

# Procedural Safeguards Notice

## Parent Rights for Special Education K-21



**Office of Enhancing Student Opportunities**  
255 Capitol Street NE  
Salem, Oregon 97310

This document conforms to the U.S. Department of Education’s Model Procedural Safeguards Notice (June 2009) with specific information about Oregon rules as necessary.

This document is being prepared for the 2020-2021 school year. However, this document will be in effect until school districts are notified otherwise.

Questions or comments about this document may be directed to:

Office of Enhancing Student Opportunities  
Oregon Department of Education  
255 Capitol Street  
Salem, OR 97310  
(503) 947-5634

This document is available electronically on the Procedural Safeguards website:

<https://www.oregon.gov/ode/rules-and-policies/Pages/Procedural-Safeguards.aspx>

It is the policy of the State Board of Education and a priority of the Oregon Department of Education that there will be no discrimination or harassment on the grounds of race, color, sex, marital status, religion, national origin, age or disability in any educational programs, activities, or employment. Persons having questions about equal opportunity and nondiscrimination should contact the State Superintendent of Public Instruction at the Oregon Department of Education, 255 Capitol Street NE, Salem, Oregon 97310; phone 503-947-5634; fax 503-378-5156.

The information in this booklet is for:

- Parents of children as defined at 34 CFR 300.30, who are, or who may be, eligible for special education services under the Individuals with Disabilities Education Act (IDEA).
- Adult students with a disability or emancipated minors pursuant to ORS 419B.550 to 419B.558 and OAR 581-015-2325.

## DEFINITION OF “PARENT”

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The IDEA gives certain rights to parents of children with disabilities. A parent may be:

- A biological or adoptive parent of a child;
- A foster parent of a child;
- A legal guardian (other than a State agency) or other person legally responsible for the child’s welfare;
- An individual acting as a parent as a parent in place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives; or
- A surrogate parent appointed by the school district or a juvenile court.

If more than one person is qualified to act as a parent, and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent under the IDEA. However:

- This rule does not apply if the biological or adoptive parent does not have legal authority to make educational decisions for the child.
- If there is a court order or judicial decree identifying specific person(s) who can act as the parent of a child or to make educational decisions on behalf of a child, that person will be the parent for special education purposes.

🎓 Students who have reached 18 years of age, applicable younger students who marry, or who are legally emancipated, and without an established court guardian, are responsible for making decisions about their own education. Such students will have all of the IDEA parental rights noted in this publication.

🎓 This symbol indicates applicable material for adult students and/or emancipated minors.

🎓 Note that the rights in this booklet that apply to a child will also apply to an adult student who is eligible under the IDEA.

Not all students with disabilities are eligible for special education services under IDEA. Some students may have disabilities that affect major life activities but they do not meet the eligibility requirements for one of the categories of disability under the IDEA. These children may be protected by different federal laws, such as Section 504 of the Rehabilitation Act of 1973 or the American with Disabilities Act (ADA). The rights of these children and their parents are similar, but not the same, as the procedural safeguards described in this booklet. For more information about these laws, contact your school district’s Section 504 coordinator or see the information on the [ODE Civil Rights website](#) .

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## **GENERAL INFORMATION**

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The Individual with Disabilities Education Act (IDEA), the federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA and U.S. Department of Education regulations. A copy of this notice must be given to parents at least once a school year, and a copy must be given to the parents: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State special education complaint under 34 CFR 300.151 through 300.153 (OAR 581-015-2030) and upon receipt of the first due process hearing request under 300.507 (OAR 581-015-2345) in a school year; (3) when a decision is made to take a disciplinary action against your child that constitutes a change of placement; and (4) upon your request.

All of the rights in this document relate to Part B of the IDEA. Part B includes children from age three (3) to twenty-one (21). ODE also publishes notices of procedural safeguards for children ages birth – five (5) in Early Intervention/Early Childhood Special Education (EI/ECSE) programs.

This Notice of Procedural Safeguards also applies to parents whose children with disabilities attend any Oregon charter school. Under Oregon law, the district in which the charter school is located is responsible for special education.

## **PRIOR WRITTEN NOTICE**

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### **Notice**

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

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

### **Content of notice**

The written notice must:

1. Describe the action that your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in part B of the IDEA;
5. Tell you how you can get a copy of this Notice of Procedural Safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;

6. Include resources for you to contact for help in understanding the IDEA;
7. Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; **and**
8. Provide a description of other factors that are relevant to the school district's proposal or refusal.

