

informed written consent. If the hearing officer upholds your education agency, the education agency may evaluate subject to your rights to appeal the decision and the child must remain in the current educational placement awaiting the decision of the appeal unless you and the education agency agree otherwise. If the parent of a child refuses to give consent to the initial provision of special education and related services, or fails to respond to a request for consent, the education agency shall not provide special education and related services to the child by utilizing due process hearing or mediation procedures. In this instance, the education agency will not be considered to be in violation of the requirement to make available a free appropriate public education to the child and is not required to convene an IEP Team meeting or develop an IEP for the child. The same applies if, subsequent to the initial provision of special education and related services, the parent revokes consent in writing and the public agency provides prior written notice before ceasing services. If the parent revokes consent in writing after the initial provision of services, the public agency is not required to amend the child's education record to remove any references to the child's receipt of special education and related services because of the revocation of consent.

Your education agency must obtain your informed consent before it reevaluates your child, unless your education agency 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 education agency may, but is not required to, pursue your child's reevaluation by using the mediation and/or due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your education agency does not violate its obligations under Part B of the *Individual With Disabilities Education Act* (IDEA) if it declines to pursue the reevaluation in this manner. However, if after at least two attempts to obtain your consent for reevaluation you have not responded, the education agency may proceed with the reevaluation. Your consent is not required before your education agency 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. An education agency may not use a parent's refusal to consent to one service or activity regarding initial evaluation for special education services to deny the parent or child any other service, benefit, or activity offered by the education agency for all children, except as required by this part. If you are the parent of a child who is home schooled or placed in a private school at your own expense, and you do not provide your informed written consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your informed written consent, the education agency shall not use its consent override procedures and it is not required to consider your child as eligible to receive equitable services. Your informed written consent or the informed written consent of an eligible child who has reached the age of majority (Age 19), must be obtained prior to an IEP Team meeting before representatives of participating agencies who may be responsible for providing or paying for transition services may be invited to the IEP Team meeting.

TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

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

INDEPENDENT EDUCATIONAL EVALUATION

You have the right to an independent educational evaluation at public expense if you disagree with an evaluation obtained by your education agency. However, your education agency may request a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense. If you obtain an independent educational evaluation at private expense, the results of the evaluation must be considered by your education agency (if it meets agency criteria) in any decision made with respect to the provision of a free appropriate public education and may be presented as evidence at a due process hearing. If a due process hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation will not be at your expense. Each education agency shall provide you, on request, information about where an independent educational evaluation may be obtained and the criteria for the independent educational evaluation. Whenever an independent educational evaluation is at public expense, the standards under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the standards that the education agency uses when it conducts an evaluation. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

DIFFERENCE BETWEEN STATE COMPLAINT AND DUE PROCESS HEARING PROCEDURES

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

STATE COMPLAINT PROCEDURES

Any individual or organization has a right to file a signed written complaint alleging that a school system has violated the IDEA or 34 CFR Part 300 and the facts on which the statement is based; to present allegation(s) that occurred not more than one year prior to the date that the complaint is received; to submit additional information either orally or in writing about the allegations in the complaint; to a written decision within 60 calendar days that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the final decision; to an extension of the time limit only if exceptional circumstances exist with respect to a particular complaint; and to procedures for effective implementation of the final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. It is permissible for the timeline to be extended if the parent and the education agency agree to extend the timeline in order to participate in mediation to resolve the state complaint. The education agency will respond to the complaint allegations, at the discretion of the education agency, a proposal to resolve the complaint. An independent onsite investigation will occur as determined appropriate by the SDE, Special Education Services.

If requested, the SDE, Special Education Services, will provide you with a sample form for filing a State complaint.

You are not required to use the sample form, however your complaint must include: (1) A statement that a public agency has violated a requirement of Part B of the IDEA or of this part; (2) The facts on which the statement is based; (3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child: (a) The name 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 (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), 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 at the time the complaint is filed.

