



Office of the
State Superintendent of Education

District of Columbia

Notice of

Procedural Safeguards

Rights of Parents of Students with Disabilities

Revised January, 2011

INTRODUCTION

DISTRICT OF COLUMBIA PROCEDURAL SAFEGUARDS NOTICE

SPECIAL EDUCATION PROCEDURAL SAFEGUARDS REQUIREMENTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Revised January, 2011

“Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.” **IDEA Preamble**

The Individuals with Disabilities Education Act (IDEA), the federal law which speaks to the education of students with disabilities, requires schools to provide a comprehensive notice of the procedural safeguards applicable to all parents of children with disabilities. The Office of the State Superintendent of Education (OSSE), as the State Education Agency (SEA), is required to provide notice of these procedural safeguards.

A copy of this notice must be provided to parents by schools one time per school year, except that a copy must also be given to parents:

- Upon initial referral or your request for evaluation;
- If you file a State complaint under 34 CFR §§300.151 through 300.153 or due process complaint under 34 CFR §300.507 during a school year¹;
- When a decision is made to take a disciplinary action against your child that constitutes a change of placement; and
- Upon your request.

This document reflects the new mandates of the IDEA [IDEA Part B; PL 108-446; 20 USC § 1400 et seq.] and the August 14, 2006 implementing regulations, including changes made to federal regulations effective December 31, 2008. This document conforms to the U.S. Department of Education’s Model Procedural Safeguards Notice and includes specific District of Columbia requirements that must be included in this Notice.

Questions regarding this document may be referred to:

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This document is available electronically at:

<http://www.osse.dc.gov>

¹ Schools must provide you with a copy of procedural safeguards at the point at which you file your first State complaint under 34 CFR §§300.151 through 300.153 or due process complaint under 34 CFR §300.507 during a school year; however, not if subsequent complaints or due process complaints are subsequently filed within the same school year.

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OVERVIEW: PART B PROCEDURAL SAFEGUARDS NOTICE

As a parent, you have rights known as *procedural safeguards* that apply to every aspect of the special education process. Federal and state laws and regulations outline the procedural safeguards that are designed to ensure that children with disabilities with an Individualized Education Program (IEP) receive a free appropriate public education (FAPE).



This document serves as your procedural safeguards notice and will help you understand specific rights available to you and your child through the Individuals with Disabilities Education Act (IDEA) and the District of Columbia laws regarding special education. The full text of these procedural safeguards is found in Title 34 of the Code of Federal Regulations (CFR), Part 300, Title 38, Chapter 25B of the District of Columbia Code, and Title 5, Subtitle E, Chapter 30 of the District of Columbia Municipal Regulations (5E DCMR).

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

If you have any questions regarding the information provided in this manual, please contact your local school, your local school district, also known as the local education agency (LEA), or the Office of the State Superintendent of Education (OSSE), which is the State Education Agency (SEA) within the District of Columbia.

[NOTE: The LEA in which your child attends school may have additional procedural safeguards applicable to students enrolled in that LEA. Your LEA is obligated to provide you with this information. You may contact your LEA for information regarding any such additional safeguards.]

GENERAL INFORMATION

OPPORTUNITY TO INITIATE REFERRAL AND PROCEDURES FOR EVALUATION

34 CFR §§300.301, 300.304, and 300.305; D.C. Official Code § 38-2561.02; 5E DCMR § 5-3004

An evaluation is a process consisting of a set of procedures and/or assessments used in accordance with the IDEA and District of Columbia law to determine: (1) whether a child has a disability, and if so, (2) the nature and extent of the special education and related services that the child needs. Either the LEA or you may initiate a request for an evaluation to determine if your child is a child with a disability.

In conducting the evaluation, the LEA must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. In addition, the LEA must not use any single measure or assessment as the sole criteria for determining whether your child is a child with a disability and for determining an appropriate educational program for your child. The LEA must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Each LEA must ensure that assessments are selected and administered so as not to be discriminatory on a racial or cultural basis. Furthermore, all assessments must be administered in your child's native language. Native language, in the context of the evaluation of your child, is defined as the language normally used by your child in the home or learning environment (not by you if there is a difference between the two).

