PROCEDURAL SAFEGUARDS NOTICE

BUREAU OF SPECIAL EDUCATION'S CONSULTLINE, A PARENT HELPLINE
800-879-2301

ConsultLine personnel are available to parents and advocates of children with disabilities or child thought to be disabled to explain federal and state laws relating to special education; describe the options that are available to parents; inform the parents of procedural safeguards; identify other agencies and support services; and describe available remedies and how the parents can proceed.

Additional Resources appear at the end of this notice.

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires the Local Education Agency (LEA) to provide parents of a child with a disability with this notice containing a full explanation of the procedural safeguards available under the IDEA and the U.S. Department of Education regulations. A copy of this notice must be given to parents only once a school year, or:
(1) upon initial referral or parent request for evaluation; (2) upon filing by parents of their first State complaint under 34 CFR §§300.151 through 300.153 and upon filing by parents of their 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 CFR §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 LEAs may choose to use to provide information about procedural safeguards to parents.

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I. GENERAL INFORMATION

A. WHO IS A PARENT? (34 CFR §300.30)

THIS SECTION DESCRIBES WHO IS ABLE TO ACT AS A PARENT FOR PURPOSES OF SPECIAL EDUCATION DECISION MAKING.

A parent is a biological or adoptive parents of a child; a foster parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decision for the child; an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent.

A surrogate parent must be appointed when no parent can be identified; the public agency, after reasonable efforts, cannot locate a parents; the child is a ward of the State under the laws of Pennsylvania, or the child in an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Sec. 11434a(6). Public agencies must ensure that a person selected as a surrogate parent is not an employee of the SEA, the LEA or any other agency that is involved in the education or care of the child; has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and has knowledge and skills that ensure adequate representation of the child. 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 FAPE to the child. The public agency must make reasonable efforts to ensure the assignment of surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

B. WHAT IS PRIOR WRITTEN NOTICE? (34 CFR §300.503)

THIS SECTION EXPLAINS WHAT, HOW, AND WHEN AN LEA MUST TELL YOU ABOUT ACTIONS IT PROPOSES OR REFUSES TO TAKE.

1. **When Notice Is Required**

   Your local education agency (LEA) – the entity responsible for providing a free appropriate public education to your child – must notify you in writing whenever it:

   a. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or**
   b. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.
   c. Change of placement for disciplinary reasons.
   d. Due process hearing, or an expedited due process hearing, initiated by LEA.
   e. Refusal of LEA to agree to an independent educational evaluation (IEE) at public expense.
   f. Parents' revocation of consent for special education and related services.

   In Pennsylvania, prior written notice is provided by means of a LEA Prior Written Notice Form/Notice of Recommended Educational Placement. You should be given reasonable notice of this proposal or refusal so that if you do not agree with the LEA you may take appropriate action. Reasonable Notice means ten days.

2. **Content of notice**

   The prior written notice must:

   1. Describe the action that your LEA proposes or refuses to take;
   2. Describe the parents' action for the revocation of special education and related services;
   3. Explain why your LEA is proposing or refusing to take the action;
   4. Describe each evaluation procedure, assessment, record, or report your LEA used in deciding to propose or refuse the action;
   5. Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
   6. Tell how you can obtain a description of the procedural safeguards if the action that your LEA is proposing or refusing is not an initial referral for evaluation;
   7. Include resources for you to contact for help in understanding Part B of the IDEA;

8. Describe any other choices that your child's IEP Team considered and the reasons why those choices were rejected; **and**
9. Provide a description of other reasons why your LEA proposed or refused the action.

3. Notice in understandable language

a. The notice must be:
   1) Written in language understandable to the general public; **and**
   2) Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.
   3) If your native language or other mode of communication is not a written language, your LEA must ensure that:
      a) The notice is translated for you orally or by other means in your native language or other mode of communication;
      b) You understand the content of the notice; **and**
      c) There is written evidence that 1 and 2 have been met.

C. WHAT IS NATIVE LANGUAGE? (34 CFR §300.29)

1. *Native language*, when used with an individual who has limited English proficiency, means the following:
   a. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
   b. In all direct contact with a child (including evaluation of a child), the language normally used by the child in the home or learning environment.
   For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

D. NOTICE BY ELECTRONIC MAIL (34 CFR §300.505)

If your LEA 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.

E. WHAT IS PARENTAL CONSENT? (34 CFR §300.9)

THIS SECTION EXPLAINS WHAT INFORMED PARENTAL CONSENT IS AND WHEN YOU NEED TO PROVIDE IT, SO AN LEA MAY PROCEED AS PROPOSED IN THE NOTICE.

1. What is Parental Consent?

Consent means:

a. 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 consent is sought;
b. You understand an 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**
c. You understand that the consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

2. Can the Parent Revoke Consent?

a. Yes. You must submit written documentation to the LEA staff revoking consent for special education and related services;
b. When you revoke consent for special education and related services, the LEA must provide you with Prior Written Notice;
c. Special education and related services cannot cease until the LEA provides you with Prior Written Notice;
d. Prior notice is defined as ten calendar days;
e. LEA staff cannot use mediation or due process to override your revocation of consent;

f. The LEA will not be considered in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services;
g. The LEA is not required to amend the child's educational records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
h. The LEA is not required to convene an IEP team meeting or develop and IEP for the child for further provision of special education and related services.

