

Willard R-II
Special Services Department

Procedural Safeguards
Explanation Module



This explanation module is for case manager use when explaining procedural safeguards to parents or guardians. This explanation CAN NOT replace procedural safeguards given to parents and guardians. This copy of the module SHOULD NOT be copied and given to parents but only used by the case manager for assistance in explaining the safeguards.

Grey boxes within the document are summaries of the Federal/State section of the Part B Procedural Safeguard Notice.

This module is part of a training package on the 2004 Amendments to the Individuals with Disabilities Education Act (IDEA), developed by NICHCY for the Office of Special Education Programs at the U.S. Department of Education. The training curriculum is entitled *Building the Legacy*; this module is entitled *Introduction to Procedural Safeguards*.

Resource

Rebhorn, T., & Küpper, L. (2007, August). Introduction to procedural safeguards (Module 17). *Building the legacy: IDEA 2004 training curriculum*. Washington, DC: National Dissemination Center for Children with Disabilities. Available online at: <http://www.nichcy.org/training/contents.asp>

Procedural Safeguards Notice

Part B of the Individuals with Disabilities Education Act (IDEA).

Note: All references to school district are applicable to the responsible public agency.

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General Information

PRIOR WRITTEN NOTICE

34 CFR §300.503

Notice

Your school district must give you written notice (provide you 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 your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your 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 your 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**
8. Provide a description of other reasons why your school district proposed or refused the action.

Your school district must give you information in writing whenever it proposes to change or the identification, evaluation, or educational placement of your child, or the free appropriate public education to your child. The written notice will include the description of the action that your school district proposes; it will explain why, describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose the action, it will include a statement that you have protections under the procedural safeguards and how you can obtain a description and help in understanding procedural safeguards; it will describe any other choices that your child's IEP Team considered; **and** will provide a description of other reasons why your school district proposed 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 or by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**

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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).

The notice will be written in language understandable to the general public and provided in your native language or other mode of communication you use. If your native language or method of communication is not written, the school district will ensure that the notice is translated for you orally or by other means of communication and the district will ensure that you understand the content of the notice.

ELECTRONIC MAIL

34 CFR §300.505

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

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

If the school district offers choice of receiving documents by e-mail, you may choose to receive the following by e-mail: Prior written notice; Procedural safeguards notice; and notices related to a due process complaint.

PARENTAL CONSENT - DEFINITION

34 CFR §300.9

Consent

Consent means:

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

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

Giving consent means that the district has informed you in your method for communication, you understand and agree to the action, and that your consent is voluntary and you can withdraw it at any time.

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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 the 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, resolution meeting, and impartial due process hearing procedures (unless required to do so or prohibited from doing so under State law). Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances, unless State law requires it to pursue the evaluation.

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, as used in the IDEA, 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,

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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 reevaluation 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,

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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).

Initial Evaluations

The district cannot conduct an initial evaluation of your child to determine whether your child is eligible receive special education and related services without providing you with prior written notice and without obtaining your consent. The district must make reasonable efforts to obtain your consent for an initial evaluation to decide whether your child has a disability. Your consent for initial evaluation does not mean that you have given consent for the school district to start providing special services to your child.

The school district must make reasonable efforts and obtain your informed consent before providing special services to your child for the first time. If you do not respond to a request for your consent or refuse to give consent for your child to receive special services, your school district may not use the procedural safeguards in order to obtain agreement or a ruling that the special services (recommended by your child's IEP Team) may be provided to your child without your consent. If you refuse to give your consent or do not respond to the request for your child to receive special services for the first time, 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 available to your child for its failure to provide 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 services for which your consent was requested.

Re-Evaluations

Your school district must obtain your informed consent before it reevaluates your child, unless your school district has taken reasonable steps to obtain your consent for your child's reevaluation and you did not respond. If you refuse to consent to your child's reevaluation, the school district may, pursue your child's reevaluation by using 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.

Your school will maintain documentation of efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluation.

Your consent is not required before the school district may review existing data as part of your child's evaluation or a reevaluation or give your child a test or other evaluation that is given to all children unless, Your school district may not use your refusal to consent to one service to deny you or your child any other service.

Home School and Private School Consent

If you have enrolled your child in a private school or if you are home schooling your child, and you do not provide your consent for your child's initial or re-evaluation, or to respond to a request to provide your consent, the school district may not use its consent override procedures and is not required to consider your child as eligible to receive equitable services.