The evaluation must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment, and used for the purpose for which the measurements obtained through the assessment are valid and reliable.

Additional procedures for evaluation are as follows:

- The LEA must ensure that assessments are tailored to assess specific areas of educational need and are not merely designed to test your child's Intelligence Quotient (IQ);
- The LEA must ensure that assessments are selected and administered in a manner to best ensure that the results accurately reflect your child's aptitude or achievement level or other factors the test is intended to measure and not any other impairments in sensory, manual, or speaking skills that your child may have;
- The LEA must ensure that your child is tested in all areas of suspected disability;
- If your child is transferring from one LEA to another in the same school year, both LEAs must coordinate as necessary and as quickly as possible to ensure prompt completion of the evaluation;
- The LEA must ensure that the evaluation is comprehensive enough to identify all of your child's special education and related service needs; and
- The LEA must ensure that persons who are responsible for determining the educational needs of your child are provided with assessment tools and strategies that provide relevant information.

Timeframe for an Initial Evaluation

Under District of Columbia law, the LEA must complete an initial evaluation of a child suspected of having a disability, including the determination of eligibility, within one hundred twenty (120) calendar days of receiving the written referral. However, the one hundred twenty (120) day timeframe does not apply to an LEA if:

- You repeatedly fail or refuse to produce the child for evaluation;
- You fail or refuse to respond to a request for consent for the evaluation; or
- You enroll your child in a school of another LEA after the 120 day timeline has begun, but before the previous LEA has determined whether your child is a child with a disability. This special circumstance only applies if:
 - The new LEA is making sufficient progress to ensure a prompt completion of the evaluation, and
 - You and the new LEA agree to a specific time when the evaluation will be completed.

Reevaluation

A reevaluation is defined as an evaluation, conducted after the initial evaluation, to determine whether a child with a disability still has a disability. The purpose of a re-evaluation is to:

- Identify a child's present levels of academic achievement and related developmental needs;
- Review whether the child continues to need special education and related services; and
- If so, determine whether any additions or modifications to these services are needed.

A reevaluation must occur at least once every three years, whether or not your child's needs have changed, unless you and the LEA agree that a reevaluation is unnecessary. Reevaluations may occur more frequently if conditions warrant, or if you or your child's teacher requests a reevaluation. A reevaluation need not occur more than once a year, unless you and the LEA agree otherwise.

PRIOR WRITTEN NOTICE

34 CFR §300.503 and 5E DCMR §3025.1

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

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

Content of Prior Written Notice

The *prior written notice* must:

- Describe the action that the LEA is proposing or refusing to take;
- Explain why the LEA is proposing, or refusing to take, the action;
- Describe each evaluation procedure, assessment, record, or report the LEA used in deciding to propose or refuse the action;
- Include a statement that you have protections under the procedural safeguards provisions in Part B of the IDEA;
- Provide information on the manner in which you may obtain a copy of these procedural safeguards;
- Tell you that you have procedural protections under Part B of the IDEA, and tell you how you can, at your discretion, obtain a copy of the procedural safeguards notice that describes the protections (unless the action that the LEA is proposing or refusing is an initial referral for evaluation, in which case the LEA must provide you with a copy of the procedural safeguards notice);
- Include resources you can access for help in understanding Part B of the IDEA;
- Describe any other choices that the LEA considered, and the reasons why those choices were rejected; and
- Provide a description of any other reasons why the LEA proposed or refused the action.

Notice in an Understandable Language

The notice must be:

- Written in language understandable to the general public; and
- Provided in the 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 LEA must ensure that:

- The notice is translated for you orally, or by other means, in your native language or other mode of communication;
- You understand the content of the notice; and

- There is written evidence that these two requirements have been met.

NATIVE LANGUAGE

34 CFR §300.29

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

- The language normally used by that person, or in the case of a child, the language normally used by the child's parents; and
- In all direct contact with a child (including an 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 the LEA offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

- Prior written notice;
- Procedural safeguards notice; and
- Notices related to a due process complaint.

