

Part B Procedural Safeguards Notice

Calhoun County Public Schools

Part B Procedural Safeguards Notice

Parents Rights Regarding Special Education



The Notice of Procedural Safeguards: Rights of Parents of Students with Disabilities fulfills the current legal requirements for the federally prescribed content of this notice. It is presented in a format designed to clarify for parents their rights under the Individuals with Disabilities Education Act (IDEA).

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GENERAL INFORMATION

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

A copy of this notice must be given to parents only one time a school year, except that a copy must also be given to the parents:

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first State complaint under 34 CFR 300.151 through 300.153 and upon receipt of the first due process complaint under 34 CFR 300.507 in a school year;
3. In accordance with the discipline procedures in 34 CFR 300.530(h) (...on the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the District must ... provide the parents the procedural safeguards notice); and
4. Upon request by a parent

The Term “**parent**” refers to the same broad definition of parent as found in the Individuals with Disabilities Education Act (IDEA) including the:

1. biological or
2. adoptive parent,
3. a foster parent (including a grandparent, stepparent, or other relative) with whom the child lives or an individual who is legally responsible for the child’s welfare or a surrogate that has been appointed.

As a parent of a child who has been referred for special education services or a child who is already receiving special education and related services, you and your child have certain rights which are protected by state and/federal law. These rights are outlined in the next few pages. Please be sure to ask your school or the Director of Exceptional Children Services for an explanation if there is anything in this document that you do not understand, if you need your rights in a different language or if you want the information explained to you.

The information about your child being a child with a disability eligible under the IDEA, his or her special education and related services and other related information is confidential and is not released to others within the school district unless they have a legitimate need to know nor is it released to other agencies or groups except under limited circumstances. Regarding when confidential information is released, you have the following rights:

- Right to restrict third party access to your child’s records except in certain limited circumstances described in the Family Education Right to Privacy Act (34 C.F.R. § 99.31(a)).

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- Right to be notified and receive copies before information in your child's file is destroyed.
- Right to be told to whom information has been disclosed.
- Right to review and receive copies of all information sent to another agency where your child seeks or is eligible to enroll.

Content of notice

The written notice must:

- Describe the action that Calhoun County Public Schools (CCPS) proposes or refuses to take;
- Explain why CCPS is proposing or refusing to take the action;
- Describe each evaluation procedure, assessment, record, or report CCPS 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;

Tell you how you can obtain a description of the procedural safeguards if the action that CCPS is proposing or refusing is not an initial referral for evaluation;

- Include resources for you to contact for help in understanding Part B of the IDEA;
- Describe any other choices that your child's individualized education program (IEP) Team considered and the reasons why those choices were rejected; **and**
- Provide a description of other reasons why CCPS proposed or refused the action.

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, CCPS must ensure that:

The notice is translated for you orally by other means in your native language or other mode of communication;

1. You understand the content of the notice; **and**
2. There is written evidence that 1 and 2 have been met.

Native Language

34 CFR §300.29

Native language, when used with 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;

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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).

Electronic Mail

34 CFR §300.505

If CCPS 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.

Parental Consent - Definition

34 CFR §300.9

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 you may withdraw your consent at anytime.

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, CCPS 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.

Parental Consent

34 CFR §300.300

CONSENT FOR INITIAL EVALUATION

CCPS cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the 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 under the heading **Prior Written Notice** and **Parental Consent**.

CCPS 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 CCPS to start providing special education and related services to your child.

CCPS 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 CCPS 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, CCPS 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. CCPS 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/her parent —

CCPS 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, CCPS 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 the IDEA, means a child who, as determined by the State where the child lives, is:

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

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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

- CCPS must obtain your informed consent before providing special education and related services to your child for the first time.
- CCPS 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 for special education and related services, CCPS 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, if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and CCPS does not provide your child with the special education and related services for which it sought your consent, CCPS:

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 at any time subsequent to the initial provision of special education and related services, you revoke consent in writing for the continued provision of special education and related services, CCPS may not continue to provide special education and related services to your child, but must provide prior written notice, as described under the heading **Prior Written Notice**, before ceasing the provision of special education and related services.

PARENTAL CONSENT FOR REEVALUATIONS

CCPS must obtain your informed consent before it re-evaluates your child, unless CCPS 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, CCPS 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, CCPS does

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not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

DOCUMENTATION OF REASONABLE EFFORTS TO OBTAIN PARENTAL CONSENT

The school staff must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of The District'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 the parents and any responses received; **and**
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

OTHER CONSENT REQUIREMENTS

Your consent is not required before **CCPS** 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 all parents of all children.

CCPS 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 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, **CCPS** 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 parentally-placed private school children with disabilities).

Independent Educational Evaluations

34 CFR §300.502

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 CCPS.

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If you request an independent educational evaluation, CCPS must provide you with information about where you may obtain an independent educational evaluation and about The District criteria that apply to independent educational evaluations.

Definitions

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

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

Parent 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 CCPS is subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, CCPS 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 CCPS demonstrates in a hearing that the evaluation of your child that you obtained did not meet CCPS's criteria.
2. If CCPS requests a hearing and the final decision is that CCPS'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, **CCPS may ask why you object to the evaluation of your child obtained by CCPS.** However, **CCPS 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 CCPS evaluation of your child.**

You are entitled to only one independent educational evaluation of your child at public expense each time CCPS 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 CCPS an evaluation of your child that you obtained at private expense:

1. CCPS must consider the results of the evaluation of your child, if it meets The CCPS's criteria for independent educational evaluations, in any decision made

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with respect to the provision of a free appropriate public education (FAPE) to your child; **and**

2. You or CCPS may present the evaluation as evidence at a due process hearing regarding your child.

Requests for evaluations by hearing officers

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

School district 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 CCPS 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, CCPS may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

CONFIDENTIALITY OF INFORMATION

DEFINITIONS

34 CFR §300.611

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

PERSONALLY IDENTIFIABLE

34 CFR §300.32

Personally identifiable means information that has:

- (a) Your child’s name, your name as the parent, or the name of another family member;
- (b) Your child’s address;

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- (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.