A party filing a complaint must send it to the SES section of the SDE. The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SDE. If after reviewing the complaint, the SES determines that it includes all of the required information and is signed, the 60-day timeline begins on the workday that the SES received the complaint. A signature requirement is the same that a person would use for any other legal document such as a bank check or signing a contract. Exceptions may be made for persons without the ability to sign their name.

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures required. If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties the due process hearing decision is binding on that issue; and the SEA must inform the complainant to that effect. A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

STATE MEDIATION PROCEDURES

You have the right to participate in mediation to resolve disagreements under IDEA with an education agency, whether or not you have requested a due process hearing or have filed a State complaint. The voluntary mediation will be scheduled by the SDE at no cost to you. A qualified impartial mediator trained in effective mediation techniques and selected by rotation will be provided and each mediation session will be scheduled in a timely manner and held in a location

convenient to the parties in the dispute. The SDE must have a list of qualified mediators and the mediators must be knowledgeable of the laws and regulations relating to special education and related services. The mediators may not be employees of the SDE or the education agency involved in the education or care of your child and must not have a personal or professional conflict of interest. You may participate without denial or delay of any other rights. If an agreement is reached, a legally binding written agreement that is signed by the parent and a representative of the education agency that has the authority to bind the education agency will state the resolution. All parties sign a confidentiality pledge prior to the beginning of the mediation process to assure confidentiality of mediation discussions and assurance that discussions may not be used as evidence in any later due process hearings or civil proceedings. The mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States. The education agency may develop procedures that offer an opportunity to meet with a disinterested party at a time and location convenient to you if you have chosen not to participate in mediation. The benefits of mediation will be explained by the disinterested party to encourage the use of mediation.

DUE PROCESS HEARING PROCEDURES

You may request a due process hearing regarding the education agency's proposal or refusal to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education. If you request a hearing, you or your attorney must provide a copy of the written request (that must be kept confidential) to the other party and to the SDE. If requested, the SDE, Special Education Services section, will provide you with a sample form for requesting a due process hearing.

You are not required to use the sample form, however your request must include: (1) The name of the child; (2) The address of the residence of the child or available contact information in the case of a homeless child; (3) The name of the school the child is attending; (4) A description of the nature of the problem including facts relating to the problem that occurred within two years of the date the parent or the education agency knew or should have known about the alleged action that is the basis for the hearing request; and (5) A proposed resolution of the problem to the extent known and available to you at the time you requested the hearing. The timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to specific misrepresentations by the education agency that it had resolved the problem forming the basis of the written request; or the education agency's withholding of information from the parent that was required under this part to be provided to the parent. You or the education agency may not have a due process hearing until you (or your attorney), or the education agency, files a due process hearing request that includes all of the information listed above.

If after receiving the due process hearing request, and SES determines that it includes all of the required information and is signed, the due process hearing will be initiated and the timeline begins on the workday received. A signature requirement is the same that a person would use for any other legal document such as a bank check or signing a contract. Exceptions may be made for persons without the ability to sign their name.

The party requesting the hearing shall not be allowed to raise issues at the hearing that were not raised in the written request for a hearing unless the other party agrees otherwise.

The education agency must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or if you or the education agency requests a hearing.

In order for a due process hearing to go forward, the request must be considered sufficient. The due process request will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the education agency) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above. Within five calendar days of receiving the notification that the receiving party (you or the education agency) considers a due process request insufficient, the hearing officer must decide if the due process request meets the content requirements, and notify you and the education agency in writing immediately.

You or the education agency may make changes to the hearing request only if the other party approves of the changes in writing and is given the chance to resolve the due process request through a resolution meeting, or no later than five days before the due process hearing begins, the hearing officer grants permission for the changes. If the complaining party makes changes to the due process request, the timelines for the resolution meeting and the time period for resolution start again on the date the amended request is filed.