PARENTAL CONSENT

34 CFR §§300.9 and 300.300, and 5E DCMR §3026.1

Definition of Parent (34 CFR §300.30 and 5E DCMR §3001.1)

The term "*parent*" means (a) a biological or adoptive parent; (b) a foster parent (but only if the biological or adoptive parent's authority to make educational decisions on the child's behalf has been extinguished under applicable law; and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child as required under the IDEA, and has no interest that conflicts with the interests of the child); (c) a guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child; (d) a person acting in the place of a biological or adoptive parent (such as a grandparent, stepparent or other relative) with whom the child lives or a person who is legally responsible for the child's welfare); or (e) an educational surrogate who has been appointed in accordance with the IDEA and District of Columbia law. This term does not include the District of Columbia if the child is a ward of the District of Columbia.

Definition of Consent

Consent means:

- You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent;

- You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
- You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the LEA 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 for Initial Evaluation

The LEA 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
- Obtaining your consent as described under the headings **Prior Written Notice** and **Parental Consent**.

The LEA must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability. Your consent for initial evaluation does not mean that you have also given your consent for the LEA to start providing special education and related services to your child.

The LEA may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the LEA 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, the LEA may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the District of Columbia's IDEA mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. The LEA 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

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

- A foster child;
- A ward of the State under State law; or
- In the custody of a public child welfare agency.

There is one exception that you should know about. This definition does not apply to a foster child who has a foster parent who meets the definition of a parent as defined in IDEA and District of Columbia law.

If a child is a Ward of the State and is not living with his/her parents, the LEA does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

- Despite reasonable efforts to do so, the LEA cannot find the child's parent;
- 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.

Parental Consent for Services

Your LEA must obtain your informed consent before providing special education and related services to your child for the first time and before making any change in your child's placement.

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

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, your LEA may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

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

- 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
- Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the LEA may not continue to provide such services, but must provide you with prior written notice, as described under the heading **Prior Written Notice**, before discontinuing those services.

Parental Consent for Reevaluations

Your LEA must obtain your informed consent before it reevaluates your child, unless your LEA can demonstrate that:

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

If you refuse to consent to your child's reevaluation, the LEA may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your LEA does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

Documentation of Reasonable Efforts to Obtain Parental Consent

The LEA must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, to reevaluate your child, and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the LEA's attempts in these areas, such as:

- Detailed records of telephone calls made or attempted, and the results of those calls;
- Copies of correspondence sent to you and any responses received; and

- Detailed records of visits made to your home or place of employment and the results of those visits.

Other Consent Requirements

Your consent is not required before the LEA may:

- Review existing data as part of your child's evaluation or a reevaluation; or
- 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.

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

INDEPENDENT EDUCATIONAL EVALUATIONS

34 CFR §300.502

Definitions

An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of your child. As described below, you have the right to obtain an IEE if you disagree with the results of the evaluation of your child completed by the LEA. If you request an IEE, the LEA involved must provide you with information about where you may obtain an IEE and about the LEA's criteria that apply to IEEs.

Public expense means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you. This provision is consistent with Part B of IDEA, which allows 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 IEE of your child at public expense if you disagree with an evaluation of your child obtained by the LEA involved, subject to the following conditions:

- If you request an independent educational evaluation of your child at public expense, your LEA must, without unnecessary delay, either: (a) file a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) provide an independent educational evaluation at public expense, unless the LEA demonstrates in a hearing that the evaluation of your child that you obtained did not meet the LEA's criteria.
- If your LEA requests a hearing and the final decision is that the LEA's evaluation of your child is appropriate, you still have the right to an IEE, but not at public expense.
- If you request an IEE of your child, the LEA may ask why you object to the evaluation of your child obtained by the LEA. However, the LEA 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 LEA's evaluation of your child.

