

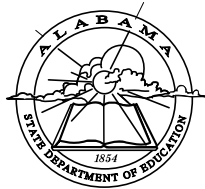


*Special Education Services | Alabama State Department of Education*

# Alabama's Procedural Safeguards Special Education Rights

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The *Individuals with Disabilities Education Act* (IDEA) and state laws create specific rights for those eligible for special education services. A copy of those rights must be given to parents only one time a year, except that a copy must also be given:

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

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

### Prior Written Notice

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

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

The written notice must:

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

### NOTICE IN UNDERSTANDABLE LANGUAGE

The prior written notice must be:

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

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

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

If your public agency offers parents the choice of receiving documents by e-mail, you may choose to receive prior written notice by e-mail.

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

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

is the federal law that supports special education and related service programming for children and youth with disabilities. It was originally known as the *Education of Handicapped Children Act*, passed in 1975.

### **Free Appropriate Public Education (FAPE)**

ensures that students with unique needs and disabilities are given an educational experience comparable to those without them. Students with disabilities are expected to be educated with students without disabilities as much as it is appropriate.

## Parental Consent

Your public agency must obtain your informed written consent:

1. Before conducting an initial evaluation,
2. Before the initial provision of special education and related services, or
3. Before obtaining additional data as part of a reevaluation.

### DEFINITION OF PARENTAL CONSENT

Consent means:

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

### PARENTAL CONSENT FOR INITIAL EVALUATION

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

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

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

If your child is enrolled in a public school or you are seeking to enroll your child in a public school, and you have refused to provide consent for an initial evaluation or failed to respond to a request to provide consent for an initial evaluation, the public agency may but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint procedures.

The public agency will not violate its obligations to locate, identify, and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

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

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

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

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

## PARENTAL CONSENT FOR SERVICES

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

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

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

1. May not use the procedural safeguards (including mediation or due process complaint) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) be provided to your child without your consent.
2. Is not in violation of the requirement to make FAPE available to your child for its failure to provide those services to your child; and
3. Is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

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

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

## PARENTAL CONSENT FOR REEVALUATIONS

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

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

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

## DOCUMENTATION OF REASONABLE EFFORTS TO OBTAIN PARENTAL CONSENT

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

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

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

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

## OTHER CONSENT REQUIREMENTS

Parental consent is not required before the public agency may:

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

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

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

### Transfer of Parental Rights at Age of Majority

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

## Independent Educational Evaluation

**Independent Educational Evaluation (IEE)** means an evaluation conducted by a qualified examiner who is not employed by the public agency.

**Public Expense** means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of 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 the Act.

### IEE CRITERIA

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

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

## RIGHT TO EVALUATION AT PUBLIC EXPENSE

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

An IEE is subject to the following conditions:

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

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

## PARENT-INITIATED EVALUATIONS

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

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

## REQUESTS FOR EVALUATIONS BY HEARING OFFICERS

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

## Dispute Resolution Options

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

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

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

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



## STATE COMPLAINT PROCEDURES

The ALSDE 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 ALSDE; and
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

## REMEDIES FOR DENIAL OF APPROPRIATE SERVICES

In resolving a State complaint in which the ALSDE has found a failure to provide appropriate services, the SES will address:

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

## MINIMUM STATE COMPLAINT PROCEDURES

The ALSDE includes 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 ALSDE 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 ALSDE with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the ALSDE, a proposal to resolve the complaint; and (b) an opportunity for a parent who has filed a complaint and the public agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the educational agency is violating a requirement of the 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 ALSDE's final decision.

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

## Time Extension; Final Decision; Implementation

The ALSDE's procedures described above also must:

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

## FILLING A STATE COMPLAINT AND DUE PROCESS

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 ALSDE will set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the State complaint that is not a part of the due process hearing will be resolved using the time limit and procedures described above.

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

A State complaint alleging the school's failure to implement a due process hearing decision will be resolved by the ALSDE.

## FILING A STATE COMPLAINT

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

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

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

Address written complaints to the Department's SES at:

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

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

The State complaint must include:

1. A statement that the public agency has violated a requirement of the IDEA or its implementing regulations in 34 C.F.R. Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific student:
  - a. The name of the student and address of the residence of the student;
  - b. The name of the school the student is attending;
  - c. In the case of a homeless student or youth, available contact information for the student, and the name of the school the student is attending;
  - d. A description of the nature of the problem of the student, 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 educational agency serving the student at the same time as the party files the complaint with the ALSDE.

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

### State Complaint Model Form

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

The ALSDE will not issue written decisions in response to anonymous complaints.

## STATE MEDIATION PROCEDURES

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

### Requirements

The procedures must ensure that the mediation process:

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

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

Mediators are selected on a random, rotational, or other impartial basis.

