

# Procedural Safeguards Notice

The Individuals with Disabilities Education Improvement Act (IDEA '04), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability a notice containing a full explanation of the procedural safeguards available under the IDEA and U.S. Department of Education regulations. This procedural safeguards notice must be given to parents one time a school year, except that a copy must be given to the parents: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request. [34 CFR §300.504(a)]

This document serves as procedural safeguards notice and includes 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).

# General Information

## Prior Written Notice 34 CFR §300.503

### Notice

Your school district must provide you with certain information in writing whenever it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a Free Appropriate Public Education (FAPE) to your child; or
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child.

### Content of Notice

The written notice must:

1. Describe the action that the school district proposes or refuses to take;
2. Explain why the district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report the school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that the school district is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of the IDEA;
7. Describe any other choices that your child's Individualized Education Program (IEP) Team considered and the reasons why those choices were rejected; and provide a description of other reasons why the school district proposed or refused the action.

### Notice in Understandable Language

The notice must be:

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

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

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

## Native Language 34 CFR §300.29

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

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

For a person with deafness or blindness, or for a person with no written language, the mode of

communication is what the person normally uses (such as sign language, Braille, or oral communication).

### **Electronic Mail 34 CFR §300.505**

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

1. Prior written notice;
2. Procedural safeguards notice; and
3. Notices related to a due process complaint.

### **Parental Consent - Definition 34 CFR §300.9**

**Consent** means:

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

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

### **Parental Consent 34 CFR §300.300**

#### **Consent for Initial Evaluation**

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

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the Act's mediation or due process complaint procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

#### **Special Rules for Initial Evaluation of Wards of the State**

If a child is a ward of the State and is not living with his/her parent —

The school district does not need consent from the parent for an initial evaluation to determine if

the child is a child with a disability if:

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

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

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

*Ward of the State* does not include a foster child who has a foster parent.

### **Parental Consent for Services**

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

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

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

If you refuse to give your consent for your child to receive special education and related services for the first time or if you do not respond to a request to provide such consent and the school district does not provide your child with the special education and related services for which it sought your consent, your school district:

1. Is not in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to your child for its failure to provide those services to your child; and
2. Is not required to have an Individualized Education Program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

### **Parental Consent for Reevaluations**

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

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

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

## **Documentation of Reasonable Efforts to Obtain Parental Consent**

Your school 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 reevaluate and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the school district's attempts in these areas, such as:

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

## **Other Consent Requirements**

Your consent is not required before your school district may:

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

Your school district 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 school district may not use its consent override procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing). The district is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

## **Independent Educational Evaluations 34 CFR §300.502**

### **General**

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

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

### **Definitions**

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

*Public expense* means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

### **Parent Right to Evaluation at Public Expense**

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

1. If you request an independent educational evaluation of your child at public expense, your

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

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

### **Parent-initiated Evaluations**

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

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

### **Requests for Evaluations by Administrative Law Judges**

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

### **School District Criteria**

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

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

## **Confidentiality of Information**

### **Definitions 34 CFR §300.611**

As used under the heading **Confidentiality of Information:**

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy

Act of 1974, 20 U.S.C. 1232g (FERPA)).

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

## **Personally Identifiable 34 CFR §300.32**

*Personally identifiable* means information that has:

- (a) Your child's name, your name as the parent, or the name of another family member;
- (b) Your child's address;
- (c) A personal identifier, such as your child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

## **Notice To Parents 34 CFR §300.612**

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

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

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

## **Access Rights 34 CFR §300.613**

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under Part B of the IDEA.

The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

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

3. Your right to have your representative inspect and review the records.

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.

### **Record Of 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.

### **Records On More Than One Child 34 CFR §300.615**

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

### **List of Types and Locations of Information 34 CFR §300.616**

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.

### **Fees 34 CFR §300.617**

Each participating agency may charge a fee for copies of records 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.

### **Amendment of Records at Parent's Request 34 CFR §300.618**

If you believe that information in the education records regarding your child that was 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 as described under the heading *Opportunity for a Hearing*.

### **Opportunity for A Hearing 34 CFR §300.619**

The participating agency 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.