F. WHEN IS PARENTAL CONSENT NEEDED?

1. Initial Evaluations (34 CFR §300.300)

a. General Rule: Consent for initial evaluation
Your LEA cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described under the heading ***Parental Consent.***

Your LEA must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability. Your consent for initial evaluation does not mean that you have also given your consent for the LEA to start providing special education and related services to your child. 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 LEA 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. Your LEA will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

b. Special rules for initial evaluation of wards of the State
Under Pennsylvania law, if a child is designated a ward of the state, the whereabouts of the parent are not known or the rights of the parent have been terminated in accordance with State law. Therefore, someone other than the parent has been designated to make educational decisions for the child. Consent for an initial evaluation should, therefore, be obtained from the individual so designated.

Ward of the State, as used in the IDEA, encompasses two other categories, so as to include a child who is:

1. A foster child who does not have a foster parent;
2. Considered a ward of the State under State law; **or**
3. In the custody of a public child welfare agency.

2. Consent for Initial Placement in Special Education (34 CFR §300.300)

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

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

If you refuse to give your consent for your child to start receiving special education and related services, or if you do not respond to a request to provide such consent and the LEA does not provide your child with the special education and related services for which it sought your consent, your LEA:

1. Is not in violation of the requirement to make FAPE available to your child for its failure to provide those services to your child; **and**

2. Is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was request.

3. Consent for Reevaluations (34 CFR §300.300)

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

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

4. What is Documentation of Reasonable Efforts to Obtain Parental Consent? (34 CFR §300.300)

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

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

5. When is Consent Not Required Related to Evaluation?

Your consent is not required before your LEA may:

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

6. What If I Refuse to Consent to a Reevaluation?

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

Your LEA may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

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

7. What If I Disagree With An Evaluation?

a. Independent Educational Evaluations (34 CFR §300.502)

1) General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your LEA. If you request an IEE, the LEA must provide you with information about where you may obtain an IEE and about the LEA's criteria that apply to IEEs.

2) Definitions

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

b) *Public expense* means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, 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.

3) Parent right to evaluation at public expense

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

a) If you request an IEE of your child at public expense, your LEA must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an IEE at public expense, unless the LEA demonstrates in a hearing that the evaluation of your child that you obtained did not meet the LEA's criteria.
b) If your LEA requests a hearing and the final decision is that your LEA's evaluation of your child is appropriate, you still have the right to an IEE, but not at public expense.
c) If you request an IEE of your child, the LEA may ask why you object to the evaluation of your child obtained by your LEA. However, your LEA may not require an explanation and may not unreasonably delay either providing the IEE of your child at public expense or filing a due process complaint to request a due process hearing to defend the LEA's evaluation of your child.
d) You are entitled to only one IEE of your child at public expense each time your LEA conducts an evaluation of your child with which you disagree.
e) LEA criteria
If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the LEA uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE).
Except for the criteria described above, a LEA may not impose conditions or timelines related to obtaining an IEE at public expense.

b. Parent-initiated evaluations
If you obtain an IEE of your child at public expense or you share with the LEA an evaluation of your child that you obtained at private expense:
1) Your LEA must consider the results of the evaluation of your child, if it meets the LEA's criteria for IEEs, in any decision made with respect to the provision of FAPE to your child; **and**
2) You or your LEA may present the evaluation as evidence at a due process hearing regarding your child.

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

G. CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION (34 CFR §300.622)

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

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

If your child is in, or is going to go to, a private school that is not located in the same 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.

II. CONFIDENTIALITY INFORMATION

A. WHO HAS ACCESS TO CONFIDENTIAL INFORMATION RELATED TO MY CHILD? (34 CFR §300.611)

1. Related to the confidentiality of information, the following definitions apply:

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

b. *Education records* means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

c. *Participating agency* means any LEA, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

d. ***Personally identifiable*** **(34 CFR §300.32)** means information that has:

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

2. Access Rights (34 CFR §300.613)

a. Parent Access

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

1) Your right to inspect and review education records includes:
2) Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
3) Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
4) Your right to have your representative inspect and review the records.
    a) The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, or separation and divorce.
    b) If any education **record includes information on more than one child**, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.
    c) On request, each participating agency must provide you with a **list of the types and locations of education records** collected, maintained, or used by the agency.

b. Other Authorized Access (34 CFR §300.614)

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

3. Fees

Each participating agency may charge a fee or copies of records (34 CFR §300.617) that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

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

4. **Amendment of Records at Parent's Request (34 CFR §300.618)**
   If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

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

   If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose.