You are entitled to only one IEE of your child at public expense each time the LEA 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 LEA an evaluation of your child that you obtained at private expense, then the following apply:

- The LEA must consider the results of the evaluation of your child, if it meets the LEA's criteria for IEEs, in any decision made with respect to the provision of FAPE to your child; and
- You or the LEA 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.

LEA 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 LEA 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, an LEA may not impose conditions or timelines related to obtaining an IEE at public expense.

CONFIDENTIALITY OF INFORMATION

DEFINITIONS

34 CFR §§300.611 and 300.32

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 IDEA.
- *Personally identifiable* information means information that includes:
 - (a) Your child's name, your name as the parent, or the name of another family member;
 - (b) Your child's address;
 - (c) A personal identifier, such as your child's social security number or student identification 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 OSSE, as the SEA, must give notice that is adequate to fully inform you about the confidentiality of personally identifiable information, including:

- A description of the extent to which the notice is given in the native languages of the various populations within the District of Columbia;
- A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the District of Columbia intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- 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
- A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as *Child Find*), the notice must be published or announced in newspapers and/or other media, with circulation adequate to notify parents throughout the District of Columbia of these activities.

ACCESS RIGHTS

34 CFR §300.613 and 5E DCMR §2600.2

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your LEA under Part B of the 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 resolution meeting or a hearing regarding discipline), and in no case more than forty five (45) calendar days after you have made a request.

Your right to inspect and review education records includes:

- Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
- Your right to inspect and review your child's education records includes the right to obtain copies of the information at a reasonable cost as described under the subheading ***Fees***; and
- Your rights to have your legal 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 District of Columbia law governing such matters as guardianship, separation and/or divorce.

RECORD OF ACCESS

34 CFR §300.614

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

RECORDS ON MORE THAN ONE CHILD

34 CFR §300.615

If any education record includes information on more than one child, you have the right to inspect, review, and to be informed of only the information relating to your child.

LIST OF TYPES AND LOCATIONS OF INFORMATION

34 CFR §300.616

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

FEEs

34 CFR §300.617

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

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

AMENDMENT OF RECORDS AT PARENT'S REQUEST

34 CFR §300.618

If you believe that information in the education records collected, maintained, or used under Part B of the IDEA regarding your child is inaccurate, misleading, or violates the privacy or other rights of your child, you may request that the participating agency that maintains the information 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 the right to a hearing as described under the heading ***Opportunity For a Hearing***.

OPPORTUNITY FOR A HEARING

34 CFR §300.619

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

HEARING PROCEDURES

34 CFR §300.621

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).

RESULT OF HEARING

34 CFR §300.620

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

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

Such an explanation must:

- 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
- If the participating agency discloses the records of your child or the challenged information to any party, the explanation must also be disclosed to that party.

CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

34 CFR §300.622

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

Your consent, or consent of an eligible child who has reached the age of majority (eighteen (18) years old) under District of Columbia law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

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

SAFEGUARDS

34 CFR §300.623

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 utilizing personally identifiable information must receive training or instruction regarding the District of Columbia's policies and procedures regarding confidentiality under Part B of the IDEA and the FERPA. Each participating

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

DESTRUCTION OF INFORMATION

34 CFR §300.624

The LEA 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, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

COMPLAINT PROCEDURES

DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES

Part B of the IDEA sets 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 requirement of Part B of the IDEA and/or a requirement of District of Columbia law regarding special education by an LEA, the OSSE or any other public agency. Only you or an LEA 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 OSSE generally must resolve a State complaint within a sixty (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 forty five (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 LEA's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The OSSE 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

The OSSE must have written procedures for:

- Resolving any complaint, including a complaint filed by an organization or individual from another State;
- The filing of a complaint with the OSSE; and
- 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 OSSE has found a failure to provide appropriate services, the OSSE must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement), and appropriate future provision of services for all children with disabilities.

