

# Table of Contents

<b>Confidentiality of Information</b>	<b>2</b>
<b>Records</b>	<b>3</b>
<b>Rights</b>	<b>4-5</b>
<b>Confidentiality of Information</b>	<b>6</b>
<b>Independent Educational Evaluation</b>	<b>6</b>
<b>Notice</b>	<b>7</b>
<b>Consent</b>	<b>8</b>
<b>Dispute Resolution</b>	<b>9</b>
<b>Rights and Responsibilities Under IDEA With Regards To Hearings</b>	<b>10-14</b>
<b>Evaluation Procedures</b>	<b>15</b>
<b>Least Restrictive Environment</b>	<b>17</b>
<b>Surrogate Parents</b>	<b>18</b>
<b>Private School Placement at Public Expense</b>	<b>18</b>
<b>Interim Alternative Educational Setting</b>	<b>20</b>

# **YOUR RIGHTS AS PARENTS - REGARDING SPECIAL EDUCATION**

*Revised: October 2006*

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with notice containing a full explanation of the procedural safeguards available under the IDEA and U.S. Department of Education regulations. A copy of this notice must be given to parents only one time a school year, except that a copy must also be given to the parents: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State complaint under 34 C.F.R. §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request. [34 C.F.R. § 300.504(a)]

This procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148 (unilateral placement at private school at public expense), §§ 300.151 through 300.153 (State complaint procedures), § 300.300 (consent), §§ 300.502 through 300.503, §§ 300.505 through 300.518, and §§ 300.530 through 300.536 (procedural safeguards in Subpart E of the Part B regulations), and §§ 300.610 through 300.625 (confidentiality of information provisions in Subpart F). This model form provides a format that States and/or school districts may choose to use to provide information about procedural safeguards to parents.

As a parent of a child who has been referred for special education services or who is already receiving special education benefits, you and your child have certain rights which are protected by state or federal law. We want you to know about these rights.

## **RECORDS:**

Education records means the type of records covered under the definition of “education records” in 34 C.F.R. Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)). In 34 C.F.R. 99.3, “education records” is defined as follows:

(a) The term means those records that are:

- (1) Directly related to a student; and
- (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

- (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
- (2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of §99.8.
- (3) (i) Records relating to an individual who is employed by an educational agency or institution, that:
  - (A) Are made and maintained in the normal course of business;
  - (B) Relate exclusively to the individual in that individual's capacity as an employee; and
  - (C) Are not available for use for any other purpose.
- (ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or

her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

## **Rights:**

1. Right to examine all records relating to your child without unnecessary delay after parents' request and before any meeting regarding an Individualized Education Program (IEP) or hearing and, in no case, more than 45 days after request.
2. Right to have a representative appointed by you to review the records.

3. Right to request that the agency provide copies of the records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.
4. Right to have the agency presume that a parent has authority to inspect and review records of his or her child unless agency has been advised that parent does not have authority under state law.
5. Right to inspect and review only the information relating to their child if any education record includes information on more than one child.
6. Right to have the public agency keep a record of parties obtaining access to education records collected, maintained, or used under this part (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.
7. Right to have the participating agency search for or retrieve information without charge.
8. A parent may be charged a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
9. Right to be informed of all types and locations of records being collected, maintained or used by the agency.
10. Right to ask for an explanation of any item in the records.
11. Right to ask for an amendment of any record if it is inaccurate, misleading or violates the privacy or other rights of the child.
12. Right to be informed of refusal and right to a hearing if the agency refuses to make the requested amendment.

13. Right to have the agency decide whether to amend the information within a reasonable time after being asked to do so.

14. Right to be informed if the agency decides in a hearing that the information is inaccurate, misleading or violative of the child's rights and the right to have the record amended.

15. Right to be informed of the parents' right to place a statement in the record commenting on information or setting forth the parents' reasons for disagreeing with the agency decision if it is decided in a hearing that information need not be amended.