NOTICE TO PARENTS

34 CFR §300.612

The South Carolina Department of Education 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 identification, location, or evaluation activity (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 the activity to locate, identify, and evaluate children in need of special education and related services.

Access Rights

34 CFR §300.613

Records:

Education records means the type of records covered under definition of "educational records" found in the Family Educational Rights and Privacy Act of 1974 (34 C.F.R. Part 99), those regulations define education records as follows: Educational records mean those records that are:

- 1) Directly related to the student and
- 2) Maintained by the School District or institution or by a party acting for the District or institution.

The term does not include:

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- 1) Records that are kept in the sole possession of the maker are used only as a person memory aid and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
- 2) Records of the law enforcement unit of an educational agency subject to the provisions of §99.8
- 3) Records relating to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business; related exclusively to the individual in that individual's capacity as an employee; and are not available for use for any other purpose
- 4) Records on a student who is 18 years of age or older or is attending an institution or postsecondary education that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in his or her professional capacity; made, maintained or used only in connection with treatment of the student and disclosed only to individuals providing the treatment, and treatment does not include remedial educational activities that are program of instruction.
- 5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
- 6) Grades on peer-graded papers before they are collected and recorded by a teacher.

FCSD#3 must permit you to **inspect** and **review** any education records relating to your child that are collected, maintained, or used by CCPS under Part B of the IDEA. The School District 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 CCPS to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that CCPS provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your rights to have your representative inspect and review the records.

CCPS 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, or separation and divorce.

Record of Access

34 CFR §300.614

Rights related to records:

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- 1) Right to examine all records related to your child without unnecessary delay after parents' request and before any meeting regarding an IEP or hearing and, in no case, more than 45 days after request.
- 2) Right to have your representative review the records
- 3) Right to request that the School District provide copies of the records if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the records.
- 4) Right to have the District presume that a parent has authority to inspect and review records of his or her child unless the District has been notified that parent does not have the authority under state law.
- 5) Right to have the District keep a record of parties obtaining access to identifiable student information included in education records collected, maintained, or used under this part (except Right to have the District search for or retrieve educational records without charge.

---Parent may be charged a fee for copies of records which are made for parents if the fee does not effectively prevent the parent from exercising their right to inspect and review those records.
- 6) Right to be informed of all types and locations of records being collected, maintained or used by the District.
- 7) Right to ask for an explanation of any item in the records
- 8) Right to ask for an **amendment of any record if the record is inaccurate, misleading or violates the privacy or other rights of the child.** 34 CFR §300.618
- 9) If CCPS refuses to change the information in accordance with your request, the District must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading *Opportunity For a Hearing*. 34 CFR §300.619
- 10) 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 §300.621
- 11) Right to have the District decide whether to amend the information within a reasonable time after being asked to do so.
- 12) Right to be informed if the District decides in a hearing that the information is inaccurate, misleading or violates the child's rights and the right to have the record amended.
- 13) Right to have the parent's explanation maintained in the record as long as the contested record is maintained.
- 14) Right to have the parents' **explanation disclosed if the contested record is disclosed.**

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- 15) On request, CCPS must provide you with a list of the types and locations of education records collected, maintained, or used by the District. 34 CFR §300.616
- 16) If, as a result of the hearing, CCPS 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.
- 17) If, as a result of the hearing, CCPS 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 CCPS. 34 CFR §300.620

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

- 18) Be maintained by CCPS as part of the records of your child as long as the record or contested portion is maintained by CCPS ; **and**
- 19) If CCPS discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

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

Records of More Than One Child

34 CFR §300.615

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

CONSENT

Consent means:

- a) 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.
 - b) You understand and agree in writing to that described action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
 - c) You understand that the consent is voluntary on your part and you may withdraw your consent at anytime. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.
1. Right to give consent before an initial evaluation of your child to determine whether your child is eligible under the IDEA to receive special education and related services. You must also receive **prior written notice** of the proposed action.

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2. If you refuse to provide consent or fail to respond to a request for consent, the school district may, but is not required to, pursue the evaluation by using the mediation or due process procedures to obtain that evaluation.

Consent to an initial evaluation is **NOT** consent to provide services under the IDEA, therefore, the district does not violate its child find obligations if it does not pursue the evaluation if you do not provide consent.

Right to give consent before a reevaluation is conducted

- i. This is true unless the district can demonstrate that **(i)** it took reasonable steps to obtain your consent for your child's reevaluation; and **(ii)** you did not respond.
 - a. If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the mediation, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation.
 - b. As with initial evaluations, your school district does not violate its obligations under the IDEA if it declines to pursue the reevaluation in this manner.
3. If the parent of a child in home school or placed in private school at parental expense does not provide consent for the evaluation or reevaluation, or the parent fails to respond to the request to provide consent, the district may NOT use the procedures of mediation or due process hearing to obtain consent.
 - a. The district is not required to consider the child eligible for special education services.
4. The school district must have your consent before initial placement can be made in special education. The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services.
 - a. If the parent fails to respond or refuses to provide consent for the initial provision of special education and related services, the school district may NOT use the mediation or due process hearing procedures to obtain consent.
 - b. The school district will not be in violation of its child find responsibilities not its obligation to make a free and appropriate public education available (FAPE) if you do not consent.
 - c. The school district is not required to convene an IEP Team meeting or to develop an IEP for a child for which consent for special education and related services has not been provided.

