300.518 - The Child's Placement While the Due Process Complaint and Hearing are Pending

Except as provided below under the heading ***PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES,*** 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 State or public school unit agree otherwise, your child must remain in his or her current educational placement.

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 public school unit 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 public school unit must provide those special education and related services that are not in dispute (those which you and the public school unit both agree upon).

If an administrative law judge 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.

34 CFR §300.517 - Attorneys' Fees

General

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).

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 a prevailing State Educational Agency or public school unit, 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 a prevailing State Educational Agency or public school unit, 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).

Note: North Carolina's Administrative Law Judges cannot award attorneys' fees.

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 or State-level review, 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 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 individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.
4. Fees also may not be awarded for a mediation as described under the heading ***Mediation***.

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 public school unit 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 State or public school unit unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA.

34 CFR §300.530 - Authority of School Personnel

Case-by-case Determination

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.

General

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 or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see the heading ***Change of Placement Because of Disciplinary Removals*** for the definition).

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

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 below under ***Services***. The child's IEP Team determines the interim alternative educational setting for such services.

Services

The public school unit does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from the child's current placement for **more than 10 school days,** and the 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 a free appropriate public education), so as 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**
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 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.

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 may be 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 (except for a removal that is for **10 school days** in a row or less and not a change of placement), the public school unit, you, and other relevant members of the IEP Team (as determined by you and the public school unit) 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 public school unit's failure to implement the child's IEP.

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

Determination that Behavior was a Manifestation of the Child's Disability

If the public school unit, 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 public school unit 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 already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading ***Special circumstances***, the public school unit must return your child to the placement from which your child was removed, unless you and the district 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 the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a public school unit;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a public school unit; **or**
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a public school unit.

Definitions

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 health-care 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.

Notification

On the date it 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 public school unit must notify you of that decision and provide you with a procedural safeguards notice.

34 CFR §300.536 - Change of Placement Because of Disciplinary Removals

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 public school unit and, if challenged, is subject to review through due process and judicial proceedings.

34 CFR §300.531 - Determination of Setting

The individualized education program (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***.

34 CFR §300.532 - Appeal

General

You may file a 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 described above.

The public school unit may file a due process complaint (see above) 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 Administrative Law Judge

An administrative law judge that meets the requirements described under the subheading ***Impartial administrative law judge*** must conduct the due process hearing and make a decision. The administrative law judge may:

1. Return your child with a disability to the placement from which your child was removed if the administrative law judge 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 administrative law judge 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 school unit believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

Whenever you or a public school unit 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, Hearings on Due Process Complaints*** except as follows:

1. The State Educational Agency or public school unit must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless you and the public school unit agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** 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. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the public school unit 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 ***Appeal***).

34 CFR §300.533 - Placement During Appeals

When, as described above, you or the public school unit file a due process complaint related to disciplinary matters, your child must (unless you and the State Educational Agency or public school unit agree otherwise) remain in the interim alternative educational setting pending the decision of the administrative law judge, 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.

34 CFR §300.534 - Protections for Children Not Yet Eligible for Special Education and Related Services

General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the public school unit 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.

Basis of Knowledge for Disciplinary Matters

A public school unit 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 Part B of IDEA; **or**
3. Your child's teacher or other public school unit personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the public school unit's director of special education or to other supervisory personnel of the public school unit.

Exception

A public school unit 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 to not be a child with a disability under Part B of IDEA.

Conditions that Apply If There Is No Basis of Knowledge

If prior to taking disciplinary measures against your child, a public school unit does not have knowledge that your child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** 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.

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 public school unit, and information provided by you, the public school unit must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

34 CFR §300.535 - Referral to and Action by Law Enforcement and Judicial Authorities

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 a public school unit reports a crime committed by a child with a disability, the public school unit:

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 the Family Educational Rights and Privacy Act (FERPA).

Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense

34 CFR §300.148 - General

Part B of IDEA does not require a public school unit 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 public school unit made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the public school unit where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

Reimbursement for Private School Placement

If your child previously received special education and related services under the authority of a public school unit, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the public school unit, a court or an administrative law judge may require the agency to reimburse you for the cost of that enrollment if the court or administrative law judge 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. An administrative law judge 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 State Educational Agency and public school units.

Limitation on Reimbursement

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

1. If: (a) At the most recent individualized education program (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 school unit 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 school unit of that information;
2. If, prior to your removal of your child from the public school, the public school unit 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.

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 an administrative law judge, 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.