Within 10 calendar days of receiving a copy of your request for a hearing, the education agency will provide you written notice addressing the concerns of the request for hearing, if it has not previously done so. The response must include an explanation of why the education agency proposed or refused to take the action raised in the due process request, a description of other options that the child's IEP Team considered and the reasons why those options were rejected, a description of each evaluation procedure, assessment, record, or report the education agency used as the basis for the proposed or refused action, and a description of the other factors that are relevant to the educational agency's proposed or refused action. However, providing this information does not prevent the education agency from asserting that the due process request was insufficient.

If the education agency files the due process hearing request, you must, within 10 calendar days of receiving the request, send the education agency a response that specifically addresses the issues in the complaint.

Prior to the opportunity for a hearing, the education agency, within 15 calendar days of receiving the parents' request for a hearing, will convene a meeting with the parents and the relevant member or members of the IEP Team (as determined by the education agency and the parent), including a member who has decision-making authority on behalf of the education agency, and who have specific knowledge of the facts identified in the written request for a hearing. The education agency may not include an attorney of the education agency if an attorney does not accompany the parent. The purpose of the meeting is for the parents of the child to discuss their hearing issues and the facts that form the basis of the hearing request. The education agency is then provided the opportunity to resolve the hearing issues unless the parents and the education agency agree in writing to waive such meeting, or agree to use the mediation process. If a resolution is reached at the resolution meeting or mediation, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the education agency who has the authority to bind the education agency. This agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States. If the parties execute such an agreement, a party may void such agreement within three business days of the agreement's execution. If the education agency has not resolved the hearing issues to the satisfaction of the parents within 30 days of the receipt of the written request for a hearing, the hearing may occur and all the applicable timelines for a hearing will commence. A final hearing decision will be reached within 45 calendar days after the hearing timeline commences (i.e., after the 30-day timeline to resolve the issues has expired) unless the hearing officer grants a specific extension at the request of either party. A copy of the decision is mailed to each of the parties.

Except where you and the education agency have both agreed to waive the resolution process or to use mediation, failure of the parent to participate in the resolution meeting will delay the timelines for the resolution process and the due process hearing until the parent's agree to participate in a meeting. If after making reasonable efforts and documenting such efforts, the education agency is not able to obtain the parent's participation in the resolution meeting, the education agency may, at the end of the 30 calendar day resolution period, request that a hearing officer dismiss your due process request. Documentation of such efforts must include a record of the education agency'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 and any responses received; and detailed records of visits made to the home or place of employment and the results of those visits. If the education agency fails to hold the resolution meeting within 15 calendar days of receiving notice of the parent's due process request or fails to participate in the resolution meeting, the parent may ask a hearing officer to order that the 45 calendar day due process hearing timeline begin.

If the parent and the education agency agree in writing to waive the resolution meeting, then the 45 calendar day timeline for the due process hearing starts the next day. After the start of mediation or the resolution meeting and before the end of the 30 calendar day resolution period, if the parent and the education agency agree in writing that no agreement is possible, then the 45 calendar day timeline for the due process hearing starts the next day. If the parent and the education agency agree to use the mediation process, at the end of the 30 calendar day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either party withdraws from the mediation process, then the 45 calendar day timeline for the due process hearing starts the next day.

At a minimum a hearing officer must not be an employee of the state education agency or the local education agency that is involved in the education or care of the child, or any person having a personal or professional interest that would conflict with his or her objectivity in the hearing. A person who otherwise qualifies to conduct a hearing is not an employee of the education agency solely because he or she is paid by the education agency to serve as a hearing officer. He or she must possess the knowledge and the ability to: understand the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations by Federal and State courts; conduct hearings in accordance with appropriate, standard legal practice; and render and write decisions in accordance with appropriate, standard legal practice.

Each education agency shall keep a list of the persons who serve as due process hearing officers. The list must include a statement of the qualifications of each of those persons.