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RIGHT TO REVOKE CONSENT AT ANY TIME. If at any time subsequent to the consent for initial provision of services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school district:

- a. May not continue to provide the special education and related services to the child but
 - b. Must, prior to ceasing the provision of services, provide prior written notice.
 - c. May not use mediation or due process hearing procedures to obtain consent'
 - d. Will not be in violation of the provision of FAPE if you withdraw consent
 - e. Is not required to convene an IEP team meeting or develop an IEP for further provision of services.
6. Consent is not required prior to reviewing existing data as part of an evaluation or reevaluation or prior to administering a test that is administered to all children unless consent is required for all children.

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 Florence County School District 3, the State Educational Agency, or any other public agency. Only you or a school district 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 hearing officer 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 hearing officer grants a specific extension of the timeline at your request or the school district'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**.

MINIMUM STATE COMPLAINT PROCEDURES

34 CFR §300.152

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 school district 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 school district 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 school district 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.

Part B Procedural Safeguards Notice

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

FILING A STATE COMPLAINT

34 CFR §300.153

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 school district 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 forward a copy of the complaint to the school district 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

FILING A DUE PROCESS COMPLAINT

34 CFR §300.507

DUE PROCESS HEARINGS

Due process is a set of procedures that seeks to ensure fairness of educational decisions and accountability, both for parents and for educational professionals. Due process rights begin when educational professionals or the parents request an initial evaluation to determine whether or not a student is eligible and needs special education and related services. The due process hearing provides a forum where disagreements about the identification, evaluation, educational placement, and provision of a FAPE for students with disabilities may be resolved.

- When disagreements arise, federal and state law allow either party to request a due process hearing to resolve issues in dispute.
- Ultimately, the intent of federal and state special education due process requirements is to protect the rights of children from inappropriate actions by LEAs or by parents.
- Every special education due process hearing and review must be provided at no cost to the child or the parent of the child. The costs of the initial hearing must be paid for by the LEA except for parent's attorney fees and expert witnesses unless the parent substantially prevails and requests reimbursement from the federal court.

Other avenues to resolve disagreements include:

- Mediation and the complaint process.
- Only as a last resort should the legal method of a special education due process hearing and appeal procedure be used.

Forms can be found at <http://ed.sc.gov> on the OEC Website under **Forms** and **Applications**. See also Parent Rights (Procedural Safeguards), for additional information about other rights of parents.

The School District, the parents of a child with a disability, or the student (if the student is age 18 or older) has the right to file a due process hearing complaint. A special education due process hearing may be initiated to resolve differences about a child's identification, evaluation, educational placement, or provision of a FAPE. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint. There are two exceptions to this timeline including when an LEA has misrepresented that it has resolved the problem or the LEA has withheld information that it was legally required to give to the parent (34 CFR § 300.507(a)(2)).

Part B Procedural Safeguards Notice

To request a due process hearing, the party filing the complaint sends a copy of the due process hearing request to the other party and to the Office of General Counsel. This notice is confidential and must contain the following information:

- name of the child;
- address of the child's residence (or in the case of a homeless child or youth, available contact information for the child);
- name of the school the child is attending;
- description of the nature of the problem and the facts that form the basis of the complaint; and
- a proposed resolution of the problem.

When the LEA receives this request for a due process hearing, LEA personnel are required to:

- inform parents about mediation;
- inform parents of free or low-cost legal services; and
- provide a copy of the Parent Rights document for the first due process complaint in the school year (34 CFR § 300.504).

Assigning a special education due process hearing officer

It is the responsibility of Florence County School District 3 to maintain a current list of trained, qualified special education due process hearing officers.

1. The School District will also have hearing officers to resolve other matters not related to special education, such as the LEA's disciplinary hearing officer. For special education due process hearings, however, a special education due process hearing officer is required.
2. The School District is responsible for conducting due process hearings in accordance with all federal and state requirements, including assigning special education due process hearing officers.
3. A special education due process hearing officer must be assigned within 10 calendar days of receiving or initiating a hearing request.
4. A special education due process hearing officer can have no personal or professional interest that would conflict with his or her objectivity.

Only persons who have been trained by the SCDE may be special education due process hearing officers.

If a special education due process hearing officer does not adhere to the federal and state regulations or policies and procedures, including all timelines, he or she will be removed from the list of qualified hearing officers.

Parents or attorneys representing the parents have the right to raise an objection as to the special education due process hearing officer appointed by the LEA on the basis of a potential bias or personal or professional conflict. If the determination is made by the special education due process hearing officer that a potential bias or conflict exists, he or she must remove himself/herself and the LEA must go to the next name of the list of

Part B Procedural Safeguards Notice

persons qualified to serve as special education due process hearing officers. When the parent has requested a due process hearing, the School District must schedule a resolution meeting to occur within 15 calendar days of receiving the due process requests. The District must convene a resolution meeting with:

