

**PROCEDURAL SAFEGUARDS LETTER**

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Date Sent (mm/dd/yy): \_\_\_\_\_

Student's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_ :

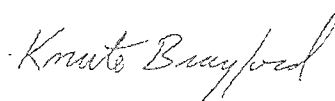
The enclosed Procedural Safeguards Notice describes your rights and the procedures that safeguard your rights under state and federal special education law, including the Individuals with Disabilities Education Act, commonly referred to as "IDEA 2004." These laws and regulations require local educational agencies to provide a free appropriate public education (FAPE) to all students with disabilities who are in need of special education. A free appropriate public education, or FAPE, means special education and related services designed to meet the individual educational needs of your child provided, at no cost to you, in conformity with your child's Individualized Education Program (IEP).

The information contained in this Procedural Safeguards Notice is important to you and your child. Please take time to review it. While we have attempted to consolidate a great deal of information into a readable format, we recognize that the information can be cumbersome. If you need clarification, you can seek help from personnel in the agency that provides educational services to your child. You also have the right to be informed of organizations that are established to assist parents in understanding their rights under these laws. Some of these resources are listed below and also contained in the Procedural Safeguards Notice.

If you have a concern about your child's educational program, you may wish to contact your child's teachers, principal, or school administrators. This type of communication is often helpful in resolving concerns.

You also have the right under federal law to file a complaint with the Pennsylvania Department of Education and/or to initiate due process procedures as described in Section VI of this Procedural Safeguards Notice.

Sincerely,



Mr. Knute Brayford  
Supervisor of Special Education

## PROCEDURAL SAFEGUARDS NOTICE

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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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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 and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
  - 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;

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:

## II. CONFIDENTIALITY INFORMATION

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### 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.

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.

- 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.



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

## V. HEARINGS ON DUE PROCESS COMPLAINTS

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### 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. 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 party.
- 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.

## VI. MEDIATION (34 CFR §300.506)

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### 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.

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

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### 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 an intellectual disability) who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than 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.

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.

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.

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.





OFFICE FOR DISPUTE  
RESOLUTION

Request Form for  
IEP/IFSP Facilitation  
Mediation  
Evaluative Conciliation Conference (ECC)

Today's Date:		Requested by: <input type="checkbox"/> Parent /Guardian <input type="checkbox"/> LEA (school district; charter; or IU)	
Name / Email of Person Completing this Form:		Relationship to Student:	Phone:
Please check the type of service requested: <input type="checkbox"/> IEP Facilitation <input type="checkbox"/> Mediation <input type="checkbox"/> ECC <input type="checkbox"/> For Parents, check here if you would like to discuss your concerns or questions about any of these services with a ConsultLine Specialist.			
<b>STUDENT INFORMATION</b>			
Last Name:		First Name:	
Date of Birth:		Exceptionality:	
<b>PARENT/GUARDIAN INFORMATION</b>			
Parent/Guardian Name(s): _____		<u>Second Parent or Parent not residing with the Student:</u> _____	
Address:		Address:	
Home Phone:		Home Phone:	
Work Phone:		Work Phone:	
Cell Phone:		Cell Phone:	
Email:		Email:	

Part B



OFFICE FOR DISPUTE  
RESOLUTION

**Due Process Complaint**

IDEA     IDEA & Gifted Education     Gifted Education     Section 504

Today's Date:		Requested by: <input type="checkbox"/> Parent <input type="checkbox"/> LEA
Name / Email of Person Completing this Request:	Relationship to Student: _____	Phone:

Please send a copy of the completed Due Process Complaint to the opposing party at the same time it is filed with the Office for Dispute Resolution.

If you require special accommodations to participate in the due process hearing, you must notify the LEA.

**Student Information**

Last Name: _____	First Name: _____	Date of Birth: _____	Gender: <input type="checkbox"/> M <input type="checkbox"/> F
Exceptionality(ies):		Exceptionality(ies): _____	
LEA (Local Education Agency):		School Building Student Attends:	

**Parent(s) Residing with Student**

Last Name:		First Name:		Relationship: <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Guardian	
Home Phone:	Cell Phone:	Work Phone:		Email:	
Preferred method of written correspondence: <input type="checkbox"/> Email <input type="checkbox"/> U.S. Mail					
Last Name:		First Name:		Relationship: <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Guardian	
Home Phone:	Cell Phone:	Work Phone:		Email:	
Preferred method of written correspondence: <input type="checkbox"/> Email <input type="checkbox"/> U.S. Mail					

**Parent(s)/Student Address:**

Parent Attorney (if represented):		Attorney Phone:
Attorney Address:		Attorney Email:

**Parent(s) Not Residing with Student**

Last Name:		First Name:		Relationship: <input type="checkbox"/> Mother <input type="checkbox"/> Father	
Home Phone:	Cell Phone:	Work Phone:		Email:	

What is the dispute about? Please include facts in your description.

How would you like to see this resolved? What are you seeking?

If you know the other side's position about this problem, please describe it here.

#### **RESOLUTION MEETING (IDEA Cases only)**

Prior to a due process hearing taking place, if the parent filed the due process complaint, the law requires the parties to participate in a resolution meeting, 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 parents and the LEA in writing on: \_\_\_\_\_ (Date)
4. In lieu of a resolution meeting, I am requesting mediation\*.

\* If #4 is checked, an ODR mediation case manager will be in contact with the parties.

An ODR staff member will confirm receipt of complaint and provide case manager and hearing officer information.

Additional information about due process is available on the ODR website, [www.odr-pa.org](http://www.odr-pa.org), or by calling the Special Education ConsultLine, 800-879-2301.

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6340 Flank Drive, Harrisburg, PA 17112-2764  
717-901-2145 • Toll Free 800-222-3353 (PA only) • Fax 717-657-5983 • TTY Users: PA Relay 711 • [www.odr-pa.org](http://www.odr-pa.org)