MINIMUM STATE COMPLAINT PROCEDURES

34 CFR §300.152 and OSSE Formal State Complaint Policy & Procedures

Time Limit; Minimum Procedures

The OSSE must include in its State complaint procedures a time limit of sixty (60) calendar days after a complaint is filed to:

- Carry out an independent on-site investigation, if the OSSE 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 the LEA 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 the LEA or public agency is violating a requirement of Part B of the IDEA or District of Columbia special education law; and
- Issue a written decision to the complainant that addresses each allegation in the complaint and contains (a) findings of facts and conclusions and (b) the reasons for the OSSE's final decision.

The decision will be sent to the complainant and public agency involved.

Time Extension; Final Decision; Implementation

The OSSE's procedures described above also must:

- Permit an extension of the sixty (60) calendar day time limit only if:
 - a. Exceptional circumstances exist with respect to a particular State complaint; or
 - b. You and the LEA 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 OSSE'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 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 OSSE must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

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

A complaint alleging an LEA or public agency's failure to implement a due process hearing decision must be resolved by the OSSE. Additionally, complaints alleging a failure to implement a settlement agreement resolving a due process hearing request may be reviewed and resolved through the State complaint process but the availability of the State complaint process for the alleged failure to implement a settlement agreement does not delay or deny a party the right to seek enforcement of a settlement agreement in a court of competent jurisdiction.

FILING A STATE COMPLAINT

34 CFR §300.153 and OSSE Formal State Complaint Policy & Procedures

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

The State complaint must include:

- A statement that the LEA or other public agency has violated either a requirement of Part B of the IDEA or its implementing regulations in 34 CFR Part 300 and/or a requirement of District of Columbia law regarding special education;
- The facts on which the statement is based;
- The signature and contact information for the party filing the complaint; and
- If alleging violations with respect to a specific child, the complaint must also include:
 - 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. For a homeless child or youth (McKinney-Vento Homeless Act), 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 to 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 LEA or other public agency serving the child at the same time the party files the complaint with the OSSE. The OSSE will send a copy of the complaint to a parent or adult child where the complaint was filed by someone other than the parent or adult child.

FILING A DUE PROCESS COMPLAINT

34 CFR §300.507

Either you or the LEA 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 FAPE to your child.

Note, prior to the opportunity to have a due process hearing, you will need to participate in a resolution meeting with the school/LEA to try to resolve the issues in the complaint, unless both you and the school/LEA waive the resolution meeting or decide to go to mediation.

The due process complaint must allege a violation that happened not more than two (2) years before you or the LEA 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 LEA specifically misrepresented that it had resolved the issues identified in the complaint; or
- The LEA withheld information from you that it was required to provide you under Part B of the IDEA.

Information for Parents

The LEA 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 LEA file a due process complaint.

DUE PROCESS COMPLAINT

34 CFR §300.508

In order to request a hearing, you or the LEA (or your attorney or the LEA'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 filing party must also file a copy of the complaint with the OSSE.

Content of the Complaint

The due process complaint must include:

- The name of the child;
- The address of the child's residence;
- The name of the child's school;
- If the child is a homeless child or youth, the child's contact information and the name of the child's school;
- 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
- A proposed resolution of the problem to the extent known and available to the filing party (you or the LEA) at the time.

Notice Required Before a Hearing on a Due Process Complaint

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

Sufficiency of Complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the LEA) notifies the hearing officer and the other party in writing, within fifteen (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 (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 LEA in writing immediately.

Complaint Amendment

You or the LEA may make changes to the complaint only if:

- 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 below under the subheading ***Resolution Process***; or
- By no later than five (5) calendar days before the due process hearing begins, the hearing officer grants permission for the changes.

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

LEA Response to a Due Process Complaint

If the LEA has not sent a prior written notice to you, as described under the subheading ***Prior Written Notice***, regarding the subject matter contained in the due process complaint, the LEA must, within ten (10) calendar days of receiving the due process complaint, send to you a response that includes:

- An explanation of why the LEA proposed or refused to take the action raised in the due process complaint;
- A description of other options that the IEP team considered and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
- A description of the other factors that are relevant to the LEA proposed or refused action.

Providing the information listed above does not prevent the LEA from asserting that your due process complaint was insufficient.