- The parent, the member or
 - members of the IEP team who have specific knowledge of the facts identified in the complaint, and a representative of the School District who has the authority to make binding decisions on behalf of the School District.
 - The parent and the School District determine which members of the IEP team will attend the meeting.
 - The School District will not include their attorney unless you bring your attorney.
 - The purpose of the resolution meeting is for the parent of the child to discuss and explain the complaint, including the facts that form the basis of the complaint. The School District then has an opportunity to resolve the complaint. If the meeting results in a resolution of the complaint, the parties develop a legally binding written agreement that both the parent and the representative of the School District signs.
 - The agreement is, by law, enforceable in any state or federal court of competent jurisdiction. However, the law also permits either party to void the agreement within 3 business days of the date the agreement was signed. The resolution agreement must be signed by the parent and a representative of the School District that has the authority to bind the School District.
 - If a resolution of the complaint is not reached at the meeting and the School District has not resolved the complaint to the satisfaction of the parent within 30 calendar days of the LEA's receipt of the complaint, the due process hearing procedures will be implemented and all of the applicable timelines for a due process hearing will commence.
 - This includes the issuance of a written decision within 45 calendar days after the end of the resolution period. If no resolution is reached during the resolution session and the parties do not believe they can reach a mutually agreeable resolution, the parties may contact the special education due process hearing officer to request the timeline start prior to the end of the 30-day resolution period.
-
- The parent's failure to participate in a resolution meeting when he or she has not waived the resolution process or requested to use mediation will delay the timelines for the resolution process and due process until the meeting is held (34 CFR § 300.510(b)(3)). In addition, if the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented) the LEA may, at the conclusion of the 30 day resolution period, request that the special education due process hearing officer dismiss the parents' due process complaint (34 CFR § 300.510(b)(4)).

Part B Procedural Safeguards Notice

- If an LEA fails to hold and participate in a resolution meeting within 15 days of receiving a due process complaint, the parent may request the special education due process hearing officer to begin the due process hearing and commence the 45 day timeline for its completion (34 CFR § 300.510(b)(5)).
- A resolution meeting, however, is not required if the parent and the School District agree, in writing, to waive the resolution meeting, or they agree to use mediation to attempt to resolve the complaint. If no resolution is reached at during the session, the parties may contact the special education due process hearing officer and request the timeline.
- The School District must respond to the issues raised in the complaint within 10 calendar days of receiving the complaint.

Resolution meeting

When the parent has requested a due process hearing, the School District must schedule a resolution meeting to occur within **15 calendar days** of receiving the due process requests.

The District must convene a resolution meeting with:

- the parent, the member or
- members of the IEP team who have specific knowledge of the facts identified in the complaint, and a representative of the School District who has the authority to make binding decisions on behalf of the School District.
- The parent and the School District determine which members of the IEP team will attend the meeting.
- The School District will not include their attorney unless you bring your attorney.
- The purpose of the resolution meeting is for the parent of the child to discuss and explain the complaint, including the facts that form the basis of the complaint.
- The School District then has an opportunity to resolve the complaint. If the meeting results in a resolution of the complaint, the parties develop a legally binding written agreement that both the parent and the representative of the School District signs.
- The agreement is, by law, enforceable in any state or federal court of competent jurisdiction. However, the law also permits either party to void the agreement within **3 business days of the date the agreement was signed**. The resolution agreement must be signed by the parent and a representative of the School District that has the authority to bind the School District.

Part B Procedural Safeguards Notice

- If a resolution of the complaint is not reached at the meeting and the School District has not resolved the complaint to the satisfaction of the parent within 30 calendar days of the LEA's receipt of the complaint, the due process hearing procedures will be implemented and all of the applicable timelines for a due process hearing will commence.
- This includes the issuance of a written decision within 45 calendar days after the end of the resolution period. If no resolution is reached during the resolution session and the parties do not believe they can reach a mutually agreeable resolution, the parties may contact the special education due process hearing officer to request the timeline start prior to the end of the 30-day resolution period.
- The parent's failure to participate in a resolution meeting when he or she has not waived the resolution process or requested to use mediation will delay the timelines for the resolution process and due process until the meeting is held (34 CFR § 300.510(b)(3)). In addition, if the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented) the LEA may, at the conclusion of the 30 day resolution period, request that the special education due process hearing officer dismiss the parents' due process complaint (34 CFR § 300.510(b)(4)).
- If an LEA fails to hold and participate in a resolution meeting within 15 days of receiving a due process complaint, the parent may request the special education due process hearing officer to begin the due process hearing and commence the 45 day timeline for its completion (34 CFR § 300.510(b)(5)).
- A resolution meeting, however, is not required if the parent and the School District agree, in writing, to waive the resolution meeting, or they agree to use mediation to attempt to resolve the complaint. If no resolution is reached at during the session, the parties may contact the special education due process hearing officer and request the timeline.

The School District must respond to the issues raised in the complaint within 10 calendar days of receiving the complaint.

Prehearing requirements

The special education due process hearing officer has up to 5 calendar days from the receipt of the sufficiency challenge to determine whether or not the original complaint notice is sufficient. The special education due process hearing officer shall immediately notify the parents and the LEA in writing of his or her decision.

Part B Procedural Safeguards Notice

If the LEA has not sent a PWN to the parent regarding the problem described in the parent's due process complaint notice, the LEA, within 10 days of receiving the complaint, must send to the parent a response that includes:

(1) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(2) a description of other options that the IEP team considered and the reasons why those options were rejected;

(3) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (4) a description of the other factors that are relevant to the agency's proposed or refused action (34 CFR § 300.508(e)(1)).

(4) **Within 5 business days prior to a hearing**, each party must disclose to the other party any evidence the party plans to use at the hearing, including all evaluations and recommendations based on the evaluation that they intend to use at the hearing.

(5) Failure to provide this evidence to the other party in a timely fashion gives the other party a right to request that the special education due process hearing officer prohibit the introduction of the evidence at the hearing.

(6) If the School District and the parent agreed to the resolution meeting but have not resolved the issues within 30 days of the date the due process complaint was received, the hearing may begin. Note that the meeting is required unless the parent and the LEA agree to waive it. Also, note that, if both parties agree in writing to waive the resolution meeting, the 45 calendar day timeline to complete the due process hearing begins the day after the written agreement is signed.