Any party to a hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities except state law prohibits non-attorney representation; present evidence and confront, cross-examine, and compel the attendance of witnesses; 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; obtain a written or electronic verbatim record of the hearing; and obtain written, or at the option of the parents, electronic findings of fact and decisions at no cost. In addition, you have the right to have the child present; open the hearing to the public; and have the hearing conducted at a time and place, which is reasonably convenient to you at no cost. At least five business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluation that the party intends to use at the hearing. A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluations or recommendations at the hearing without the consent of the other party.

CIVIL ACTION

The decision of the hearing officer is final except that any party aggrieved by the findings and decision made in a due process hearing has the right to bring a civil action in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. An aggrieved party must file a notice of intent to file a civil action with all parties to the hearing within 30 calendar days upon receipt of the decision of the hearing officer. A civil action in a court of competent jurisdiction must be filed within 30 days of the filing of the notice of intent to file a civil action.

A hearing officer's decision on whether the child received a free appropriate public education must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that the child did not receive free appropriate public education only if the procedural inadequacies interfered with the child's right to free appropriate public education, significantly interfered with the parent's opportunity to participate in the decision-making process regarding the provision of free appropriate public education to the child, or caused a deprivation of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering an education agency to comply with the procedural safeguards requirements.

Nothing in this part should be interpreted to prevent the parent from submitting a separate due process hearing request on an issue separate from a due process request already filed.

CHILD'S STATUS DURING PROCEEDINGS

During the pendency of the resolution period, a due process hearing, or judicial proceeding, unless you and the state or your education agency agree otherwise, the child must remain in his or her current educational placement. If the hearing officer agrees with the parent that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parent.

If the hearing involves an application for initial admission to public school, the child, with parental consent, must be placed in the public school until the completion of all the proceedings. If the hearing involves an application for initial services under Part B from a child transitioning from Part C to Part B and is no longer eligible for Part C services because the child turned three, the education agency is not required to provide the Part C services that the child was receiving. If the child is found eligible for special education and related services under Part B, and the parent consents to the initial provision of special education and related services, then the educational agency must provide those special education and

related services that are not in dispute. However, if a parent requests a due process hearing regarding a disciplinary action, placement remains in the alternative education setting pending the decision of the hearing officer or until the expiration of the time period unless the parent and the education agency agree otherwise. A request for expedited hearing for discipline matters must occur within 20 school days of the date the hearing is requested and the hearing officer must make a determination within 10 school days after the hearing.

State Enforcement Mechanisms. For enforcement of a written agreement reached as a result of mediation or a resolution meeting, the State Education Agency (SEA) will allow other state enforcement mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

AWARD OF ATTORNEYS' FEES

In any action or proceeding brought under Part B of the IDEA, the court may award reasonable attorneys' fees to a prevailing party who is the parent of a child with a disability; or to a prevailing party who is a state or local education agency against the attorney of a parent who files a hearing request or court case that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or to a prevailing State or local education agency against the attorney of a parent, or against the parent if the parent's request or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or needlessly increase the cost of litigation. The fee shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished.

Attorneys' fees may not be awarded and related costs may not be reimbursed for services performed subsequent to the time of a written offer of settlement to the parent if the offer is made to the parent 10 calendar days prior to the hearing; the offer is not accepted by the parent within 10 calendar days; and hearing officer or court finds that the hearing decision obtained by the parents was not more favorable to the parents than the offer of settlement. Also, fees may not be awarded for attendance at any IEP Team meeting unless the meeting is convened as a result of the hearing officer's decision or court action. However, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. A resolution meeting is not considered an administrative hearing or court action for purposes of the attorney's fees provisions.

The amount of attorneys' fees awarded may be reduced if the parent or parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; the time spent and legal services furnished were excessive considering the nature of the action or proceedings; or the attorney representing the parent did not provide to the education agency the appropriate information in the due process hearing request. The preceding items will not apply in any action or proceeding if the court finds that the state or local education agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of these rules.