### **Notice in understandable language**

The notice must be:

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

If your native language or other mode of communication is not a written language, your school district must ensure that:

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

### **NATIVE LANGUAGE**

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

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

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

### **ELECTRONIC MAIL**

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

1. Prior written notice;
2. This Notice of Procedural Safeguards; **and**
3. Notices related to a due process complaint.

## CONSENT – DEFINITION

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### Definition


*Consent* means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
3. You understand that the consent is voluntary on your part and you may withdraw your consent at any time.

**Revoking Consent** - 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 school district 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.

## CONSENT

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 Note the consent provisions noted below will also apply to adult students and emancipated minors.

### Consent for initial evaluation

Your school district 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 Consent***.

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

Your school district 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 school district 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 consent or have not responded to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial



evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

### **Special rules for initial evaluation of wards of the State**

If a child is a ward of the state and is not living with a parent, the school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the school district cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with state law; **or**
3. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

*Ward of the State*, as used in the IDEA, means a child who, as determined by the state where the child lives, is:

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

There is one exception that you should know about. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a *parent* as used in IDEA.

In Oregon, a ward of the state is a child who is temporarily or permanently in the custody of, or committed to, the Department of Human Services or the Oregon Youth Authority through the action of the juvenile court.

### **Parental consent for services**

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

The school district 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 school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later

revoke (cancel) your consent in writing and the school district does not provide your child with the special education and related services for which it sought your consent, your school district:

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

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district 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 school district must obtain your informed consent before it reevaluates your child, unless your school district can demonstrate that:

1. It took reasonable steps to obtain your consent for the reevaluation; **and**
2. You did not respond.

Oregon law requires informed written consent for any individual intelligence test or test of personality; the exception to consent does not apply when requesting consent for either of these assessments.

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue the 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 school district 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 consent**

Your school must document its attempts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents of wards of the state for initial evaluations. The documentation must include a record of the school district's attempts in these areas, such as:

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

### **Other consent requirements**

Your consent is not required before your school district may:

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

2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents of all children;

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may not use consent override procedures (i.e., mediation, 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).

### **Consent for the Use of Public Benefits and Insurance (such as Medicaid)**

The school district must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with a free appropriate public education (FAPE). Also, your school district may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

You may revoke consent at any time by notifying the school district in writing. If you revoke your consent, your child will still receive special education and related services needed to provide a FAPE.

## **INDEPENDENT EDUCATIONAL EVALUATIONS (IEE)**

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### **General**

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school district.

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

### **Definitions**

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

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

### **Right to evaluation at public expense**

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

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

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

#### **Parent-initiated evaluations**

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

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

#### **Requests for evaluations by hearing officers**

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

#### **School district criteria**

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

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

## CONFIDENTIALITY OF INFORMATION

### CONFIDENTIALITY

#### DEFINITIONS

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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)) and OAR 581-015-2300.
- *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

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*Personally identifiable* means information that includes:

- (a) Your child's name, your name as the parent, or the name of another family member;
- (b) Your child's address;
- (c) A personal identifier, such as your child’s social security number, student number, or biometric number;
- (d) Other indirect identifiers, such as the child’s date of birth, place of birth, and mother’s maiden name;
- (e) Other information that alone or in combination is linked or linkable to a specific child that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify a child with reasonable certainty; or
- (f) Other information requested by a person who the school district reasonably believes knows the identity of the student to whom the education record relates.

#### NOTICE TO PARENTS

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

1. A description of the extent to which the notice is given in the native languages of the various population groups in the state;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

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

## **ACCESS RIGHTS**

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The participating agency<sup>1</sup> must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under part B of IDEA. The participating agency<sup>1</sup> must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

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

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<sup>1</sup> The U.S. Department of Education uses the term “*participating agency*” to mean any school district, agency, or institution that collects, maintains, or uses personally identifiable information or from which information is obtained under Part B of the IDEA. Because this document focuses on the parent’s involvement with a local school district, “school district” is used rather than the broader term, “participating agency;” however, the records rules discussed in this part apply to all participating agencies.

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

#### **RECORD OF ACCESS**

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

#### **RECORDS ON MORE THAN ONE CHILD**

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

#### **LIST OF TYPES AND LOCATIONS OF INFORMATION**

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

#### **FEES**

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

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

#### **AMENDMENT OF RECORDS AT PARENT'S REQUEST**

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

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

If the participating agency decides not to amend the record as requested, it must inform you of that decision and advise you of your right to a hearing as described under the heading ***Opportunity for a Hearing***.

## **OPPORTUNITY FOR A HEARING**

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The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child on the grounds that that it is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## **HEARING PROCEDURES**

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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).

## **RESULTS OF HEARING**

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

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

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

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

## **CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION**

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

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

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



## **SAFEGUARDS**

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

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

All persons collecting or using personally identifiable information must receive training or instruction regarding your state's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

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

## **DESTRUCTION OF INFORMATION**

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Your school district 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, their grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. You have the right to ask the school district to destroy your child's educational information when it is no longer needed.