Conducting a due process hearing

The due process hearing must be held at a time and place reasonably convenient to the parent of the child and must be a closed hearing, unless the parent requests an open hearing. The parties shall be notified in writing of the time and place of the hearing at least 5 days prior to the hearing. Both parties have the right to be present at the hearing, as well as be accompanied and advised by legal counsel and people who have special knowledge about children with disabilities.

Parties have the right to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of a subpoena by the special education due process hearing officer. Under S. C. Code Ann. § 59-33-90 (2004), special education due process hearing officers have the authority to issue subpoenas related to meeting the requirements set forth in the IDEA. Each party may present witnesses in person or present their testimony by affidavit if the due process hearing officer agrees, including expert medical, psychological or educational testimony. Each party has a right to prohibit the other party from raising any issue at the hearing that was not raised in the due process complaint notice or in a prehearing conference held prior to the hearing.

Part B Procedural Safeguards Notice

1. Both parties have the right to have a written or, at the option of the parent, an electronic, verbatim record of the hearing. Parents also have the right to a written, or at the option of the parent, electronic decision, including the findings of facts and conclusions. Both the record of the hearing and the decision of the special education due process hearing officer must be provided at no cost to the parents.

Reaching a decision

The 45 day timeline for completion of a due process hearing starts on the day after *one* of the following events occurs:

- both parties to the due process proceedings agree, in writing, to waive the resolution meeting;
- the parties begin a resolution meeting or a mediation but agree, in writing, that resolution of their dispute is not possible before the end of the 30 day resolution period; or
- both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30 day resolution period, but later, one, or both, of the parties withdraws from the mediation.

A written decision of the result of any hearing must be provided to the LEA and must be sent by certified mail to the parent or attorney of the child. In addition, the special education due process hearing officer must delete personally identifiable information from the report and send a copy to the Office of General Counsel, which must make the decision available to the Special Education Advisory Council. (34 CFR § 300.509(d))

Appealing the due process decision

If the School District or the parents are dissatisfied with the decision of the special education due process hearing officer, either party may:

File a notice of appeal with the Office of General Counsel not later than 10 calendar days after the date of the receipt of the written decision.

A request for an extension to file an appeal (beyond the 10-day time limit) must be made in writing to the Office of General Counsel within 5 days of the receipt of the local decision. Within ten business days of receiving a request for an extension to file an appeal, the state-level review officer may grant the request for good cause shown. The concept of “good cause” may not include negligence or a matter of low priority in filing the request for appeal. In no event will the state-level review officer grants an extension of more than 20 days beyond the original 10-day timeline. The appeal should include a statement of the decision of the local due process hearing officer, the specific points being appealed, copies of all items entered as evidence, and the names and addresses of the parents if the is appealing the decision. The appealing party may also include written arguments. When parents appeal the decision, the LEA must provide a statement of the decision and copies of all items entered as evidence. The LEA must also provide a written transcript of the local due process hearing to the Office of General Counsel. The Office of General Counsel must appoint a state-level hearing officer and submit to the state-level hearing officer the request for appeal, the transcript, and any other relevant documentation.

Part B Procedural Safeguards Notice

The state-level due process hearing officer must conduct an impartial review of the hearing and make an independent decision based on the review. The review officer must conduct the review according to the following requirements:

- Examine the entire hearing record; an audiotape of the hearing must be made. The LEA must have court reporter to record the proceedings. The LEA is responsible for ensuring that the transcript of the proceedings will be available as required by the state appeal procedures; this includes the provision of advance notice to the court reporter concerning the appeal timelines and the possible need for a quick turnaround time in producing the transcript.
- Ensure that the procedures at the hearing were consistent with the requirements of due process;
- Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 34 CFR § 300.512 apply; and
- Afford the parties an opportunity for oral or written arguments, or both, at the discretion of the reviewing official.

The decision of the state-level review officer is final unless either party chooses to bring a civil action in either state or federal district court of competent jurisdiction. Personally identifiable information is also deleted from the report, and is made available to the Special Education Advisory Council and to the public by the Office of General Counsel.

Stay-put

While the due process hearing is pending, the student involved in the complaint must remain ("stay-put") in the current educational placement, unless:

- The parents and the School District agree to a different placement.
- The proceedings arise in connection with the initial admission of the child to school, in which case the child will be placed in the appropriate regular education classroom or program, unless otherwise directed by a special education due process hearing officer because a child's behavior is substantially likely to result in injury to the student or to others.
- The student is in an IAES for disciplinary reasons. (34 CFR § 300.533)

If the due process hearing involves an evaluation or initial services under Part B for a child who is transitioning from Part C services to Part B services and is no longer eligible for Part C services because the child has turned age three, the School District is not required to provide the Part C services that the child was receiving. However, if the child is found eligible for special education services and related services under Part B, and the parent consents to the initial provision of special education and related services, then the LEA must provide those special education and related services that are not in dispute between the parent and the LEA.

Civil action

(34 CFR § 300.516).

Part B Procedural Safeguards Notice

After a local due process hearing, or an appeal of that hearing, is completed either the parents or the LEA may pursue a civil action through a state or federal court for reimbursement of attorneys' fees. Federal and state regulations allow the civil action by either party.

Attorney's fees

- If the parents prevail in the due process hearing or upon appeal, a court may award some or all of the attorney's fees parents have paid in conjunction with the due process hearing.
- Only a court can award attorney fees to the parents and only if the parents are the prevailing parties.
- Although the special education due process hearing officer has no authority to order attorney's fees, the hearing officer must find that the party seeking attorney's fees is a prevailing party in the action.
- There may be limitations, however, on the amount of attorney fees ordered by the court. For example, if the court finds that the parents prolonged the process or if the fees charged are more than the hourly rate usually charged, the judge has the authority to reduce the award requested by the parents.