ACCESS TO RECORDS

Your education agency must permit you to inspect and review all education records of your child, that are collected, maintained, or used by the participating agency under Part B of the IDEA. The participating agency must comply with a request without unnecessary delay and before any meeting regarding an individualized education program, or hearing relating to the identification, evaluation, educational placement, or provision of a free appropriate public education, or resolution session is conducted and in no case more than 45 days after the request has been made. Your right to inspect and review records includes your right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; to have your representative inspect and review the records; and to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records. The participating agency may not charge a fee to search for or to retrieve information under this part, but may charge a fee for copies of records which are made for you under this part if the fee does not effectively prevent you from exercising your right to inspect and review those records. The agency may presume that you have authority to inspect and review records unless the agency has been advised that you do not have the authority under applicable State law governing such matters as guardianship, or separation, and divorce. If any education record includes information on more than one child, you may review only the

information relating to your situation or be informed of that specific information. The participating agency must provide you, on request, a list of the types and locations of education records collected, maintained, or used by the participating agency. The participating agency must keep a record of parties obtaining access to education records collected, maintained, or used (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 review the records.

RIGHTS FOR CHILDREN

Education agencies must afford to the child, rights of privacy similar to those afforded to parents regarding records taking into consideration the age of the child and type and severity of the disability. Although the rights of parents under the IDEA transfer to the child at the age of majority (Age 19), the rights of parents regarding educational records under the *Family Educational Rights and Privacy Act* (FERPA) at 34 CFR Part 99 transfer to the child at age 18.

CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

Your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances 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 the IDEA.

Your consent or the consent of an eligible child who has reached the age of 19 must be obtained before personally identifiable information is released to officials of participating agencies responsible for providing or paying for transition services.

Also, if your child is in, or is going to go to 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.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in your child's education records collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of the child, you may request that the education agency that maintains the information amend the information. The participating agency must decide whether to amend the information in accordance with your request within a reasonable period of time of receipt of the request. If the participating agency decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and advise you of your right to a hearing. The participating agency shall, on request, provide an opportunity for a hearing, which complies with FERPA procedures, to challenge information in your child's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights. If, as a result of the hearing, it is determined that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the participating agency must amend the information accordingly and so inform you in writing. If, as a result of the hearing, it is determined that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights, the participating agency must inform you of the right to place in the records it maintains on your child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the participating agency. Any explanation placed in the records must be maintained by the participating agency as part of the record as long as the record or the contested portion is maintained by the participating agency. If the records or the contested portion are disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

DESTRUCTION OF INFORMATION

You must be informed by the public agency when personally identifiable information collected, maintained, or used under Part B of the IDEA is no longer needed to provide education services to your child. The information must be destroyed at your request. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. Information must be destroyed in a manner that maintains confidentiality.

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

Part B of the IDEA does not require an LEA 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 LEA made FAPE available to your child and

you choose to place the child in a private school or facility. However, the public agency 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. Disagreements between the parents and the public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures. If the parents of a child with a disability who previously received special education and related services under the authority of an public agency enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment. The cost of reimbursement may be reduced or denied if at the most recent IEP meeting that the parents attended before removal of the child from the public agency, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or at least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public agency, the parents did not give written notice to the public agency that they were rejecting the offered placement; or prior to the parents' removal of the child, the public agency informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or a judicial finding of unreasonableness with respect to actions taken by the parents is found. **EXCEPTION:** The cost of reimbursement shall not be reduced or denied for a parent's failure to provide such notice if the school prevented the parent from providing such notice, the parent had not received this document, or compliance with this requirement would likely result in physical harm to the child; and may in the discretion of a court or hearing officer not be reduced or denied for failure to provide such notice if the parent is not literate and cannot write in English; or compliance would likely result in serious emotional harm to the child.

DISCIPLINE

Authority of School Personnel. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

School personnel under this section may 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, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the education agency must provide services to the child with a disability who is removed from the child's current placement. The child must continue to receive educational services, so as 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, and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that the child must continue to receive educational services. The educational services may be provided in an interim alternative setting.

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

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed so as 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, the child's IEP Team determines appropriate services.