## **RESOLVING DISAGREEMENTS**

### **MEDIATION**

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#### **General**

Mediation is available through ODE to allow you and the school district to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading ***Filing a Due Process Complaint*** or filed a special education complaint

#### **Requirements**

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the school district's part;
2. May not be used to deny or delay your right to a due process hearing, or to deny any other rights provided under Part B of IDEA; **and**

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

The state must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The state must select mediators on a random, rotational, or other impartial basis.

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

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

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

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

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

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

### **Impartiality of mediator**

The mediator:

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

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

## **STATE COMPLAINT PROCEDURES DIFFERENCES BETWEEN THE PROCEDURES FOR DUE PROCESS COMPLAINTS AND HEARINGS AND FOR STATE COMPLAINTS**

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The regulations for Part B of IDEA set forth separate procedures for state complaints and for due process complaints and hearings. As explained below, any individual or organization may file a state complaint alleging a violation of any Part B requirement by a school district, the SEA, or any other public agency. Only you or a school district may file a due process complaint on

any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child.

While staff of the SEA generally must resolve a state complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer (called an administrative law judge, or ALJ) must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request.

The state complaint and due process complaint, resolution and hearing procedures are described more fully below. The SEA must develop model forms to help you file a due process complaint and help you or other parties file a state complaint as described under the heading **Model Forms**.

## **ADOPTION OF STATE COMPLAINT PROCEDURES**

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### **General**

Each SEA must have written procedures for:

1. Resolving any special education complaint, including a complaint filed by an organization or individual from another state; and
2. The filing of a complaint with the SEA.
3. Widely disseminating the state complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

### **Remedies for denial of appropriate services**

In resolving a state complaint in which the SEA has found a failure to provide appropriate services, the SEA must address:

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

## **MINIMUM STATE COMPLAINT PROCEDURES**

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### **Time limit; minimum procedures**

Each SEA must include in its state complaint procedures include a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint with (a) findings of fact and conclusions; **and** (b) the reasons for the SEA's final decision.

#### **Time extension; final decision; implementation**

The State Educational Agency's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular state complaint; **or** (b) you and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or local resolution.
2. Include procedures for effective implementation of the SEA's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

#### **State complaints and due process hearings**

If a written state complaint is received that is also the subject of a due process hearing as described under the heading ***Filing a Due Process Complaint***, or the state complaint contains multiple issues of which one or more are part of such a hearing, the state must set aside any part of the 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 school district), then the due process hearing decision is binding on that issue and the SEA must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the SEA.

## FILING A STATE COMPLAINT

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

The state complaint must include:

1. A statement that a school district or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific child:
  - (a) The name of the child and address of the residence of the child;
  - (b) The name of the school the child is attending;
  - (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
  - (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

The party filing the state complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the SEA.

# DUE PROCESS COMPLAINT PROCEDURES

## FILING A DUE PROCESS COMPLAINT

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### General

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

The due process complaint must allege a violation that happened not more than two years before you or the school district 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 hearing request within the timeline because:

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

### Information for parents

ODE will inform you of any free or low-cost legal and other relevant services available in the area if you request the information. The school district must provide such information if you request it or you or the school district files a due process complaint.

## DUE PROCESS COMPLAINT

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### General

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

Whoever files the complaint must also provide the SEA with a copy of the hearing request.

### Content of the hearing request

The due process hearing request must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;

4. If the child is experiencing homelessness, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the school district) at the time.

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

### **Sufficiency of hearing request**

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

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

### **Amendment of hearing request**

You or the school district may make changes to the hearing request only if:

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

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

### **School district response to a due process complaint**

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

1. An explanation of why the school district proposed or refused to take the action raised in the due process complaint;

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

Providing the information in items 1-4 above does not prevent the school district from stating that your due process hearing request was insufficient.

#### **Other party response to a due process complaint**

Except as stated under the sub-heading immediately above, ***School district response to a due process complaint***, the party receiving a due process hearing request must, within 10 calendar days of receiving the hearing request, send the other party a response that specifically addresses the issues in the hearing request.

#### **MODEL FORMS**

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The SEA must develop model forms to help you file a due process hearing request and to help you and other parties to file a state complaint. However, your state or the school district may not require the use of these model forms. In fact, you can use the state's model forms or another appropriate form, so long as it contains the required information for filing a due process hearing request complaint or a state complaint.

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

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Except as provided below under the heading ***PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES***, once a due process hearing request 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 school district agree otherwise, your child must remain in their current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).