The School District may be awarded attorney fees if a parent files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

The School District may be awarded attorney fees if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. In determining the amount of the reimbursement of attorney fees, the judge must follow the IDEA regulations (34 CFR § 300.517).

Expedited due process hearings

When a due process hearing is requested by a parent to appeal a decision regarding placement for disciplinary reasons:

- a manifestation determination, or
- a decision concerning extended school year services or when the hearing is requested by the School District that believes maintaining the current placement of a child is substantially likely to result in injury to that child or to others, the hearing is considered to be expedited.
- The School District is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

Unless the parents and Florence School District 3 agree in writing to waive the resolution meeting or agree to use the mediation process a resolution meeting must occur within 7 days of receiving notice of the due process complaint; and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

Part B Procedural Safeguards Notice

The decisions from expedited due process hearings are appealable consistent with 34 CFR § 300.514. When an appeal is made by either the parents or the LEA, the child must remain in the IAES pending the decision of the special education due process hearing officer or until the expiration of the time period (period of disciplinary removal if the behavior is not a manifestation of the disability or period due to removal for special circumstances – drugs, weapons, or serious bodily injury), whichever occurs first, unless the parent and School District agree otherwise.

MEDIATION

34 CFR §300.506

General

The School District must develop procedures that make mediation available to allow you and the school district 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 school district'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 school district 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.

Part B Procedural Safeguards Notice

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 school district.

If you and the school district 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 school district who has the authority to bind the school district.

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 school district 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 school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

RESOLUTION PROCESS

34 CFR §300.510

Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district 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 school district who has decision-making authority on behalf of the school district; **and**
2. May not include an attorney of the school district unless you are accompanied by an attorney.

Part B Procedural Safeguards Notice

You and the school district 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 school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

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

Resolution period

If the school district 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 school district 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 school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district'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 school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.

Adjustments to the 30-calendar-day resolution period

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

Part B Procedural Safeguards Notice

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school district 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 school district 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 school district 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 school district must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school district who has the authority to bind the school district; **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 school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within 3 business days of the time that both you and the school district signed the agreement

SAFEGUARDS

34 CFR §300.623

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

One official at CCPS 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 the IDEA and the Family Educational Rights and Privacy Act (FERPA).

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

DESTRUCTION OF INFORMATION

34 CFR §300.624

CCPS 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.

STATE COMPLAINT PROCEDURES

DIFFERENCES BETWEEN DUE PROCESS COMPLAINTS AND HEARINGS AND STATE COMPLAINT PROCEDURES

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings.

1. Any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the South Carolina Department of Education, or any other public agency.
2. Only you or a school district 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.
3. While staff of the South Carolina Department of Education generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process 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 hearing officer grants a specific extension of the timeline at your request or CCPS request.
4. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The South Carolina Department of Education 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*.

ADOPTION OF STATE COMPLAINT PROCEDURES

34 CFR §300.151

General

The South Carolina Department of Education 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 South Carolina Department of Education;
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 South Carolina Department of Education has found a failure to provide appropriate services, the South Carolina Department of Education must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; **and**
2. Appropriate future provision of services for all children with disabilities.

MINIMUM STATE COMPLAINT PROCEDURES

34 CFR §300.152

Time limit; minimum procedures

The South Carolina Department of Education must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

Carry out an independent on-site investigation, if the South Carolina Department of Education determines that an investigation is necessary;

Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

Provide CCPS 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;

Review all relevant information and make an independent determination as to whether CCPS or other public agency is violating a requirement of Part B of the IDEA; **and**

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 South Carolina Department of Education's final decision.

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Time extension; final decision; implementation

The South Carolina Department of Education's procedures described above also must:

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 CCPS 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.

Include procedures for effective implementation of the South Carolina Department of Education'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 below 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 the State complaint, or 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 (you and CCPS), then the due process hearing decision is binding on that issue and the South Carolina Department of Education must inform the complainant that the decision is binding.

A complaint alleging CCPS or other public agency's failure to implement a due process hearing decision must be resolved by the South Carolina Department of Education.

FILING A COMPLAINT

34 CFR §300.153

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 CCPS or other public agency has violated a requirement of Part B of the 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 complainant; 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;

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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 nature of the problem of the child, including facts relating to the problem; **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.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***. The party filing the State complaint must forward a copy of the complaint to Florence County School District 3 or other public agency serving the child at the same time the party files the complaint with the South Carolina Department of Education.

DUE PROCESS COMPLAINT PROCEDURES

FILING A DUE PROCESS COMPLAINT

34 CFR §300.507

General

You or **CCPS** 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 two years before you or **CCPS** 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:

The **CCPS** specifically misrepresented that it had resolved the issues identified in the complaint; or

CCPS withheld information from you that it was required to provide you under Part B of the IDEA.

Information for parents

CCPS 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 Florence County School District file a due process complaint.

DUE PROCESS COMPLAINT

34 CFR §300.508

General

In order to request a hearing, you or CCPS (or your attorney or the attorney for CCPS) 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.

You or CCPS, whichever one filed the complaint, must also provide the South Carolina Department of Education 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;

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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 CCPS) at the time.

Notice required before a hearing on a due process complaint

You or CCPS may not have a due process hearing until you or CCPS (or your attorney or the School District'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 CCPS) notifies the hearing officer 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 the receiving party (you or CCPS) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and CCPS in writing immediately.

Complaint amendment

You or CCPS 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 hearing officer grants permission for the changes.

If the complaining party (you or CCPS) 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.

Local educational agency (LEA) or school district response to a due process complaint

If CCPS 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,

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

1. An explanation of why CCPS 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 CCPS used as the basis for the proposed or refused action; **and**
4. A description of the other factors that are relevant to The School District's proposed or refused action.