16. Right to have the parents' explanation maintained in the record as long as the contested record is maintained.

17. Right to have the parents' explanation disclosed if the contested record is disclosed.

## **CONFIDENTIALITY OF INFORMATION**

1. Right to restrict access to your child's records by withholding consent to disclose records.

2. Right to be notified and receive copies before information in your child's file is destroyed.

3. Right to be told to whom information has been disclosed.

4. Right to review and receive copies of all information sent to another agency where your child seeks or is eligible to enroll.

## **INDEPENDENT EDUCATIONAL EVALUATION:**

*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. [34 C.F.R. § 300.503(a)(3)(i)] *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 the IDEA, which allow each State to use whatever State, local, Federal and private sources of support are available in the State to meet the requirements of Part B of the Act. [34 C.F.R. § 300.503(a)(3)(ii)]

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 request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.

1. 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.
2. 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 request a due process hearing 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.

1. Right to obtain an independent educational evaluation by a qualified examiner.
2. Right to have the independent evaluation obtained at either public or private expense considered in either meetings where placement or program decisions are made or in a hearing regarding a free appropriate public education.
3. Right to be told where an independent evaluation may be obtained at no expense or low expense.
4. Right to an independent evaluation at public expense under the same criteria as those used by the public agency under which the evaluation is obtained, including the location of the evaluation if you disagree with the agency's evaluation, except that the public agency has the right to initiate a hearing

regarding a free appropriate public education to show that its evaluation is appropriate.

5. Right to an independent evaluation at public expense when the evaluation is requested by an ALJ/hearing officer during a hearing.

**NOTICE:**

1. Right to be notified and present at all meetings before the agency initiates or changes (or refuses to initiate or change) the identification, evaluation, placement or provision of a free appropriate public education (FAPE).

2. Right to have that notice in writing, in your native language, or other principal mode of communication, at a level understandable to the general public.

3. Right to have the notice describe the proposed action, explain why it is proposed, describe the options considered and explain why those other options were rejected.

4. Right to be notified of each evaluation procedure, test, assessment, record or report the agency has used as a basis for any agency-proposed action or basis for refusal.

5. Right to a description of any other factors which are relevant to the agency's proposed action or basis for refusal.

6. Right to a notice that includes a full explanation of all the procedural safeguards available to the parents.

7. Right to be notified of sources to contact to obtain assistance in understanding provisions of Part B of the IDEA.

8. Right to prior written notice that contains all information in items 2 through 7 above before the agency initiates or changes or refuses to initiate or change the identification, evaluation, placement or provision of a free and appropriate public education.

9. Right of a parent, whose native language or other mode of communication is not a written language, to have the notice translated orally or by other means in his or her native language or other mode of communication; the right to understand the content of the notice; and the right to written evidence that these requirements have been met.

10. Right to be present at all IEP meetings.

Note: 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. Procedural safeguards notice; **and**
3. Notices related to a due process complaint.

## **CONSENT:**

### **Consent**

*Consent* means:

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

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

1. Right to give consent before an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services. You must also receive prior written notice of the proposed action.

2. Right to give consent before a reevaluation is conducted. This is true unless your school district can demonstrate that (a) It took reasonable steps to obtain your consent for your child's reevaluation; **and**

**(b)** You did not respond. If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the mediation, 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 the IDEA if it declines to pursue the reevaluation in this manner.

3. Right to give consent before initial placement can be made in special education

4. Right to a description of the activity for which consent is requested.

5. Right to revoke consent at any time.

6. Right of the agency to proceed, in the absence of consent, to a hearing to determine if your child should be evaluated. Except for preplacement evaluation, reevaluation, and initial placement, consent may not be required as a condition of any benefit to the parent or child. If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the Act's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures (unless required to do so or prohibited from doing so under State law). 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, unless State law requires it to pursue the evaluation.

## **DISPUTE RESOLUTION**

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 State Educational Agency, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process complaint (if not

resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below.