5. **Opportunity for a Records Hearing (34 CFR §300.619)**
   The LEA must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

   a. **Hearing Procedures (34 CFR §300.621)**
      A hearing to challenge information in education records must be conducted according to the following procedures for such hearings under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1233g (FERPA):
      1) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.
      2) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonable in advance of the hearing.
      3) The hearing may be conducted by any individual, including an official of the educational agency or institution who does not have a direct interest in the outcome of the hearing.
      4) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
      5) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.
      6) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

   b. **Result of Hearing (34 CFR §300.620)**
      If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing. If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, you may place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

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

   c. **Safeguards (34 CFR §300.623)**
      Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

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

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

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

6. **Destruction of Information (34 CFR §300.624)**
   Your LEA must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child, and the information must be destroyed at your request.

   However, a permanent record of your child'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.

III. STATE COMPLAINT PROCEDURES (34 CFR §§300.151-153)

A. DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES

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 LEA, the State Educational Agency, or any other public agency. Only you or a LEA may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of 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 resoled 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 LEA's request. The state complaint or due process complaint, resolution and hearing procedures are described more fully below.

B. HOW CAN I FILE A STATE COMPLAINT? (34 CFR §300.153)

An organization or individual may file a signed written State complaint.
The State complaint must include:

1. A statement that a LEA or other public agency has violated a requirement of Part B of the IDEA or its regulations;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and
4. If alleging violations regarding a specific child, the name of the child and address of the residence of the child;
5. The name of the school the child is attending;
6. In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
7. A description of the nature of the problem of the child, including facts relating to the problem; **and**
8. A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

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

The party filing the State complaint must forward a copy of the complaint to the LEA or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

Complaints should be sent to:
Chief, Division of Compliance, Monitoring and Planning
Bureau of Special Education
Pennsylvania Department of Education
333 Market Street, 7th Floor
Harrisburg, PA 17126-0333

a. Procedures

1) Time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the State Educational Agency determines that the investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the LEA or other public agency with the opportunity to respond to the complaint, including, at a **minimum**: (a) at the option of the agency, a

proposal to resolve the complaint; and (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation

4. Review all relevant information and make an independent determination as to whether the LEA or other public agency is violating a requirement of Part B of the IDEA; and
5. Issue a written decision to the complainant that address each allegation in the complaint and contains: (a) findings of fact and conclusions; and (b) the reasons for the State Educational Agency's final decision.

2) Time extension; final decision; implementation

a) An extension of the 60 calendar day timeline may be granted only if: (a) exceptional circumstances exist with respect to a particular State complaint; or (b) the parent and the LEA or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
b) The State Educational Agency's final decision shall contain effective implementation procedures, if needed, including: (a) technical assistance activities; (b) negotiations; and (c) corrective actions to achieve compliance.

3) Remedies for denial of appropriate services

In resolving a State complaint in which the State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

a) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and
b) Appropriate future provision of services for all children with disabilities.

4) State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described below under the hearing ***Filing a Due Process Complaint***, or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside the State complaint, or any part of the State complaint that is being address in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above. If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the LEA), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a LEA's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency according to the above described procedures.

IV. DUE PROCESS COMPLAINT PROCEDURES

A. HOW CAN I REQUEST A DUE PROCESS HEARING?

1. Filing a Due Process Complaint (34 CFR §300.507)

General

You or the LEA may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of FAPE to your child.

The due process complaint must allege a violation that occurred not more than two years before the date you or the LEA knew or should have known about the alleged action that forms the basis of the due process complaint.

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

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

Information for parents

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

B. CONTENTS OF DUE PROCESS COMPLAINT (34 CFR §300.508)

1. General

In order to request a hearing, you or the LEA (or your attorney or the LEA's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential. At the same time you or the LEA – whichever filed the complaint – provides the due process complaint to the other party, a copy must be filed with the Office for Dispute Resolution (ODR).

2. Content of the complaint

The due process complaint must include:

a. The name of the child;
b. The address of the child's residence;
c. The name of the child's school;
d. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
e. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
f. A proposed resolution of the problem to the extent known and available to you or the LEA at the time.

3. Notice required before a hearing on a due process complaint

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

4. Sufficiency of complaint

In order to proceed to a due process hearing, the complaint must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the LEA) notifies the hearing officer and the other party in writing, within 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 the receiving party (you or the LEA) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the LEA in writing immediately.

5. **Complaint amendment**
   You or the LEA may make changes to the complaint only if:
   a. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; **or**
   b. At any time, but no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

   If the complaining party (you or the LEA) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.
6. **LEA response to a due process complaint**
   If the LEA has not sent a prior written notice to you, as described under the heading ***Prior Written Notice***, regarding the subject matter contained in your due process complaint, the LEA must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:
   a. An explanation of why the LEA proposed or refused to take the action raised in the due process complaint;
   b. A description of other options that your child's IEP Team considered and the reasons why those options were rejected;
   c. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; **and**
   d. A description of other factors that are relevant to the LEA's proposed or refused action.