Change of Placement Because of Disciplinary Removals. The child's IEP Team determines the interim alternative educational setting for services. For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if the removal is for more than 10 consecutive school days, including partial school days of a half day or more, or the child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year, because the child's behavior is substantially similar to the child's behavior in previous incidents of misconduct that resulted in the series of removals, and because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. The education agency (a minimum of an administrator and the student's special education teacher) determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the education agency must notify the parents of that decision, and provide the parents with a copy of the *Special Education Rights*.

Manifestation Determination.

1. 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, the education agency, the parent, and relevant members of the child's IEP Team (as determined by the parent and the education agency) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct in question was the direct result of the education agency's failure to implement the IEP.

2. The conduct must be determined to be a manifestation of the child's disability if the education agency, the parent, and relevant members of the child's IEP Team determine that either condition is met.

3. If the education agency, the parent, and relevant members of the child's IEP Team determine that there was a failure to implement the IEP, the education agency must take immediate steps to remedy those deficiencies.

Determination that Behavior was a Manifestation. If the education agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must:

1. Conduct a functional behavioral assessment, unless the education agency had conducted a functional behavioral assessment during the previous 18 months 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, and

3. Return the child to the placement from which the child was removed, unless the parent and the education agency agree to a change of placement as part of the modification of the behavioral intervention plan.

Special Circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Department of Education or an education agency,

2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Department of Education or an education agency, or

3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Department of Education or an education agency.

Definitions. For purposes of this section, the following definitions apply:

1. 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)).

2. 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.

3 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.

4. 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.

Appeal. The parent of a child with a disability who disagrees with any decision regarding disciplinary placement or the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a due process hearing.

Authority of Hearing Officer. A hearing officer hears, and makes a determination regarding an appeal under this section. In making the determination, the hearing officer may return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of disciplinary requirements, or that the child’s behavior was a manifestation of the child’s disability, or order a change of placement of the 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 the child is substantially likely to result in injury to the child or to others. The procedures may be repeated, if the education agency believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Expedited Due Process Hearing. Whenever a hearing is requested, the parents or the education agency involved in the dispute must have an opportunity for a due process hearing.

1. The Department of Education is responsible for arranging the expedited due process hearing due to disciplinary action, which must occur within 20 school days of the date the hearing request is filed. The hearing officer must make a determination within 10 school days after the hearing.

2. Unless the parents and education agency agree in writing to waive the resolution meeting, or agree to use the mediation process, a resolution meeting must occur within seven calendar days of receiving notice of the due process hearing request, and

3. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process hearing request.

4. The decisions on expedited due process hearings are appealable.

Placement During Appeals. When an appeal has been made by either the parent or the educational agency, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period, whichever occurs first, unless the parent and education agency agree otherwise.

Protections for Children Not Determined Eligible for Special Education and Related Services. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the education agency had knowledge, as specified below, that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred if:

1. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services,

2. The parent of the child requested an evaluation of the child, or

3. The teacher of the child, or other personnel of the education agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

Exception. A public agency would not be deemed to have knowledge if the parent of the child has not allowed an evaluation of the child, or has refused services under this part, or the child has been evaluated and determined to not be a child with a disability under this part.

Conditions that Apply if No Basis of Knowledge.

1. If a public agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.

2. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

3. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the education agency and information provided by the parents, the education agency must provide special education and related services in accordance with this part.

Referral to and Action by Law Enforcement and Judicial Authorities. Nothing in this part prohibits an agency from reporting an alleged crime committed by a child with a disability to appropriate authorities or prevents 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.

Whenever law enforcement or judicial authorities are contacted by a public agency personnel reporting an alleged crime committed by a child with a disability, the IEP Team must, within two weeks of the child's return to school setting:

1. If a public agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors. Conduct a functional behavioral assessment unless the LEA has conducted a functional behavioral assessment during the previous 18 months before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child, or

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

Transmittal of Records. (1) An agency reporting an alleged crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. (2) An agency reporting an alleged crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.