## **Hearing Procedures 34 CFR §300.621**

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

## **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, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

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

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

## **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 the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of 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 school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

## **Safeguards 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 the Family Educational Rights and Privacy Act (FERPA).

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

### **Destruction of Information 34 CFR §300.624**

Your school district must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## **State Complaint Procedures**

### **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 hearing complaints. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the State Educational Agency, or any other public agency. The State Educational Agency must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended.

A parent, public agency or the Michigan Department of Education (MDE) may initiate a due process hearing complaint with MDE on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a Free Appropriate Public Education (FAPE) to the child. An Administrative Law Judge must hear a due process hearing complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process. An administrative law judge may grant a specific extension of the timeline at the request of either party. If the due process hearing complaint is amended, the timelines for the resolution session meeting and the resolution period start again on the date that the amended due process hearing complaint is properly filed.

The State complaint and due process hearing complaint, resolution and hearing procedures are described more fully below.

### **Adoption of State Complaint Procedures 34 CFR §300.151**

#### **General**

Michigan Department of Education must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the State Educational Agency;
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy

agencies, independent living centers, and other appropriate entities.

### **Remedies for Denial of Appropriate Services**

In resolving a State complaint in which the Michigan Department of Education (MDE) has found a failure to provide appropriate services, MDE must address:

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

## **Minimum State Complaint Procedures 34 CFR §300.152**

### **Time Limit; Minimum Procedures**

MDE must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

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

### **Time Extension; Final Decision; Implementation**

The Michigan Department of Education procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if exceptional circumstances exist with respect to a particular State complaint.
2. Include procedures for effective implementation of MDE's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; and (c) corrective actions to achieve compliance.

### **State Complaints and Due Process Hearing Complaints**

If a written State complaint is received that is also the subject of a due process hearing complaint as described below under the heading ***Filing a Due Process Hearing Complaint***, or the State complaint contains multiple issues of which one or more are part of such a due process hearing, the State must set aside the State complaint, or any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties, then the due process hearing decision is binding on that issue. The State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process

hearing decision must be resolved by the State Educational Agency.

## **Filing A State Complaint 34 CFR §300.153**

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

The State complaint must include:

1. A statement that a school district or other public agency has violated a requirement of Part B of 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:
  - a. The name of the child and address of the residence of the child;
  - b. The name of the school the child is attending;
  - c. In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - d. A description of the nature of the problem of the child, including facts relating to the problem; and
  - e. A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

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

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

## **Due Process Hearing Complaint Procedures**

### **Filing A Due Process Complaint 34 CFR §300.507**

#### **General**

The parent or the school district may file a due process hearing complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child, or the provision of a Free Appropriate Public Education (FAPE) to a child.

The due process complaint must allege a violation that happened not more than two years before the parent or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

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

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

The school district must inform parents of any free or low-cost legal and other relevant services available in the area if requested, or if the parent or the school district file a due process complaint.

## **Due Process Hearing Complaint Request 34 CFR §300.508**

### **General**

A parent, a public agency, or the Michigan Department of Education (MDE) may initiate a hearing by filing a written due process hearing complaint with both the MDE and the public agency.

A hearing may be initiated on matters related to any of the following:

1. Identification;
2. Evaluation;
3. Educational placement;
4. Provision of a Free Appropriate Public Education (FAPE);
5. Provision of appropriate Part C services to the child or the child's family;
6. Assignment of financial obligations for Part C services to the parent;
7. Determination that behavior was not a manifestation of the student's disability;
8. Determination of an appropriate interim alternative education setting by the Individualized Education Program (IEP) Team; and
9. Placement in an interim alternative setting for not more than 45 days because maintaining the current placement is substantially likely to result in injury to the student or others.

The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew about the alleged action that forms the basis of the due process complaint. The two-year timeline does not apply to a parent if the parent was prevented from requesting the hearing due to:

1. Specific misrepresentations by the local educational agency (LEA) that it had resolved the problem forming the basis of the due process hearing complaint; or
2. The LEA's withholding of information from the parent that was required to be provided to the parent.