   Providing the information in items 1-4 above does not prevent the LEA from asserting that your due process complaint was insufficient.
7. **Other party response to a due process complaint**
   Except as stated under the sub-heading immediately above, ***LEA response to a due process complaint***, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

C. RESOLUTION PROCESS (34 CFR §300.510)

1. **Resolution meeting**
   Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the LEA must convene a meeting with you and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in your due process complaint. The meeting:
   a. Must include a representative of the LEA who has decision-making authority on behalf of the LEA; **and**
   b. May not include an attorney of the LEA unless you are accompanied by an attorney. You and the LEA determine the relevant members of the IEP Team to attend the meeting. The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the LEA has the opportunity to resolve the dispute.
   c. The resolution meeting is not necessary if:
      1) You and the LEA agree in writing to waive the meeting; **or**
      2) You and the LEA agree to use the mediation process, as described under the heading ***Mediation.***
2. **Resolution period**
   If the LEA has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

   The 45-calendar day timeline for issuing a final decision begins at the expiration of the 30-calendar day resolution period, with certain exceptions for adjustments made to the 30-calendar day resolution period, as described below.

   Except where you and the LEA have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting. If after making reasonable

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

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

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

3. Adjustments to the 30-calendar day resolution period

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

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

If you and the LEA 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 you or the LEA withdraws from the mediation process, then the 45-calendar day timeline for the due process hearing starts the next day.

4. Written settlement agreement

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

a. Signed by you and a representative of the LEA who has the authority to bind the LEA; and
b. Agreement review period – If you and the LEA enter into an agreement as a result of a resolution meeting, either party (you or the LEA) may void the agreement within 3 business days of the time that both you and the LEA signed the agreement.

V. HEARINGS ON DUE PROCESS COMPLAINTS

A. IMPARTIAL DUE PROCESS HEARING (34 CFR §300.511)

1. General

Whenever a due process complaint is filed, you or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections. In Pennsylvania, the due process system is administered by the Office for Dispute Resolution (ODR). (listed under ***Resources***)

2. Impartial hearing officer

At a minimum, a hearing officer:

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

Each SEA must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

3. Subject matter of due process hearing

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

4. Timeline for requesting a hearing

a. **Time Limitations**

You or the LEA must request an impartial hearing on a due process complaint within two years of the date you or the LEA knew or should have known about the issue addressed in the complaint. The due process complaint must allege a violation that occurred not more than two years before the date you or the LEA knew and should have known about the alleged action that forms the basis of the due process complaint.

Exceptions to the timeline

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

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

B. HEARING RIGHTS (34 CFR §300.512)

1. General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) or an appeal, as described under the sub-heading *Appeal of decisions; impartial review* **has the right to:**

a. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
b. Present evidence and confront, cross-examine, and require the attendance of witnesses;
c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
d. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
e. Obtain written, or, at your option, electronic findings of fact and decisions.

2. **Additional disclosure of information**
   At least 5 business days prior to a due process hearing, you and the LEA must disclose to all other parties all evaluations completed by that date and recommendations based on those evaluations that you or the LEA intend to use at the hearing.

   A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
3. **Parental rights at hearings**
   You must be given the right to:
   a. Have the child who is the subject of the hearing present;
   b. Open the hearing to the public; **and**
   c. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

C. HEARING DECISIONS (34 CFR §300.513)

1. ***Decision of hearing officer***
   a. A hearing officer's decision on whether your child received FAPE must be based on substantive grounds.
   b. In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:
      1) Interfered with your child's right to FAPE;
      2) Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; **or**
      3) Caused a deprivation of an educational benefit.
   c. Construction clause
      None of the provisions described above can be interpreted to prevent a hearing officer from ordering a LEA to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536). None of the provisions under the headings: ***Filing a Due Process Complaint; Due Process Complaint; Model Forms; Resolution Process; Impartial Due Process Hearing; Hearing Rights; and Hearing Decisions*** (34 CFR §§300.507 through 300.513), can affect your right to file an appeal of the due process hearing decisions with a court of competent jurisdiction.
2. ***Separate request for a due process hearing***
   Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.
3. ***Findings and decision to advisory panel and general public***
   The SEA after deleting any personally identifiable information, must:
   a. Provide the findings and decisions in the due process hearing or appeal to the State Special Education Advisor Panel (SEAP); **and**
   b. Make those findings and decisions available to the public.

D. FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW (34 CFR §300.514)

Finality of hearing decision
A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the LEA) may appeal the decision to a court of competent jurisdiction.

E. TIMELINES AND CONVENIENCE OF HEARINGS (34 CFR §300.515)

1. **Timelines**
   The SEA must ensure that not later than 45 calendar days after the expiration of the 30-calendar day period for resolution meetings **or**, as described under the sub-heading ***Adjustments to the 30-calendar day resolution period***,
   a. A final decision is reached in the hearing; **and**
   b. A copy of the decision is mailed to you and the LEA.

2. *Extensions of Time*

A hearing or reviewing officer may grant specific extensions of time beyond the periods described above (45 calendar days for a hearing decision and 30 calendar days for a review decision) if you or the LEA make a request for a specific extension of the timeline. Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to you or your child.

F. CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS (34 CFR §300.516)

1. General

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

2. Time limitation

The party (you or the LEA) bringing the action in a district court of the United States shall have 90 calendar days from the date of the decision of the SEA to file a civil action. The party bringing the action in the Commonwealth Court shall have 30 calendar days from the date of the decision of the SEA to file a civil action.

3. Additional procedures

In any civil action, the court:

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

4. Rule of construction

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first exhaust the available under the IDEA, but in general, to obtain relief under those other laws, you must first exhaust the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going into court unless some specific judicial exception is available which renders exhaustion of administrative remedies futile.

G. ATTORNEY'S FEES (34 CFR §300.517)

1. General

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

a. To you if you are considered the prevailing part.
b. To a prevailing State Educational Agency or LEA, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**
c. To a prevailing State Educational Agency or LEA, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

2. Reasonable Fees

A court awards reasonable attorneys' fees consistent with the following:

a. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

b. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:

   1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
   2) The offer is not accepted within 10 calendar days; **and**
   3) The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.
   4) Notwithstanding these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

c. Fees may NOT be awarded relating to any meeting of the IEP Team unless the meeting is held as a result of an administrative proceeding or court action. A resolution meeting, as described under the heading ***Resolution meeting***, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

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

3. Reduction in Fees

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

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

b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;

c. The time spent and legal services furnished were excessive considered the nature of the action or proceeding; **or**

d. The attorney representing you did not provide to the LEA the appropriate information in the due process request notice as described under the heading ***Due Process Complaint***.

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

H. MODEL FORMS (34 CFR §300.509)

While the State Educational Agency (SEA) has developed model forms to help you file a due process complaint and a State complaint. The SEA or the LEA may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a State complaint.

VI. MEDIATION (34 CFR §300.506)

A. GENERAL

The SEA must make mediation available to allow you and the LEA to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not you or the LEA have filed a due process complaint to request a due process hearing as described under the heading ***Filing a Due Process Complaint***.

B. PROCEDURAL REQUIREMENTS

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the LEA's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of the IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
4. The SEA must maintain a list of people you are qualified mediators and are knowledgeable in the laws and regulations relating to the provision of special education and related services. The SEA must select mediators on a random, rotational, or other impartial basis.
5. The State is responsible for the cost of the mediation process, including the costs of meetings.
6. Each session in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the LEA.
7. **If you and the LEA resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:**
    a. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
    b. Is signed by both you and a representative of the LEA who has the authority to bind the LEA.
8. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.
9. Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State Court of a State receiving assistance under Part B of IDEA.

C. IMPARTIALITY OF MEDIATOR

The mediator:

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

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

VII. THE CHILD'S PLACEMENT PENDING MEDIATION AND DUE PROCESS (34 CFR §300.518)

A. GENERAL

THE CHILD'S PLACEMENT PENDING MEDIATION AND DUE PROCESS (34 CFR §300.518)
Except as provided below under the heading **PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES**, once a due process complaint is sent to the other party, during the resolution process time period, during mediation, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or LEA agree otherwise, your child must remain in his or her current educational placement.

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

If the due process complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the LEA may be required to provide the Part C services that the child has been receiving. Children are entitled to pendency – that is, the continuation of the services set forth in their IFSP – when a dispute arises when they are transitioning into the preschool Early Intervention program at age three (3) and the family requests a formal hearing to resolve the dispute. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the LEA must provide those special education and related services that are not in dispute (those which you and the LEA both agree upon).

VIII. WHAT IF MY CHILD IS EXCLUDED FROM SCHOOL BECAUSE OF DISCIPLINE ISSUES?

THIS SECTION OUTLINES PROCEDURES FOR DISCIPLINARY EXCLUSION OF CHILDREN WITH DISABILITIES.

There are special rules in Pennsylvania for excluding children with disabilities served by LEAs for disciplinary reasons. Unless indicated otherwise, children in charter schools follow the same procedures:

A. AUTHORITY OF SCHOOL PERSONNEL (34 CFR §300.530)

1. **Case-by-case determination**
   School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.
2. **General**
   To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 consecutive school days**, remove a child with a disability (other than a child with mental retardation) who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **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 (see ***Change of Placement Because of Disciplinary Removals*** for the definition, below) or exceed 15 cumulative school days in a school year. Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the LEA must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading ***Services***.
3. **Additional authority**
   If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see ***Manifestation determination***, below) and the disciplinary change of placement would exceed **10 consecutive school days**, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under ***Services***. The child's IEP Team determines the interim alternative educational setting for such services. Under PA special education regulations (22 Pa. Code Sec. 14.143), a disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year will be considered a pattern so as to be deemed a change in educational placement (explained under Change of Placement Because of Disciplinary Removals). The LEA is required to issue a NOREP/Prior Written Notice to parents prior to a removal that constitutes a change in placement (removal for more than 10 consecutive days or 15 cumulative days).
4. **Services**
   The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided to an interim alternative educational setting. A LEA is only required to provide services 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 has been similarly removed. Students may have the responsibility to make up exams and work missed while being disciplined by suspension and may be permitted to complete these assignments within guidelines established by their LEA.