## **RIGHTS AND RESPONSIBILITIES UNDER IDEA WITH REGARD TO HEARINGS:**

1. Right to present complaints, both due process complaints or formal written complaints, with respect to any matter relating to the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education to your child.

(a) Due Process Complaint: the complaint must set forth an alleged violation that occurred not more than **two (2)** years before the date the parent knew or should have known about the alleged action that forms the basis for the complaint. A due process complaint is a request for a hearing to occur to resolve the matter. The two year time limitation does not apply if you could not file a due process complaint 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 the IDEA.

(b) Formal Written Complaint: the complaint is a signed, written complaint that sets forth an alleged violation pursuant to State Board Rule 160-4-7-.12. The complaint shall include a statement that the local system has violated the requirements of IDEA and the facts on which the statement is based. The complaint must allege a violation that occurred not more than **one (1)** year prior to the date the complaint is received.

2. Right to present complaints if you disagree with a determination by the school district that your child's behavior was not a manifestation your child's disability.
3. Right to mediation and/or an impartial due process hearing whenever you file a complaint as described in 1 of this section and to an expedited due process hearing whenever you file a complaint as described in 2 of this section.
4. Responsibility to file due process complaint notice. A parent or school alleging a due process violation under IDEA, or his or her attorney, is required to provide a due process complaint notice to the other party (or their attorney) and the state educational agency (SEA). The notice must include the name and home address of the child; the name of the school the child attends; if the child is a homeless child or youth, the child's contact information and the name of the child's school; a description of the nature of the problem, and a proposed resolution. The party presenting the due process complaint must file this notice before a due process hearing can occur.
5. Right to prior written notice regarding the subject matter of the due process complaint. When the school receives a due process complaint notice, it must first determine whether it provided prior written notice regarding the subject matter of the due process complaint. If it has not done so, the school must provide a response to the parents within 10 days of receiving the due process complaint notice. Prior written notice must contain the following: (1) an explanation of why the agency proposed or refused to take the action raised in the due process complaint, (2) a description of other option that the IEP team considered and the reasons those options were rejected; (3) a description of each evaluation procedure, assessment, record or report the agency used as the basis for the proposed or refused action; and (4) a description of the relevant factors in the school's proposal or refusal.
6. Responsibility to provide sufficient notice of the nature of the problem for which you are filing a due process complaint. If the school system feels that the parent's due process complaint notice is insufficient, the system must notify the hearing officer

in writing within 15 days of receiving the complaint. Administrative Law Judges (ALJs)/Hearing Officers then have up to 5 days to determine if the notice meets the requirements of IDEA. Upon making a determination, the ALJ must immediately notify all parties in writing of the decision. If the ALJ determines that the complaint is sufficient, the school must respond to the due process complaint. If the ALJ determines that the complaint is not sufficient, the parent has the opportunity to resubmit a new complaint and the timelines start over.

7. Right to file a due process complaint after the notice is filed. The due process complaint must describe the nature of the problem, relevant facts relating to the problem, and a proposed resolution to the problem. As noted in 4, if the system feels the complaint is not sufficient to inform them about the problem, the system has 15 days from when the parent filed their complaint to ask the ALJ to decide whether the complaint is sufficient. If the ALJ determines that the complaint is not sufficient, the complaint is returned to the parent, and the parent is able to file a new due process complaint with greater specificity. The timelines for due process hearings start over when the new complaint is filed.

8. Right to a resolution session that provides an opportunity for parents and school systems to resolve any issues in the due process complaint so that the parents and systems can avoid a due process hearing and provide immediate benefit to the child. Within 15 days of when a complaint is filed, the system must convene a Resolution Session between the parents and relevant members of the IEP Team. The session must include a representative of the system who has decision-making authority on behalf of the system, but may not include an attorney for the system unless the parent is also accompanied by an attorney. The session provides an opportunity for the party who filed the due process complaint to discuss that complaint and the facts forming the basis of it, and an opportunity for the responding party to resolve the complaint. If the parties reach an agreement, they must execute a legally binding agreement that is signed by the parents and the system representative. The agreement is enforceable in any state court of competent jurisdiction or in a United States district court. Either party may void the agreement

up to 3 days after its execution. If the due process complaint is not resolved through this session, then the parties may proceed to a due process hearing. The Resolution Session may be waived by the school and the parents in writing or if they agree to use the mediation process.