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

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

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

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

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

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

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

### Impartiality of Mediator

The mediator:

1. May not be an employee of the educational agency that is involved in the education or care of your child; and
2. Must not have a personal or professional interest that conflicts with the mediator's objectivity.
3. A person who otherwise qualifies as a mediator is not an employee of the Department solely because he or she is paid by the Department to serve as a mediator.

### Mediation Request Form

The Department developed a mediation request form to help with requesting mediation.

However, the Department does not require the use of this form to request mediation.

The Department's mediation request form may be found at: [Dispute Mediation Request](#) or [www.alabamaachieves.org](http://www.alabamaachieves.org) > Families and Students > Special Education > Dispute Resolution > Dispute Mediation Request.

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

Discussions during the mediation process are confidential and cannot be used as evidence in any future due process hearing or civil proceeding of any federal or state court.

## DUE PROCESS HEARING PROCEDURES

### Filing a Due Process Complaint

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

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

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

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

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

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

#### **Alabama Disabilities Advocacy Program (ADAP)**

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

#### **Alabama Parent Education Center (APEC)**

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

#### **Legal Services Alabama**

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

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

### Due Process Complaint

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

The public agency is responsible for the conduct and costs of the hearing.

### Content of a Due Process Complaint

The due process complaint must include the following:

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

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

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

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

### Sufficiency of Complaint

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

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

### Complaint Amendment

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

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

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

### Public Agency Response to a Due Process Complaint

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

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

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

### Other Party Response to a Due Process Complaint

Except as stated under the subheading immediately above, in public agency response to a due process complaint, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

### Due Process Complaint Model Form

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

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

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

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

## RESOLUTION PROCESS

### Resolution Meeting

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

The meeting:

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

You and the public agency determine the relevant members of the IEP Team to attend the meeting. The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint so that the public agency has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

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

### Resolution Period

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

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

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

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

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

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

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

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

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

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

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

### Written Settlement Agreement

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

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

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

### IMPARTIAL DUE PROCESS HEARING

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

#### Impartial Hearing Officer

At a minimum, a hearing officer:

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

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

#### Subject Matter of Due Process Hearing

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

#### Timeline for Requesting a Hearing

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

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

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

### Exceptions to the Timeline

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

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

### Hearing Rights

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

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

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

### Additional Disclosure of Information

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

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

### Parental Rights at Hearings

You must be given the right to:

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

### Hearing Decisions

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

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

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

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

Following a student's placement in a private school or for continued placement in a private school, the private school cannot be determined to be an appropriate placement by the hearings officer if the public agency has not been allowed to exercise its responsibility to ensure the provision of FAPE for the student.

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



### Separate Request for a Due Process Hearing

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

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

The Department, after deleting any personally identifiable information, must:

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

### Finality of Decision and Appeal

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

### Timelines and Convenience of Hearings

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

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

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

1. The negative effects of extending the time in which a student's education is delayed due to the extension;
2. The requesting party's ability to have avoid requesting for an extension;
3. If the extension request is from the petitioner, whether the petitioner had the opportunity to adequately prepare before filing for a hearing;
4. The negative effects of denying the request for an extension;
5. The intent of IDEA 2004 is to expedite an informal administrative proceeding; and
6. Whether granting the request for an extension will override the intent of the law in favor of the convenience of the parties.

The hearing officer shall not grant an extension for a hearing unless provided with a compelling reason or a specific showing of substantial hardship.

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

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

### CIVIL ACTIONS

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

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

The hearing officer shall not grant an extension for a hearing unless provided with a compelling reason or a specific showing of substantial hardship.

### Time Limitation

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

### Additional Procedures

In any civil action, the court:

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

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

### JURISDICTION OF DISTRICT COURTS

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

### RULE OF CONSTRUCTION

Nothing in 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 students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under 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 the IDEA.

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

Except as provided below under the heading **Procedures When Disciplining Students 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 public agency agree otherwise, your child must remain in his/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 the IDEA for a student who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because the student has turned three, the public agency is not required to provide the Part C services that the student has been receiving. If the student is found eligible under Part B of IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the public agency must provide those special education and related services that are not in dispute.

If a hearing officer in a due process hearing 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

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

If you decide to have an attorney present and participate in resolution meetings or mediation meetings, the attorney's fees you are charged may not be reimbursed or covered by the public agency. Because the intent of the resolution meeting and mediation is an opportunity for the parent and the public

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

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

agency to resolve the issue and make agreements for resolution, attorney participation in the resolution meeting and mediation meeting is not right for either party.

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

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

### **Award of Fees**

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing 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.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail, and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the IEP Team unless the meeting is held as a result of an administrative proceeding or court action.

Fees also may not be awarded for mediation as described under the heading **Mediation**.