Providing the information in items 1-4 above does not prevent CCPS 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, **Local educational agency (LEA) or school district 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.

MODEL FORMS

34 CFR §300.509

The South Carolina Department of Education must develop model forms to help you file a due process complaint and a State complaint. However, your State or CCPS may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a State complaint (See Model Forms)

MEDIATION

34 CFR §300.506

General

CCPS must develop procedures that make mediation available to allow you and CCPS to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the 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:

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Is voluntary on your part and CCPS'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 Part B of the IDEA; **and**

Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

CCPS 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:

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**

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

The State must have 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 South Carolina Department of Education must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the cost 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 CCPS.

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

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 CCPS who has the authority to bind CCPS.

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:

3. May not be an employee of the South Carolina Department of Education or CCPS that is involved in the education or care of your child; **and**
4. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

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

RESOLUTION PROCESS

34 CFR §300.510

Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, CCPS 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 CCPS who has decision-making authority on behalf of CCPS ; **and**
2. May **not** include an attorney of CCPS unless you are accompanied by an attorney.
3. You and CCPS 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 CCPS has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

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

Resolution period

If CCPS 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.

1. Except where you and CCPS 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.
2. If after making reasonable efforts and documenting such efforts, CCPS is not able to obtain your participation in the resolution meeting, CCPS may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss

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your due process complaint. Documentation of such efforts must include a record of CCPS's attempts to arrange a mutually agreed upon time and place, such as:

3. Detailed records of telephone calls made or attempted and the results of those calls;
4. Copies of correspondence sent to you and any responses received; and
5. Detailed records of visits made to your home or place of employment and the results of those visits.
6. If CCPS fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline begin.

Adjustments to the 30-calendar-day resolution period

If you and CCPS 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 CCPS 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 CCPS 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 CCPS withdraws from the mediation process, 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 CCPS must enter into a legally binding agreement that is:

Signed by you and a representative of CCPS who has the authority to bind CCPS ; **and**

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 South Carolina Department of Education, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement review period

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

HEARINGS ON DUE PROCESS COMPLAINTS

IMPARTIAL DUE PROCESS HEARING

34 CFR §300.511

General

Whenever a due process complaint is filed, you or CCPS 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.

Whenever a due process complaint is filed, CCPS is responsible for convening the due process hearing in accordance with the South Carolina Department of Education procedures. An appeal from a due process hearing can be made to the South Carolina Department of Education.

Impartial hearing officer

At a minimum, a hearing officer:

1. Must **not** be an employee of the South Carolina Department of Education or CCPS that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the 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.

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

Subject matter of due process hearing

The party (you or CCPS) 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 CCPS must request an impartial hearing on a due process complaint within two years of the date you or

CCPS knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

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- *The above timeline does not apply to you if you could not file a due process complaint because:*
- *CCPS specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or*
- *CCPS withheld information from you that it was required to provide to you under Part B of the IDEA.*

HEARING RIGHTS

34 CFR §300.512

General

You have the right to represent yourself at a due process hearing (including a hearing related to disciplinary procedures) or an appeal with a hearing to receive additional evidence, as described under the subheading ***Appeal of decisions; impartial review***. In addition, any party to a hearing has the right to:

1. Be accompanied or advised by an attorney and/or persons with special knowledge and training regarding the problems of children with disabilities; but only may be represented by an attorney licensed by the state of South Carolina in any such hearing;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;

Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;

Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**

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 CCPS must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or CCPS intend to use at the hearing.

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

Parental rights at hearings

You must be given the right to:

Have your child present;

Open the hearing to the public; **and**

Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

HEARING DECISIONS

34 CFR §300.513

Decision of hearing officer

A hearing officer'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, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:

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 a deprivation of an educational benefit.

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

None of the provisions under the headings: ***Filing a Due Process Complaint; Due Process Complaint; Model Forms; Resolution Process; Impartial Due Process Hearing; Hearing Rights; and Hearing Decisions*** (34 CFR §§300.507 through 300.513), can affect your right to file an appeal of the due process hearing decision with the South Carolina Department of Education.

Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the 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 to advisory panel and general public

The South Carolina Department of Education or CCPS, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; **and**

Make those findings and decisions available to the public.

APPEALS

FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

34 CFR §300.514

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 CCPS) may appeal the decision to the South Carolina Department of Education.

Appeal of decisions; impartial review

If a party (you or CCPS) is aggrieved (harmed) by the findings and decision in the hearing, an appeal may be brought to the South Carolina Department of Education.

If there is an appeal, the South Carolina Department of Education must conduct an impartial review of the findings and decision appealed. The official conducting the review must:

1. Examine the entire hearing record;
2. Ensure that the procedures at the hearing were consistent with the requirements of due process;
3. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above under the heading **Hearing Rights** apply;
4. Give the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
5. Make an independent decision on completion of the review; **and**
6. Give you and CCPS a copy of the written, or, at your option, electronic findings of fact and decisions.

Findings and decision to advisory panel and general public

The South Carolina Department of Education, after deleting any personally identifiable information, must:

1. Provide the findings and decisions of the appeal to the State special education advisory panel; **and**
2. Make those findings and decisions available to the public.

Finality of review decision

The decision made by the reviewing official is final unless you or CCPS brings a civil action, as described under the heading **Civil Actions, Including the Time period in Which to File Those Actions**.

TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

34 CFR §300.515

CCPS must ensure that not later than **45 calendar days** after the expiration of the **30-calendar-day** period for resolution meetings or, 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 you and CCPS

The South Carolina Department of Education must ensure that not later than 30 calendar days after the receipt of a request for a review:

1. A final decision is reached in the review; **and**
2. A copy of the decision is mailed to you and CCPS.

A hearing or reviewing officer may grant specific extensions of time beyond the periods described above (45 calendar days for a hearing decision and 30 calendar days for a review decision) if you or CCPS make a request for a specific extension of the timeline.