Other Party Response to a Due Process Complaint

Except as stated under the section ***LEA Response to a Due Process Complaint***, the party receiving a due process complaint must, within ten (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 OSSE has developed model forms to help you file a due process complaint and to help you and other parties to file a State complaint; however, neither the OSSE nor the LEA may require you to use these model forms. In fact, you can use these forms or other appropriate forms, so long as the forms contain the required information for filing a due process complaint or a State complaint.

MEDIATION

34 CFR §300.506

Mediation must be made available to allow you and the LEA 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.

Requirements

The procedures must ensure that the mediation process:

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

The LEA 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 District of Columbia; and
- Who would explain the benefits and encourage the use of the mediation process to you.

The OSSE 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 OSSE must select mediators on a random, rotational, or other impartial basis. The OSSE 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 the LEA.

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

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

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a 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 the IDEA.

Impartiality of Mediator

The mediator:

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

RESOLUTION PROCESS

34 CFR §300.510 and 5E DCMR §§3030.5, 3030.6, 3030.9, and 3030.10

Resolution Meeting

Within fifteen (15) calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the LEA involved 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:

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

You and the LEA 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 LEA has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

- You and the LEA agree in writing to waive the meeting; or
- You and the LEA agree to use the mediation process, as described under the section *Mediation*.

Resolution Period

If the LEA has not resolved the due process complaint to your satisfaction within thirty (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.

A forty five (45) calendar day timeline for issuing a final due process hearing decision begins at the expiration of the thirty (30) calendar day resolution period, with certain exceptions for adjustments made to the thirty (30) calendar day resolution period, as described below.

Except where you and the LEA have both agreed to waive the resolution process or to use mediation, if you fail to participate in the resolution meeting, the LEA may request that a hearing officer order a continuance to delay the timelines for the resolution process and due process hearing until the meeting is held. Any such request must include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent. The reasonable measures shall be documented as described below. You would then have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.

In addition, if after making reasonable efforts and documenting such efforts, the LEA is not able to obtain your participation in the resolution meeting, the LEA may, at the end of the thirty (30) calendar day resolution period, request that a hearing officer dismiss your due process complaint. As with the LEA's request for a continuance to delay the timelines, any request to dismiss your due process complaint must include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent. The reasonable measures must be

documented as described below. Again, you would then have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.

Documentation of such efforts must include a record of the LEA's attempts to arrange a mutually agreed upon time and place, such as:

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

If the LEA fails to hold the resolution meeting within fifteen (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 forty five (45) calendar day due process hearing timeline.

Adjustments to the Thirty (30) Calendar Day Resolution Period

If you and the LEA agree in writing to waive the resolution meeting, then the forty five (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 thirty (30) calendar day resolution period, if you and the LEA agree in writing that no agreement is possible, then the forty five (45) calendar day timeline for the due process hearing starts the next day.

If you and the LEA agree to use the mediation process but have not yet reached agreement, at the end of the thirty (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 LEA withdraws from the mediation process during this continuation period, then the forty five (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 LEA must enter into a legally binding agreement that is:

- Signed by you and a representative of the LEA who has the authority to bind the LEA; 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.

Agreement Review Period

If you and the LEA enter into an agreement as a result of a resolution meeting, either party (you or the LEA) may void the agreement within three (3) business days of the time that both you and the LEA signed the agreement. The party who voids the agreement must provide written notice to all other parties.

HEARING ON DUE PROCESS COMPLAINTS

IMPARTIAL DUE PROCESS HEARING

34 CFR §300.511

Whenever a due process complaint is filed, you or the LEA involved in the dispute must have an opportunity for an impartial due process hearing. The OSSE is responsible for convening the due process hearing.

Impartial Hearing Officer

At a minimum, a hearing officer:

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

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

Exceptions to the Timeline

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

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

HEARING RIGHTS

34 CFR §300.512 and 5E DCMR §3029.5

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

- Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
- Be represented at the due process hearing by an attorney;
- 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 that party at least five (5) 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 (5) business days prior to a due process hearing, you and the LEA must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the LEA 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.