   A child with a disability who is removed from the child's current placement for **more than 10 consecutive school days** must:
   a. 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 happen again.

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

If the removal is a change of placement (see definition below), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

5. **Manifestation determination**

Within 10 school days **of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that does not constitute a change in educational placement i.e., is for** 10 consecutive school days **or less and not a change of placement), the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:**

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

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

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

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

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

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

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

7. **Special circumstances**

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

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

8. **Definitions**

   a. *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)).
   b. *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.

c. *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.

d. *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.

9. Notification

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

B. CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS (34 CFR §300.536)

A removal of a child with a disability from the child's current educational placement is a **change of placement** requiring a NOREP/prior written notice if:

1. The removal is for more than 10 consecutive school days; **or**
2. The removal is for 15 cumulative school days total in any one school year;
3. The child has been subjected to a series of removals that constitute a pattern because:
   a. The series of removals total more than 10 school days in a school year;
   b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in a series of removals;
   c. 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; **and**

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

C. DETERMINATION OF SETTING (34 CFR §300.531)

The IEP must determine the interim alternative educational setting for removals that are **changes of placement**, and removals under the headings ***Additional authority*** and ***Special circumstances***, above.

D. APPEAL (34 CFR §300.532)

1. General

The parent of a child with a disability may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

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

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

2. Authority of hearing officer

A hearing officer that meets the requirements described under the sub-heading ***Impartial Hearing Officer*** must conduct the due process hearing and make a decision.

The hearing officer may:

a. 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 the requirements described under the heading Authority of School Personnel, or that the child's behavior was a manifestation of the child's disability; or
b. 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.

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

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

1. The SEA must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is filed and must resulting a determination within **10** school days after the hearing.
2. Unless the parents and the LEA agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **7** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see ***Appeals***, above).

E. PLACEMENT DURING APPEALS (34 CFR §300.533)

When, as described above, the parent or LEA has filed a due process complaint related to disciplinary matters, the child must (unless the parent and the State Educational Agency or LEA agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

Special Rules for Students with Mental Retardation

The disciplinary removal of a child with mental retardation attending either a LEA or a charter and cyber charter school for any amount of time is considered a change in placement under 22 Pa. Code Sec. 14.143 and requires NOREP/prior written notice (if the disciplinary event does not involve drugs, weapons and/or serious bodily injury). A removal from school is not a change in placement for a child who is identified with mental retardation when the disciplinary event involves weapons, drugs, and/or serious bodily injury.

According to certain assurances the Commonwealth entered into related to the PARC consent decree, an LEA may suspend on a limited basis a student with mental retardation who presents a danger to himself or others upon application and approval by the Bureau of Special Education and only to the extent that a student with a disability other than mental retardation could be suspended.

F. PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES (34 CFR §300.534)

1. General

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

2. Basis of knowledge for disciplinary matters

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

a. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of appropriate educational agency, or a teacher of the child;
b. The parent request an evaluation related to eligibility for special education and related services under Part B of the IDEA; **or**
c. The child's teacher, or other LEA personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the LEA's director of special education or to other supervisory personnel of the LEA.

3. Exception

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

a. The child's parent has not allowed an evaluation of the child or refused special education services; **or**

b. The child has been evaluated and determined to not be a child with a disability under Part B of the IDEA.

4. Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, a LEA does not have knowledge that a child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** and ***Exception***, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

However, 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. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA, and information provided by the parents, the LEA must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

G. REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES (34 CFR §300.535)

1. The state and federal regulations do not:

a. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; **or**

b. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

Subsequent to a referral to law enforcement, an updated functional behavior assessment and positive behavior support plan are required.

2. Transmittal of records

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

a. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**

b. May transmit copies of the child's special education and disciplinary records only to the extent permitted by FERPA.

IX. WHAT SPECIAL EDUCATION SERVICES ARE AVAILABLE FOR MY CHILD, IF PARENTALLY PLACED IN A PRIVATE SCHOOL?

THIS SECTION ADDRESSES THE SPECIAL EDUCATION SERVICES AVAILABLE TO CHILDREN PLACED BY THEIR PARENTS IN PRIVATE SCHOOL.

A. GENERAL RULE (34 CFR §300.148)

Part B of the IDEA does not require a 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 IU where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

B. EXCEPTIONS

1. **Reimbursement for private school placement**
   If your child previously received special education and related services under the authority of a LEA, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the State Educational Agency and LEAs.
2. **Limitation on reimbursement**
   The cost of reimbursement described in the paragraph above may be reduced or denied:
   a. If: (a) At the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the LEA to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the LEA of that information;
   b. If, prior to your removal of your child from the public school, the LEA provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
   c. Upon a court's finding that your actions were unreasonable.
3. **Exceptions to Limitation on Reimbursement**
   The cost of reimbursement:
   a. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**
   b. May, in the discretion of the court or a hearing officer, not be reduced or denied for the parents' failure to provide the required notice if: (a) The parent is not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to the child.