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

## RESOLUTION PROCESS

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### Resolution meeting

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

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

You and the school district determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

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

### Resolution period

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

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

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

If, after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your request for a due

process hearing. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

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

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

### **Adjustments to the 30-calendar-day resolution period**

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

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

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

### **Written settlement agreement**

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

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

### **Agreement review period**

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

# HEARINGS ON DUE PROCESS COMPLAINTS

## IMPARTIAL DUE PROCESS HEARING

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### General

Whenever a due process hearing is requested, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the *Due Process Complaint* and *Resolution Process* sections.

### Impartial hearing officer

At a minimum, a hearing officer:

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

Each school district must keep a list of those persons who serve as ALJs and a statement of the qualifications for each one.

### Subject matter of due process hearing

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process hearing request, unless the other party agrees.

### Timeline for requesting a hearing

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

### Exceptions to the timeline

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

1. The school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**

2. The school district withheld information from you that it was required to provide to you under Part B of IDEA.

## **HEARING RIGHTS**

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### **General**

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

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

### **Additional disclosure of information**

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

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

### **Parental rights at hearings**

You must be given the right to:

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

## **HEARING DECISIONS**

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### **Decision of Administrative Law Judge**

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

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

1. Interfered with your child’s right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**
3. Caused your child to be deprived of an educational benefit.

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

### **Separate request for a due process hearing**

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

### **Findings and decision provided to the advisory panel and general public**

The SEA or the school district (whichever was responsible for your hearing), after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the state special education advisory panel; **and**
2. Make those findings and decisions available to the public.

### **TIMELINES AND CONVENIENCE OF HEARINGS; FINALITY OF DECISION**

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The SEA must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings **or**, as described under the sub-heading ***Adjustments to the 30-calendar-day resolution period***, not later than 45 calendar days after the expiration of the adjusted time period:

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

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the school district).

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

### **Finality of hearing decision**

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district)

may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the time Period in Which to File Those Actions.***

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

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### **General**

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

### **Time limitation**

The party (you or the school district) 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:

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

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

### **Jurisdiction of district courts**

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

### **Rule of construction**

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of 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 IDEA. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

## ATTORNEYS' FEES

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### General

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

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or a school district, 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.

### Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than 10 calendar days before the proceeding begins;
  - b. The offer is not accepted within 10 calendar days; **and**
  - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

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

3. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action. Fees also may not be awarded for a mediation as described under the heading **Mediation**.

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

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

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

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



# PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

## AUTHORITY OF SCHOOL PERSONNEL

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### Case-by-case determination

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

### General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see the heading ***Change of Placement Because of Disciplinary Removals*** for the definition).

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

### Additional authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see the sub-heading ***Manifestation determination***) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under ***Services***. The child's IEP Team determines the interim alternative educational setting for such services.

## SERVICES

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A school district is only required to provide services to a child with a disability who has been removed from their current placement for **10 school days or less** in that school year, if it provides services to a child without disabilities who has been similarly removed. The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.

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

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

After a child with a disability has been removed from their current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see the heading, **Change of Placement Because of Disciplinary Removals**), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

## **MANIFESTATION DETERMINATION**

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Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district, you, and other relevant members of the IEP Team (as determined by you and the school district) 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 school district's failure to implement the child's IEP.

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

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

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

Except as described below under the sub-heading ***Special circumstances***, the school district must return your child to the placement from which your child was removed, unless you and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

### **Special circumstances**

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 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 SEA or a school district;
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 SEA or a school district; **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 SEA or a school district.

### **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 school district must notify you of that decision, and provide you with a procedural safeguards notice.

## CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

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

1. The removal is for more than 10 school days in a row; **or**
2. Your child has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year;
  - b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;
  - c. Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

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

## DETERMINATION OF SETTING

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

## APPEAL

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### General

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

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

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

### **Authority of hearing officer**

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

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

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

Whenever you or a school district 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 SEA or school district must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless you and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.

You or the school district 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**

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

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

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#### **General**

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

### **Basis of knowledge for disciplinary matters**

A school district 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 school district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school district's director of special education or to other supervisory personnel of the school district.

### **Exception**

A school district would not be deemed to have such knowledge if:

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

### **Conditions that apply if there is no basis of knowledge**

If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child is a child with a disability, as described above under the subheadings ***Basis of knowledge for disciplinary matters*** and ***Exception***, your child may be subjected to the disciplinary measures that are applied to 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 the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by you, the school district 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**

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Part B of IDEA does not:

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

### **Transmittal of records**

If a school district reports a crime committed by a child with a disability, the school district:

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

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

### **Reimbursement for private school placement**

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

### **Limitation on reimbursement**

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

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

However, the cost of reimbursement:



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