9. Right to be told of any free or low-cost legal and other relevant services available (e.g., an expert on disability conditions that may be a witness at the hearing when parent requests information or parent or agency initiates a hearing).

10. Right to a hearing conducted by the state educational agency.

11. Right to have the hearing chaired by an ALJ/hearing officer who is not employed by a public agency involved in the education of your child or otherwise personally or professionally interested in the hearing (the ALJ/hearing officer is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ/hearing officer).

12. Right to a list of the persons who serve as ALJs/hearing officers, including a statement of the qualifications of each of those persons.

13. Right of parents or parties to be advised and accompanied at the hearing by counsel and to be accompanied by individuals with special knowledge or training in problems of the disabled.

14. Right to have your child present.

15. Right to have the hearing open to the public.

16. Right of parents or parties to present evidence and confront, cross-examine and compel the attendance of witnesses.

17. Right of parents or parties to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

18. Right of parents or parties to have a written or, at the option of the parent, electronic verbatim record of the hearing.

19. Right of parents or parties to obtain written or, at the option of the parents, electronic findings of fact and decisions within 45 days after the local education agency received the initial request for the hearing, except that the ALJ/hearing officer may grant a specific extension of time at the request of either party.

20. Right of parents or parties to a final decision made by the ALJ/hearing officer, unless a party brings a civil action.

21. Right to have a hearing or an appeal set at a time and place reasonably convenient to you and your child.

22. Right of aggrieved parents or parties to appeal the decision of the ALJ/hearing officer by bringing a civil action in state or federal court within 90 days from the date of the decision of the ALJ/hearing officer.

23. Right to have your child remain in his or her present educational placement until completion of all hearing and appeal proceedings, unless you and the agency agree otherwise. This right does NOT apply to appeals regarding placement under discipline procedures, manifestation determinations, or when a school district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. During those appeals, the child must remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period specified in the disciplinary code or federal law, whichever occurs first, unless the parent and the State or school district agree otherwise.

24. Right to have child placed in the public school program until the completion of all the proceedings if the complaint involves an application for initial admission to the public school.

25. U.S. District Courts can award reasonable attorneys' fees to prevailing parties, whether that is a parent, SEA or local system as part of any settlement of a due process complaint or civil action.

Attorneys' fees awarded to SEAs or local systems may only be granted under certain guidelines. First, the parents' attorney

may be forced to pay the agency's attorneys' fees when that attorney files a complaint or civil action that is frivolous, unreasonable, or without foundation, or if the litigation clearly became frivolous, unreasonable, or without foundation. Second, the parents or their attorney may be forced to pay the SEAs or local system attorneys' fees if the parents' complaint or subsequent civil action was presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Not all legal and administrative proceedings and services are eligible for reimbursement. A court may not award attorneys' fees for any services performed subsequent to the time of a written offer of settlement that is made to the parents if: (1) the offer is made in accordance with Rule 68 of the Federal Rules of Civil Procedure; (2) in the case of an administrative hearing, if the offer is made more than 10 days prior to the hearing; (3) the offer is not accepted within 10 days; and (4) the court or administrative hearing officer find that the relief finally obtained by the parents is not more favorable than the offer of settlement. However, attorneys' fees may be awarded to parents who were substantially justified in rejecting the settlement offer. In addition, IEP Team meetings are not eligible for reimbursement unless the meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the state, for a mediation session. Attorneys' fees for Resolution Sessions are also ineligible for reimbursement.