C. EQUITABLE PARTICIPATION (34 CFR §300.138)

It is Pennsylvania Department of Education policy that the Intermediate Unit (IU) must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located within IU service area.

In circumstances when parents place their children in private schools, when FAPE is not an issue, the IUs must make provision, to the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private schools, located in IU service area, for the participation of those children in the program assisted or carried out under the IU plan, by providing them with special education and related services, including direct services determined in accordance with regard to equitable participation (EP) agreement between private schools and IUs. A service plan must be developed and implemented for each private school child with a disability who has been designated by the IU in which the private school is located to receive special education and related services as determined by EP agreement.

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Due Process and State Complaints are not applicable, except for a suspected failure by the IU to meet child find requirements.

RESOURCES

THE ARC OF PENNSYLVANIA
101 South Second Street, Suite 8
Harrisburg, PA 17101
800-692-7258
www.thearcpa.org

BUREAU OF SPECIAL EDUCATION'S CONSULTLINE, A PARENT HELPLINE
800-879-2301
ConsultLine personnel are available to parents and advocates of children with disabilities or children thought to be disabled to explain federal and state laws relating to special education; describe the options that are available to parents; inform the parents of procedural safeguards; identify other agencies and support services; and describe available remedies and how the parents can proceed.

DISABILITIES RIGHTS NETWORK
1414 North Cameron Street
Suite C
Harrisburg, PA 17103
800-692-7443 (Toll-Free Voice)
877-375-7139 (TDD)
717-346-0293 (TDD)
717-236-8110 (Voice)
717-346-0293 (TDD)
717-236-0192
www.drnpa.org

HISPANICS UNITED FOR EXCEPTIONAL CHILDREN (HUNE, INC.)
202 West Cecil B. Moore Avenue
Philadelphia, PA 19122
215-425-6203 (Voice)
215-425-6204 (Fax)
www.huneinc.org

THE MENTOR PARENT PROGRAM, INC.
270 Mayfield Road
Clarion, PA 16214
814-226-4151 (Voice)
888-447-1431 (Voice in PA)
800-855-1155 (TTY)
814-226-4850 (Fax)
www.mentorparent.org

OFFICE FOR DISPUTE RESOLUTION
6340 Flank Drive
Harrisburg, PA 17112-2764
717-541-4960 (Phone)
800-222-3353 (Toll Free in PA only)
800-654-4984 (TTY)
717-657-5983 (Fax)
http://ODR.pattan.net
The Office for Dispute Resolution administers the mediation and due process systems statewide, and provides training and services regarding alternative dispute resolution methods.

PARENT EDUCATION AND ADVOCACY LEADERSHIP CENTER (PEAL)
1119 Penn Avenue
Suite 400
Pittsburgh, PA 15222
412-281-4404 (Voice)
866-950-1040 (Voice)
412-281-4409 (TTY)
412-281-4408 (Fax)
www.pealcenter.org

PARENT EDUCATION NETWORK (PEN)
2107 Industrial Highway
York, PA 17402-2223
717-600-0100
800-522-5827 (Voice/TTY)
800-441-5028 (Spanish in PA)
717-600-8101 (Fax)
www.parentednet.org

PENNSYLVANIA BAR ASSOCIATION
100 South Street
Harrisburg, PA 17101
800-932-0311 (Phone)
www.pabar.org

THE PENNSYLVANIA TRAINING AND TECHNICAL ASSISTANCE NETWORK (PaTTAN)
Harrisburg 800-360-7282
King of Prussia 800-441-3215
Pittsburgh 800-446-5607
www.pattan.net

PUBLIC INTEREST LAW CENTER OF PHILADELPHIA
United Way Building
1709 Benjamin Franklin Parkway, Second Floor
Philadelphia, PA 19103
215-627-7100 (Phone)
215-627-3183 (Fax)
www.pilcop.org

STATE TASK FORCE ON THE RIGHT TO EDUCATION
3190 William Pitt Way
Pittsburgh, PA 15238
1-800-446-5607 ext. 6830

APPENDIX B

Part A

Office for Dispute Resolution

MEDIATION REQUEST FORM

Mediation requested by: Parent ☐ School District (LEA) ☐ Date: _____

Student's Name: _____ Date of Birth: _____

Male ☐ Female ☐ Student's Exceptionality: _____

Student's School Building/Placement: _____

School District (LEA): _____

Superintendent: _____

School District Contact Person: _____

Title: _____ Phone No.: _____ Ext.: _____

Cell No.: _____ Fax No.: _____ Email: _____

Address: _____

Mother: _____ _____
(First name) (Last name)

Father: _____ _____
(First name) (Last name)

Parent Address: _____

_____ Home Phone: _____

Mother (work phone): _____ Father (work phone): _____

Mother (cell phone): _____ Father (cell phone): _____

Mother (email): _____ Father (email): _____

Mother Fax: _____ Father Fax: _____

Parent Name (if not living with student): _____

Parent Address (if not living with student): _____

_____

INFORMATION ABOUT THIS MEDIATION:

Please provide a brief description of the dispute below in order to facilitate the scheduling of the mediation.