A party may not have a due process hearing until the party or the attorney representing the party files the due process hearing complaint with the MDE and provides the other parties with a copy of the due process hearing complaint. The due process hearing complaint is properly filed when both the MDE and the public agency has received a copy of the complaint from the complaining party.

The due process hearing complaint must contain the following information:

1. The name of the student, address of residence of the student (or available contact information in the case of a homeless child or youth), and the name of the school the student attends;
2. A description of the nature of the problem, including related facts; and
3. A proposed resolution of the problem to the extent known and available to the party at that time.

The information contained in the due process hearing complaint must be kept confidential.

A model due process hearing complaint form is available on the MDE website:  
[www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis)

## **State Office of Administrative Hearings and Rules**

Upon receipt of a due process hearing complaint, the MDE will forward the complaint to the State Office of Administrative Hearings and Rules (SOAHR) which will:

1. Appoint an Administrative Law Judge (ALJ) to conduct the hearing;
2. Inform the parties of the availability of mediation;
3. Inform the complainant of any free or low-cost legal and other relevant services available in the area; and
4. Provide the complainant with a copy of the *Procedural Safeguards Available to Parents of Students with Disabilities*.

The SOAHR will also:

1. Make available to the public and to the parties a statement of the participants' roles and responsibilities and a description of the hearing process;
2. Make available to the public a statement of the ethical rules governing the conduct of ALJs.
3. Develop and make available to the parties general statements of matters such as the burden of proof, legal standards or analyses, and elements for proof necessary to support claims or defenses commonly raised in special education due process hearings.

## **Local Educational Agencies' Response to a Due Process Complaint**

If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten days of the date that the due process hearing complaint was properly filed, send the parent a response that includes:

1. An explanation of why the LEA proposed or refused to take the action raised in the due process complaint;
2. A description of other options that the IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the LEA's proposed or refused action.

## **Other Party Response to a Due Process Complaint**

Except as stated above, the party receiving a due process hearing complaint must, within ten days of the date that the due process hearing complaint was properly filed, send to the other party a response that specifically addresses the issues raised in the due process hearing complaint.

## **Sufficiency of a Complaint**

A due process hearing complaint is deemed to be sufficient unless the party receiving the due process hearing complaint notifies the ALJ and the other party in writing that the receiving party believes the due process hearing complaint has not met the applicable IDEA requirements.

The receiving party must notify the ALJ and the complaining party of its objection to the sufficiency of the complaint within 15 days of the date that the due process hearing complaint was properly filed.

Within five calendar days of receiving the notification that the receiving party considers a due process hearing complaint insufficient, the ALJ will decide whether the due process hearing complaint is sufficient, and the ALJ will immediately notify both parties, in writing, of the decision.

## **Complaint Amendment**

The due process hearing complaint may be amended only if:

1. The other party approves of the amendment in writing and is given the chance to resolve the due process hearing complaint through a resolution meeting, described below; or
2. By no later than five days before the due process hearing begins, the ALJ allows the amendment.

If the due process hearing complaint is amended, the timelines for the resolution session meeting and the resolution start again on the date that the amended complaint is properly filed.

## **Subject Matter of a Hearing**

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the filed due process hearing complaint unless the other party agrees.

## **Resolution Session**

Within 15 calendar days from the date a parent properly files a due process hearing complaint, and before the due process hearing begins, the LEA must convene a meeting with the parents and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the complaint. The meeting:

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

The purpose of the resolution meeting is for the parents to discuss their concerns with the LEA staff so that the LEA has an opportunity to resolve the dispute.

The resolution session need not be held if:

1. The parent and the LEA agree in writing to waive the resolution session ; or
2. The parent and the LEA agree to mediate the dispute.

If the LEA has not resolved the complaint to the satisfaction of the parents within 30 days from the date that the due process hearing complaint was properly filed, the due process hearing may occur and all of the applicable timelines for a due process hearing will commence.

## **Supplement to the Procedural Safeguards Available to Parents of Students with Disabilities**

If a resolution to the complaint is reached during the resolution session, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the LEA who has the authority to bind the LEA.