26. At least five (5) business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all valuations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. An ALJ/hearing officer may bar any party that fails to comply with this provision from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

## **EVALUATION PROCEDURES:**

1. Right to have a full and individual evaluation of your child's educational needs.

2. Right to have the evaluation made by a multidisciplinary team including at least one specialist with knowledge in the area of the suspected disability.
  3. Right to have your child assessed in all areas related to the suspected disability.
  4. Right to have appropriate tests administered by qualified examiners.
  5. Right to have more than one criterion used in determining the appropriate educational program for your child.
  6. Right to have the evaluation made in your child's native language or mode of communication.
  7. Right to have a reevaluation every three years.
  8. Right to have a reevaluation in less than three years if you or your child's teacher requests it.
- Reevaluations shall not occur more frequently than one time per year unless the school system and the parent agree otherwise.

#### **LEAST RESTRICTIVE ENVIRONMENT:**

1. Right to have your child educated with non-disabled children to the maximum extent appropriate.
2. Right to have your child remain in a regular education environment, unless a special class or separate school is needed. (Removing a child from a regular class environment should be done only when the nature or severity of the disability is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.)
3. Right to have a continuum of alternative placements so that removal from the regular educational program can be the least restrictive situation.
4. Right to have supplementary services such as resource room or itinerant instruction to make it possible for your child to remain in a regular class placement.
5. Right to have placement in the school your child would attend if non-disabled, unless the child's individualized education program requires some other arrangement, and right to participate in nonacademic and extracurricular services and activities such as meals, recess, counseling, athletics and special interest groups.

## **SURROGATE PARENTS:**

1. A surrogate parent is a person appointed for a student for whom no parent can be identified or who is a ward of the state or whose parent's whereabouts cannot be discovered, after reasonable efforts by the local system. Such surrogate parent has no personal or professional interest that conflicts with the interests of the student presented, has knowledge and skills that ensure adequate representation of the students, is not an employee of the SEA, the local system, or any other agency that is involved in the education or care of the child. In the case of a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph. In the case of an unaccompanied youth as defined in the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 1143a(6)), the local system shall appoint a surrogate in accordance with this paragraph. The state shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the system that the child needs a surrogate.
2. The agency must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.
3. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child.

## **PRIVATE SCHOOL PLACEMENT AT PUBLIC EXPENSE:**

Part B of the 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 C.F.R. §§ 300.131 through 300.144.

1. The school district is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the school district made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

2. If a child with a disability who has previously received special education and related services from the school district has been enrolled by his parents in a private elementary or secondary school without the consent of or referral by the school district, a court or ALJ/hearing officer may require the school district to reimburse the parents for the cost of that enrollment if the court or ALJ/hearing officer finds that the school district had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

3. The cost of any reimbursement described in paragraph (2) above may be reduced or denied if: (a) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school the parents failed to inform the IEP team that they were rejecting the placement proposed by the school district to provide a free appropriate public education to the child, including stating their concerns and their intent to enroll their child in private school at public expense; or the parents failed, at least 10 business days (including any holidays that occur on a business day) prior to removal of the child from the public school, to give the school district written notice that they were rejecting the placement proposed by the school district to provide a free appropriate public education to the child, including stating their concerns and their intent to enroll their child in private school at public expense; (b) prior to the parents' removal of the child from the public school, the school district has notified the parents in writing of its intent to evaluate the child with a statement of an appropriate and reasonable purpose of such evaluation, but the parents did not make the child available for the evaluation; or (c)

upon a judicial finding of unreasonableness with respect to actions taken by the parents.

4. Reimbursement may not be reduced or denied for failure of the parent to provide notice referred to above if:

- (a) the parent is illiterate and cannot write in English;
- (b) compliance with the notice requirements would result in physical or serious emotional harm to the child;
- (c) the school prevented the parent from providing the notice; or
- (d) the parent had not received this notice of rights.