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

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

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

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

## Access to Records

### CONFIDENTIALITY OF INFORMATION

Parents, or students age 19 or older, are afforded the rights with respect to the education records of their child under the Family Educational Rights and Privacy Act (FERPA) and state law relating to the protection of educational rights and privacy of students and parents. Under FERPA and state law, when a student becomes 19 years of age, the rights of the parents regarding the student's education records, including the right of consent to release records, transfer to the student.

### PERSONALLY IDENTIFIABLE INFORMATION (PII)

Personally identifiable means information that includes:

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

### NOTICE TO PARENTS

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

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. A description of the students 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 students regarding this information, including the rights under FERPA and its implementing regulations in 34 CFR Part 99.

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

### ACCESS RIGHTS

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

Your right to inspect and review education records includes:

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

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

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

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

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

### Record of Access

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

### Records on More Than One Student

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

### List of Types and Locations of Information

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

### Fees

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

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

### Amendment of Records at Parent's Request

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

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

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

### Opportunity for a Hearing.

#### Opportunity for a Hearing

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

#### Hearing Procedures

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA pertaining to the Protection of Educational Rights and Privacy of Students and Parents.

#### Result of Hearing

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

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

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

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

Each participating agency may charge a fee for copies of records that are made for you under the IDEA.

### Consent for Disclosure of Personally Identifiable Information

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

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

### Safeguards

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

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

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

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

### Destruction of Information

The public agency must inform you when personally identifiable information collected, maintained, or used under the 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/her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

At your request, the educational agency must also provide you access to the education records before the destruction of records.

## Children's Rights

### TRANSFER OF RIGHTS

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

Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 19.

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

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

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

At your request, the public agency must provide you access to the education records before the destruction of records.

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

or facility. However, the public agency must include your child in the population whose needs are addressed under the IDEA provisions regarding students who have been placed by their parents in a private school under 34 C.F.R. §§ 300.131 through 300.144.

### Reimbursement for Private School Placement

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

For a student continuing in private school placement, the determination of an appropriate placement by the hearing officer shall not be made unless the private school allows the public agency to exercise its responsibility to ensure the provision of FAPE for the student.

#### Limitation on Reimbursements

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

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

However, the cost of reimbursement:

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

## Discipline

### AUTHORITY OF SCHOOL PERSONNEL

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

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

Once a student with a disability has been removed from his/her current placement for a total of 10 school days in the same school year, the public agency must, during any subsequent days of removal in that school year, provide services to the extent required under the sub-heading **Services**. Removals of more than 10 cumulative or consecutive school days in that same school year is a change of placement (see the heading **Change of Placement Because of Disciplinary Removals**).

#### Additional Authority

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

### SERVICES

The public agency may provide services to both a student with a disability and a student without a disability who has been removed from his/her current placement for 10 school days or less in that school year. The student may be provided with an alternate educational option (such as homework, projects, or class assignments), and services may be provided in an interim alternative educational setting.

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

1. Continue to receive educational services (have available FAPE) so as to enable the student 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 student's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a student with a disability has been removed from his/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 student's teachers, determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

If the removal is a change of placement (see the heading **Change of Placement Because of Disciplinary Removals**), the student's IEP Team determines the appropriate services to enable the student to continue to participate in the general education curriculum, although in another setting (that

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



may be an interim alternative educational setting), and to progress toward meeting the goals set out in the student's IEP.

If the removal exceeds 10 cumulative days in the same school year and is a crisis removal, then school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

### MANIFESTATION DETERMINATION

Excluding crisis removals, within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the public agency, you, and other relevant members of the IEP Team must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by you to determine:

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

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

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

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

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

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

### SPECIAL CIRCUMSTANCES

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

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

### NOTIFICATION

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

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

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

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

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

## CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

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

1. The removal is for more than 10 school days in a row; or
2. The series of removals totals more than 10 school days in a school year.

## DETERMINATION OF SETTING

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

## EXPEDITED DUE PROCESS

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

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

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

### Authority of Hearing Officer

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

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

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

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

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

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

### Placement During the Expedited Due Process

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

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

## PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

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

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

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

### Exception

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

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

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

If prior to taking disciplinary measures against your child, the public agency does not have knowledge that your child is a student with a disability, as described above under the subheadings **Basis of Knowledge for Disciplinary Matters** and **Exception**, your child may be subjected to the disciplinary measures that are applied to students without disabilities who engage in comparable behaviors.

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

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

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

## REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

The IDEA does not:

1. Prohibit an agency from reporting a crime committed by a student 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 student with a disability.

### Transmittal of Records

If the LEA reports a crime committed by a student with a disability, the LEA:

1. Must ensure that copies of the student'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 student's special education and disciplinary records only to the extent permitted by FERPA.

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



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