A resolution agreement is enforceable in any state court or in a district court of the United States.

If the parties execute an agreement as a result of the resolution session, either party may void the agreement within three business days from the date the agreement was executed.

# Hearings on Due Process Complaints

## Administrative Law Judge (ALJ)

A due process hearing may not be conducted by a person who is an employee of a public agency that is involved in the education or care of the student, or by any person having a personal or professional interest which would conflict with his or her objectivity in the due process hearing. A person who otherwise qualifies to conduct a due process hearing is not an employee of the public agency solely because he or she is paid by the public agency to serve as an ALJ.

A person who qualifies to conduct a due process hearing, at a minimum, must possess:

1. Knowledge of and the ability to understand the provisions of the IDEA, state and federal regulations pertaining to the IDEA, and legal interpretations of the IDEA by state and federal and courts;
2. The knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
3. The knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

## Due Process Hearing Rights

Any party to a hearing has the right to:

1. Be accompanied and advised by an attorney and by individuals with special knowledge or training with respect to the problems of students with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence (including evaluations and recommendations based on those evaluations) that has not been disclosed to that party at least five business days before the hearing; and
4. Obtain written or, at the option of the parent, electronic findings-of-fact and decisions at no cost to the parent.

A parent involved in hearings has the right to have the student who is the subject of the hearing present, to open the hearing to the public, and to have the record of the hearing provided at no cost. A hearing must be conducted at a time and place that is reasonably convenient to the parent and student involved.

## Decision of the Administrative Law Judge

The ALJ will issue a final decision within 45 calendar days after the expiration of the 30-day resolution period, unless the ALJ grants a specific extension at the request of either party.

The ALJ's decision must be made on substantive grounds based on a determination of whether the student received a FAPE.

In matters alleging a procedural violation, an ALJ may find that a student did not receive a FAPE only if the procedural inadequacies:

1. Impeded the student's right to a FAPE;
2. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
3. Caused a deprivation of educational benefits.

However, if an ALJ determines that an LEA committed a procedural violation, the ALJ may order the LEA to come into compliance.

## **Student's Status During Proceedings**

During the pendency of any hearing or judicial proceeding, the student involved in the hearing must remain in his or her present educational placement unless the LEA and the parent of the student agree otherwise.

If the hearing involves an application for initial admission to a public school, the student, with the consent of the parents, shall be placed in the public school program until the completion of all of the proceedings.

## **Civil Action**

Any party aggrieved by the findings and decision made by the ALJ has the right to bring a civil action in state or federal court. The party bringing the action has 60 days from the date of the decision of the ALJ to bring such an action.

## **Award of Attorneys' Fees**

A court may award reasonable attorneys' fees to the parent of a student with a disability who prevails in court or a due process hearing. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of the services furnished. No bonus or multiplier may be used in calculating the fees awarded.

A court, in its discretion, may award reasonable attorneys' fees as part of the costs:

1. To a prevailing party who is the parent of a child with a disability;
2. To a prevailing party who is a state educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation; or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
3. To a prevailing state educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Reimbursement of attorneys' fees and related costs are prohibited if:

1. The district makes a written offer of settlement more than ten days before the proceeding begins;
2. The offer is not accepted within ten days; and
3. The relief granted to the parent in a hearing or by the court is not more favorable than the offer of settlement.

If the court finds that the parent was substantially justified in rejecting a settlement offer, and the parent prevails in the hearing or court case, then attorneys' fees may be awarded.

A resolution session shall not be considered a meeting convened as a result of an administrative hearing or judicial action for purposes of attorneys' fees.

The court may reduce attorneys' fees if it finds that:

1. The parent or the parent's attorney has unreasonably delayed the final resolution of the controversy;
2. The attorneys' fees exceed the prevailing hourly rate in the community for similar services;
3. The time spent and legal services furnished were excessive considering the nature of the case; or
4. The attorney representing the parent did not provide the public agency with the appropriate information in a due process hearing notice.

The reduction of attorneys' fees listed above does not apply if the court finds that the state or public agency:

1. Unreasonably delayed the final resolution of the dispute; or
2. Otherwise violated the procedural safeguards of the parent.