### **INTERIM ALTERNATIVE EDUCATIONAL SETTING:**

1. If your child carries a weapon to school or to a school function; if your child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; or if your child inflicts serious bodily injury on another person while at school, on school premises or at a school sponsored function, school district personnel may order a change in the placement of your child to (a) an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities), or to (b) an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days without regard to whether or not the behavior was a manifestation of disability. The alternative education setting shall be determined by the IEP team.

2. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate.

3. Either before or not later than 10 days after taking a disciplinary action described in paragraph (1) of this section, the school district shall convene an IEP meeting to develop an assessment plan to address the behavior if the school district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for your child before the behavior that resulted in the suspension described in paragraph (1); or if

your child already has a behavioral intervention plan, the IEP Team shall review and modify it, as necessary, to address the behavior.

4. An ALJ/hearing officer may order a change in the placement of your child to the IEP-determined appropriate interim alternative educational setting for not more than 45 days if the ALJ/hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others; and determines that the interim alternative educational setting meets the requirements of paragraph (5).

5. Any interim alternative educational setting in which your child is placed pursuant to paragraph (1) or paragraph (4) in this section shall: (a) be selected so as to enable your child to continue to receive educational services in order to participate in the general curriculum, although in another setting, and to continue to progress toward the goals set out in the IEP; and (b) receive the services and modifications of a functional behavioral assessment and behavior intervention plan designed to address the behavior so that it does not recur.

6. If a disciplinary action is contemplated as described in paragraph (1) or paragraph (4) of this section for the behavior of your child, not later than the date on which the decision to take that action is made, you shall be notified of that decision and of all procedural safeguards accorded under this section; and immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, the Local Education Agency (LEA), the parent and relevant members of the IEP team shall conduct a review of the relationship between your child's disability and the behavior subject to the disciplinary action.

7. In carrying out a review described in paragraph (6) of this section, the LEA, the parent and relevant members of the IEP team (as determined by the parent and the LEA ) shall 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 (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 LEAs failure to implement the IEP. When the LEA, the parent and the relevant members of the IEP determine that either (a) or (b) is applicable, the conduct is a manifestation of the disability.

8. If the determination is that the behavior of your child was not a manifestation of his or her disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to your child in the same manner in which they would be applied to children without disabilities except that the child: (a) must continue to receive educational services 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; and (b) 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.

9. If the determination is made that the conduct was a manifestation of the disability, then the IEP team shall conduct a functional behavioral assessment and implement the behavior intervention plan or review such and revise as necessary if already in place. The child shall be returned to the placement from which he or she was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. For circumstances described in paragraph (1) or (4) an interim alternative setting may be used as determined by the IEP team.

10. If you request an expedited due process hearing regarding a disciplinary action described in paragraph (1)(b) or Paragraph (3) to challenge the interim alternative educational setting or the manifestation determination, your child shall remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period provided for in paragraph (1)(b) or paragraph (3), whichever occurs first, unless you and the State or the school district agree otherwise. Such expedited due process hearing 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; a resolution session meeting must occur within seven days of the date the hearing is requested and the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request. The decision of an expedited due process hearing may be appealed.

When an expedited due process hearing has been requested regarding placement as a result of a violation of code of conduct, the child shall remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period defined, whichever occurs first, unless the parent and the State or local agency agree otherwise.

If you would like a further explanation of any of these rights, you may contact Denise Swanson, special education director, at the Buford City School, at 770-945-5035, or by e-mail at [denise.swanson@bufordcityschools.org](mailto:denise.swanson@bufordcityschools.org).

Or you may ask for assistance from the Georgia Department of Education, Division for Exceptional Students, Suite 1870, Twin Towers East, Atlanta, Georgia 30334-5010, (404) 656-3963 or <http://public.doe.k12.ga.us>, or the Georgia Learning Resource System (GLRS) Direction Service (1-800-282-7552), or visit their website at [www.glrs.org](http://www.glrs.org).

## **Notes:**