In addition, if you are represented by an attorney, your attorney must disclose any financial interest, of which he or she is aware, of any participant in the due process hearing in a non-public provider that may be at issue in the hearing.

Parental Rights at Hearings

You must be given the right to:

- Have the child present;
- Open the hearing to the public; and
- Have the record of the hearing, the findings of fact and decisions provided 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 and Appropriate Public Education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

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

- Interfered with your child's right to FAPE;
- Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; or
- 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 LEA 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).

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 as preventing 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

After deleting any personally identifiable information, the OSSE must:

- Provide the findings and decisions in the due process hearing to the State special education advisory panel; and
- Make those findings and decisions available to the public.

APPEALS

FINALITY OF DECISION; APPEAL

34 CFR §300.514

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the LEA) may appeal the decision by bringing a civil action, as described below.

TIMELINES AND CONVENIENCE OF HEARINGS

34 CFR §300.515 and 5E DCMR §§3030.11 and 3030.12

The OSSE must ensure that not later than forty five (45) calendar days after the expiration of the thirty (30) calendar day period for resolution meetings or as described under the section ***Adjustments to the Thirty (30) Calendar Day Resolution Period*** not later than forty five (45) calendar days after the expiration of the adjusted time period:

- A final decision is reached in the hearing; and
- A copy of the decision is mailed to each of the parties or alternatively is transmitted electronically or by facsimile if all parties to the due process complaint consent to transmission electronically or by facsimile.

A hearing officer may, for good cause shown, grant specific extensions of time beyond the forty five (45) calendar day time period described above at the request of either party.

Each hearing 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

Any party (you or the LEA) 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 the Superior Court of the District of Columbia (or other state court that has authority to hear this type of case) or in a District court of the United States without regard to the amount in dispute.

Time Limitation

The party (you or the LEA) bringing the action has 90 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:

- Receives the records of the administrative proceedings;
- Hears additional evidence at your request or at the LEA's request; and
- 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

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

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

34 CFR §300.518

Except as provided below under the section *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 OSSE or LEA 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 IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the LEA is not required to provide the Part C services that the child has been receiving. If your 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 outcome of the proceedings, the LEA must provide those special education and related services that are not in dispute (those which you and the LEA both agree upon).

If a hearing officer in a due process hearing conducted by the OSSE 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 and 5E DCMR §3032.4

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 the prevailing LEA or other public agency, to be paid by your attorney, if the attorney:

- Filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or
- 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 the prevailing LEA or other 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:

- 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.
- 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, at any time more than ten (10) calendar days before the proceeding begins;
 - b. The offer is not accepted within ten (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.

- 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.

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:

- You or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;

- 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;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing you did not provide to the LEA the appropriate information in the due process request notice as described under the section ***Due Process Complaint***.

However, the court may not reduce fees if the court finds that the OSSE or LEA 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.

All requests to the LEA for attorneys' fees by you, if you have prevailed against the LEA, must be submitted within forty-five (45) days of the issuance of the hearing decision or execution of a settlement agreement requiring the payment of such fees. Failure to do so may result in delayed processing by the LEA.

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

[NOTE: THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS (DCPS) HAVE ADOPTED DIFFERENT PROCEDURES REGARDING THE DISCIPLINE OF CHILDREN WITH DISABILITIES. IF YOUR CHILD IS ENROLLED AT A DCPS SCHOOL OR A PUBLIC CHARTER SCHOOL THAT HAS ELECTED DCPS TO SERVE AS THE LEA, YOU SHOULD BE PROVIDED WITH A COPY OF DCPS' PROCEDURAL SAFEGUARDS REGARDING DISCIPLINE AS REQUIRED BY THE IDEA.]

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 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 **ten (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 **ten (10) school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see the subheading ***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 **ten (10) school days** in the same school year, the LEA must, during any subsequent days of removal in that school year, provide services to the extent required below under the subheading ***Services***.