Attorneys' fees will not be awarded to the parent for any meeting of the IEP Team unless:

1. The meeting is directed by the court or by an administrative proceeding; or
2. At the discretion of the state, the meeting is for mediation conducted prior to the filing for a request for a due process hearing.

## **Procedures When Disciplining Children with Disabilities**

### **Authority of School Personnel 34 CFR §300.530**

#### **Case-by-case determination**

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

#### **General**

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct. School personnel may also impose additional removals of the child for not more than **10 school days** in a row in that same school year for separate incidents of misconduct; as long as those removals do not constitute a change of placement (see *Change of Placement Because of Disciplinary Removals* for the definition, below).

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 school district must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading *Services*.

#### **Additional authority**

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

## 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 in another setting.

A school district 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.

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

1. 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**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation to reduce the likelihood of it happening again.

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

If the removal is a change of placement (see 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.

## 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 is for **10 school days** in a row or less and not a change of placement), the school district, the parent, and relevant members of the IEP Team (as determined by the parent and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

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

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

### **Determination That Behavior Was a Manifestation of the Child's Disability**

If the school district, 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:

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

Except as described below under the sub-heading *Special Circumstances*, the school district must return 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.

### **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:

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

### **Definitions**

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

*Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

*Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

*Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### **Notification**

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

## **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** if:

1. The removal is for more than 10 school days in a row; **or**
2. 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 the series of removals
  - c. Or 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

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

## **Determination of Setting 34 CFR § 300.531**

The Individualized Education Program (IEP) Team 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.

## **Appeal 34 CFR § 300.532**

### **General**

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

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

The school district may file a due process hearing 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.

### **Authority of Law Judge (ALJ)**

**An administrative law judge (ALJ)** that meets the requirements described under the sub-heading *ALJ* must conduct the due process hearing and make a decision. The ALJ may:

1. Return the child with a disability to the placement from which the child was removed, if the ALJ 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**
2. 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 ALJ 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 school district 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 school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Hearing Complaint Procedures, Hearings on Due Process Complaints***, except as follows:

1. Unless the parents and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process hearing 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.
2. The State Educational Agency or school district must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

### **Placement During Appeals 34 CFR §300.533**

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

### **Protections for Children Not Yet Eligible for Special Education and Related Services 34 CFR §300.534**

#### **General**

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

#### **Basis of Knowledge for Disciplinary Matters**

A school district 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:

1. 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 the appropriate educational agency, or a teacher of the child;
2. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; **or**
3. The child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or to other supervisory personnel of the school district.

#### **Exception**

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

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

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

### **Conditions That Apply if There is No Basis of Knowledge**

If prior to taking disciplinary measures against the child, a school district 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 school district, and information provided by the parents, the school district must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

## **Referral to and Action by Law Enforcement and Judicial Authorities**

### **34 CFR §300.535**

Part B of the IDEA does not:

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

### **Transmittal of Records**

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

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

## **Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense**

### **General 34 CFR §300.148**

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

### **Reimbursement for Private School Placement**

If the child previously received special education and related services under the authority of a school district, and the parent chooses to enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or an AJL may require the agency to reimburse the parent for the cost of that enrollment if the court or an AJL finds that the agency had not made a Free Appropriate Public Education (FAPE) available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. An AJL or court may find the 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 school districts.

### **Limitation on Reimbursement**

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

1. If: (a) At the most recent Individualized Education Program (IEP) meeting that the parent attended prior to the removal of the child from the public school, the parent did not inform the IEP Team that they were rejecting the placement proposed by the school district to provide FAPE to the child, including stating concerns and intent to enroll the 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 the parent's removal of the child from the public school, the parent did not give written notice to the school district of that information;
2. If, prior to the removal of the child from the public school, the school district provided prior written notice to the parent, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the child available for the evaluation; **or**
3. Upon a court's finding that the parent's actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented the parent from providing the notice; (b) The parent had not received notice of their responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to the child; **and**
2. May, in the discretion of the court or a Administrative Law Judge, 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.