Parent Issues:

School District (LEA) Issues:

Has a Due Process Hearing also been requested for this student? ☐ NO ☐ YES

6340 Flank Drive, Harrisburg, PA 17112-2764
717-541-4960 ● Toll Free 800-222-3353 (PA only) ● Fax 717-657-5983 ● TTY Users: PA Relay 711
ODR.pattan.net

Part B

DUE PROCESS COMPLAINT NOTICE

Today's Date: _____ Requested by: ☐ Parent ☐ LEA

Name of Person Completing this Notice: Relationship to Student: Phone:

It is your responsibility to notify the opposing party of your request for due process by sending to them a copy of this Due Process Complaint Notice at the same time it is filed with the Office for Dispute Resolution.

Has the opposing party been provided a copy of this request? ☐ Yes ☐ No

If you require special accommodations to participate in the due process hearing, you must contact the LEA with your special needs.

Student Information

Last Name: First Name: Date of Birth: Gender: ☐ M ☐ F

Exceptionality(ies):

LEA (Local Education Agency): School Building Student Attends:

Parent(s) Residing with Student

Last Name: First Name: Relationship: ☐ Mother ☐ Father ☐ Guardian

Home Phone: Cell Phone: Work Phone: Fax: Email:

Last Name: First Name: Relationship: ☐ Mother ☐ Father ☐ Guardian

Home Phone: Cell Phone: Work Phone: Fax: Email:

Parent/Student Address:

Parent Attorney: Attorney Phone:

Attorney Email:

Address: Attorney Fax:

Parent Not Residing with Student

Last Name: First Name: Relationship: ☐ Mother ☐ Father ☐ Guardian

Home Phone: Cell Phone: Work Phone: Fax: Email:

Last Name: First Name: Relationship: ☐ Mother ☐ Father ☐ Guardian

Home Phone: Cell Phone: Work Phone: Fax: Email:

Parent/Student Address:

Parent Attorney: Attorney Phone:

Attorney Email:

Address: Attorney Fax:

Local Education Agency (LEA) Information

I. LEA Contact

Last Name: First Name: Position Title:

Cell Phone: Work Phone: Fax: Email:

Address:

II. Superintendent/CEO

Last Name: First Name: Position Title:

Address: Phone:

III. LEA Attorney

Last Name: First Name: Attorney Phone:

Attorney Email:

Address: Attorney Fax:

IV. The Due Process Hearing will be held at the following address:

(Building Name, Address and Room Number/Name – to be completed by the LEA)

Information About the Due Process Complaint Notice

A. Does your issue pertain to a Hearing Officer Decision which has not been implemented? ☐ Yes ☐ No

(If yes, the Bureau of Special Education will be notified, and will investigate the matter. Due Process is not available when the issue pertains to non-implementation of a Hearing Officer Decision.)

B. Is this request for an expedited hearing? ☐ Yes ☐ No

If yes, please check one of the reasons below:

☐ Disciplinary (drugs/weapons) ☐ ESY (Extended School Year)

Check here if Student is in the ESY Target Group ☐

C. The law states that a party may not have a due process hearing until a Due Process Complaint Notice is filed, which meets all of the legal requirements. An opposing party may challenge the sufficiency of the Due Process Complaint Notice if it is lacking sufficient information. You must describe the nature of the problem giving rise to this request for due process, including as many facts to support your position as possible. You must also provide a proposed resolution of the problem to the extent known and available to you. You may attach a separate sheet of paper if you need more space:

Nature of the problem:

Proposed Resolution:

If you know the opposing side's position on this matter, you may provide it here, although it is not required by law:

D. Prior to a due process hearing taking place, the law requires the parties to participate in a Resolution Session, unless both sides agree in writing to waive this requirement. Please complete the following information:

1. A Resolution Meeting to discuss these issues is scheduled for: _____ (Date)

2. A Resolution Meeting was held on: _____ (Date)

3. Participation in the Resolution Meeting was waived by both parties and the LEA in writing on:
_____ (Date)

4. In lieu of a Resolution Meeting, I am requesting mediation*: ☐

* If #4 is checked, the ODR Mediation Case Manager will be in contact with the parties.

Please **MAIL** or **FAX** a copy of this form to the opposing side and to the Office for Dispute Resolution:

Office for Dispute Resolution
6340 Flank Drive
Harrisburg, PA 17112-2764
Phones:
717-541-4960
800-222-3353 (PA only)
800-654-5984 (TTY)
717-657-5983 (Fax)

You will be contacted by a Case Manager from ODR upon receipt of this Due Process Complaint Notice.

Additional information about due process is available by accessing the website at **odr.pattan.net** and the **Special Education Dispute Resolution Manual**.

Parents may also contact the *Special Education ConsultLine*, a Parent Help Line, for information on procedural safeguards and due process: 800-879-2301.