Additional Authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see the section **Manifestation Determination**) and the disciplinary change of placement would exceed **ten (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 the section **Services**. The child's IEP Team determines the interim alternative educational setting for such services.

Services

Your LEA may, but is not required to, provide services to both a child with a disability and a child without a disability who has been removed from his or her current placement for **ten (10) school days or less** during that school year. You should contact your LEA to determine whether such services are provided.

For a child with a disability who is removed from the child's current placement for **more than ten (10) school days** when the behavior is not a manifestation of the child's disability (see section **Manifestation Determination**) or who is removed under special circumstances (see the section **Special Circumstances**), he or she must:

1. Continue to receive educational services (have available a Free Appropriate Public Education (FAPE)), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **ten (10) school days** in that same school year, and **if** the current removal is for **ten (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 **ten (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 **ten (10) school days** in a row or less and not a change of placement), the LEA, you, and other relevant members of the IEP Team (as determined by you and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

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

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

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

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

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

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

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

Special Circumstances

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

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

Definitions

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

Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

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

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

Notification

On the date it makes the decision to make a removal that is a change of placement of your child because of a violation of a code of student conduct, the LEA 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 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 ten (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 ten (10) school days in a school year;
 - b. Your child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - c. Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the LEA 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 determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the sections ***Additional Authority*** and ***Special Circumstances***.

APPEAL

34 CFR §300.532

General

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

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

The LEA may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

Authority of Hearing Officer

A hearing officer that meets the requirements described under the subheading *Impartial Due Process Hearings* 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 subheading *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 forty five (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 LEA 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 an LEA 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 State Educational Agency or LEA must arrange for an expedited due process hearing, which must occur within **twenty (20)** school days of the date the hearing is requested and must result in a determination within **ten (10)** school days after the hearing.
2. Unless you and the LEA 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 **fifteen (15)** calendar days of receipt of the due process complaint.
3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the LEA 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 APPEALS

34 CFR §300.533

When, as described above, you or the LEA file a due process complaint related to disciplinary matters, your child must (unless you and the State Educational Agency or LEA 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 subheading *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 the LEA 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

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

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

Exception

An LEA would not be deemed to have such knowledge if:

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

Conditions that Apply if There Is no Basis of Knowledge

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

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA, and information provided by you, the LEA must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

34 CFR §300.535

Part B of IDEA does not:

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

Transmittal of Records

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

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 and 5E DCMR §3018.5

Part B of the IDEA does not require an LEA to pay for the cost of an education, including special education and related services, of your child with a disability at a private school or facility if the LEA made FAPE available to your child and you choose to place the child in a private school or facility. However, DCPS (as the only geographic LEA in the District of Columbia) 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 an LEA, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the LEA, a 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 LEA had not made a 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 the private placement to be appropriate even if it does not meet the State standards that apply to education provided by the OSSE and LEA.

Limitation on Reimbursement

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

- If, at the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the LEA to provide FAPE to your child, including a statement of your concerns and your intent to enroll your child in a private school at public expense;
- If, at least ten (10) business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the LEA of that information;

- If, prior to your removal of your child from the public school, the LEA provided prior written notice to you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make your child available for the evaluation; or
- Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

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

FOR FURTHER INFORMATION, PLEASE CONTACT:

Office of the State Superintendent of Education
Division of Special Education
810 First Street, NE, 5th Floor
Washington, DC 20002
(202) 741-0273

This document is available electronically at:
<http://www.osse.dc.gov>



Office of the



State Superintendent of Education

**District of Columbia
Notice of Procedural Safeguards
Rights of Parents of Students with Disabilities**

RECEIPT

I, _____, received a copy of
(Parent/Guardian name)

The District of Columbia's Notice of Procedural Safeguards: Rights of Parents of Students with
Disabilities,

from: _____
(Name and Title of Person Issuing Document)

at: _____
(Name of School)

_____/_____/_____
(Date)

(Parent/Guardian Signature)

(This receipt is to remain in a designated file in the school, with a copy provided to
parent/guardian upon request.)