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

CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS

34 CFR §300.516

General

Any party (you or CCPS) who does not agree with the findings and decision in the State-level review has the right to bring a civil action with respect to the matter that was the subject of the due process hearing (including a hearing relating to disciplinary procedures). 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 CCPS) bringing the action shall have 90 calendar days from the date of the decision of the State review official to file a civil action.

Additional procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;

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2. Hears additional evidence at your request or at CCPS'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 the IDEA without regard to the amount in dispute.

Rule of construction

1. Nothing in Part B of the 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 the 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 the IDEA.

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

THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING

34 CFR §300.518

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 CCPS 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 the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, CCPS 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 the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the

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outcome of the proceedings, CCPS must provide those special education and related services that are not in dispute (those which you and CCPS both agree upon).

If a State review official in an administrative appeal proceeding agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

ATTORNEYS' FEES

34 CFR §300.517

General

In any action or proceeding brought under Part B of the 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 the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing South Carolina Department of Education or CCPS, 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 the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State agency or CCPS, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).

Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement 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 or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

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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.

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 the 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 CCPS 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 South Carolina Department of Education or CCPS unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

AUTHORITY OF SCHOOL PERSONNEL

34 CFR §300.530

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

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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 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, CCPS 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 services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.

CCPS is only required to provide services to a child with a disability who has been removed from his or her current placement for **10 school days or less** in that school year, if it provides services to a child without disabilities who has been similarly removed.

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 subheading, ***Special circumstances***) must:

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**

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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), CCPS, you, and relevant members of the IEP Team (as determined by you and CCPS) 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:

If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**

If the conduct in question was the direct result of CCPS's failure to implement the child's IEP.

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

Determination that behavior was a manifestation of the child's disability

If CCPS, 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:

Conduct a functional behavioral assessment, unless FCSD#3 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**

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

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Except as described below under the sub-heading ***Special circumstances***, CCPS must return the child to the placement from which the child was removed, unless you and CCPS 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 the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the 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 South Carolina Department of Education or CCPS;
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 South Carolina Department of Education or CCPS; **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 South Carolina Department of Education or CCPS.

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 "serious bodily injury" is defined in Section 1365(h)(3) of Title 18, U.S. Code, to mean a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. [615(k)(7)(D)]

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 the child because of a violation of a code of student conduct, CCPS must notify you of that decision, and provide you with a procedural safeguards notice.

CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

34 CFR §300.536

A removal of a child with a disability from the 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;
 - 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; **and**

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

DETERMINATION OF SETTING

34 CFR § 300.531

The individualized education program (IEP) Team must determine the interim alternative educational setting for removals that are **changes of placement**, and removals under the headings **Additional authority** and **Special circumstances**.

APPEAL

34 CFR § 300.532

General

The parent of a child with a disability may file a due process complaint (see the heading **Due Process Complaint Procedures**) to request a due process hearing if he or she disagrees with:

1. Any decision regarding placement made under these discipline provisions; **or**
2. The manifestation determination described above.

FCSD#3 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.

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Authority of hearing officer

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

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

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

Whenever you or CCPS 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, and Appeal of Decisions; Impartial Review*** except as follows:

1. The South Carolina Department of Education or CCPS 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 CCPS 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.

You or CCPS may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see the heading ***Appeal***).

PLACEMENT DURING APPEALS

34 CFR §300.533

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

PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

34 CFR §300.534

General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but CCPS 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

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

Exception

CCPS would not be deemed to have such knowledge if:

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

Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against your child, CCPS 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 engaged 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.

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

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

34 CFR §300.535

Part B of the 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 CCPS reports a crime committed by a child with a disability, CCPS:

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

GENERAL

34 CFR §300.148

Part B of the IDEA does not require CCPS 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 CCPS 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 school district 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 CCPS, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by CCPS, a court or a hearing officer 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 the South Carolina Department of Education and school districts.

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 FCSD#3 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 CCPS of that information;
2. If, prior to your removal of your child from the public school, CCPS 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.

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However, the cost of reimbursement:

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

Conclusion

You have rights as parents of a child with a disabilities and your child have many rights. With these rights, there are certain responsibilities. CCPS is responsible for protecting your rights. You, in turn, should attempt to keep the school district informed of things that affect your child's education. You also are urged to assist the school by attending the IEP meetings and by keeping the lines of communication open at all times. When you have concerns about your child's education, it is important to tell your child's teacher, school principal, school psychologist, director of special education, or other school administrators. You may contact the South Carolina Department of Education, Office of Exceptional Children, at 803-734-8224. If you need further assistance, there are advocacy and/or parent resource centers listed below from whom you may obtain help. If you would like further explanation of any of these rights, you may contact your local special education director, Cheryl Hubbard-George at 843 374-2393, or you may contact these agencies or organizations for assistance:

Parent Training and Resource Center
1575 Savannah Highway, Suite 6
Charleston, South Carolina 29407
843-266-1318

Protection & Advocacy for People with Disabilities,
Inc.
3710 Landmark Drive, Suite 208
Columbia, South Carolina 29204
toll free 866-232-4525 (TTY)
><http://www.protectionandadvocacy-sc.org><

PRO-Parents
652 Bush River Road, Suite 218
Columbia, South Carolina 29210
1-800-759-4776
803-772-5688 (Columbia)

Family Connection of South Carolina, Inc.
2712 Middleburg Drive, Suite 103 B
Columbia, South Carolina 29204
803-252-0914