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, 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.

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.

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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 hearing officers

If a hearing officer 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, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Independent Educational Evaluations

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.

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.

Confidentiality of Information defines:

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

Education records as the type of records covered under the definition of "education records" in 34 CFR Part 99 of FERPA.

Participating agency as 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.

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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.

Personally identifiable is information that has your child's name, your name as the parent, or the name of another family member; your child's address; a personal identifier, such as a social security or student number; or a list of personal characteristics or other information that would make it possible to identify your child.

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.

The district must give notice to inform parents about confidentiality of personally identifiable information, including: a description of native languages, a description of the children on whom personally identifiable information is maintained, a summary of the policies and procedures that participating agencies must follow regarding personally identifiable information; and a description of all of the rights of parents and children regarding this information.

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.

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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.

Parents can inspect, review and request explanation of educational records with respect to their child's evaluation, identification, and placement; and the provision of FAPE. Parents can request copies of the records if not having a copy would prevent the parents from inspecting and reviewing records. Parents can request that their representative be given access to inspect and review the records.

The school must comply with a your request to inspect and review records without unnecessary delay before any meeting—regarding an IEP, a hearing or resolution session, and in no case more than 45 days after the request has been made. Schools can charge a fee for copies of records made for parents, if the fee does not prevent the parents from inspecting and reviewing records. Schools may not charge a fee for searching for, or retrieving, a child's records for parents.

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.

The district will keep a record of those obtaining access to education 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.

If any education record includes information on more than just your child, you have the right to inspect and review only the information relating to your 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.

On request, the district will provide you with a list of the types and locations of education records collected, maintained, or used by the district.

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.

The district may charge a fee for copies of records that are made for you if the fee does not 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.

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AMENDMENT OF RECORDS AT PARENT'S REQUEST

34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

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

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading *Opportunity For a Hearing*.

Parents may ask that their child's records be amended if they believe that information in the records is inaccurate. The district must decide to accept or refuse this request within a reasonable period of time and inform the parent. The school will also provide parents with information regarding the right to a hearing on this matter.

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.

The district 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).

A hearing would be conducted to challenge information in education records 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.

Two outcomes can result: (1) Parents' request is upheld in the final decision, and the information must be amended in the child's records, and parents must be so informed in writing. (2) Parents' request is not upheld in the final decision. The district must inform you of their right to place in the records a statement commenting on the information or any reasons for disagreeing with the decision of the agency.

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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.

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 other parties outside the district. 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.

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.

The district will protect the confidentiality of personally identifiable information at all times.

The district maintains 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.

The school district will inform you when personally identifiable information is no longer needed to provide educational services to your child. The information will 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.

DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES

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

ADOPTION OF STATE COMPLAINT PROCEDURES

34 CFR §300.151

General

Each State Educational Agency 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 State Educational Agency has found a failure to provide appropriate services, the State Educational Agency 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.

The district has written procedures for: resolving any complaint, the filing of a complaint with the school district, and widely distributing the State complaint procedures to parents and other interested individuals. In resolving a State complaint in which the district has found a failure to provide appropriate services, the district must address: the failure to provide appropriate services, including corrective action appropriate to the needs of the child; and appropriate future provision of services for all children with disabilities.

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MINIMUM STATE COMPLAINT PROCEDURES

34 CFR §300.152

Time limit; minimum procedures

Each State Educational Agency 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 the State Educational Agency 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 the State Educational Agency's final decision.

The State Educational Agency has a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if necessary;
2. Give the person filing complaint the opportunity to submit additional information about the allegations in the complaint;
3. Respond to the complaint, including a proposal to resolve the complaint; and an opportunity for the parent and the agency to agree voluntarily to have mediation;
4. Review all information and determine 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 including: (a) findings of fact and conclusions; and (b) the reasons for the final decision.

Time extension; final decision; implementation

The State Educational Agency's procedures described above also must:

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

The district's procedures described permit an extension of the 60 calendar-day time limit only if: circumstances exist with respect to a particular State complaint or the parent and the school district or voluntarily agree to extend the time to resolve the matter through mediation or dispute resolution.

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 heading **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 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 (you and the school district), 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 school district's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

If a State complaint is received that is also the subject of a due process hearing or the State complaint contains multiple issues of which are part of such a 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. If an issue in a State complaint has previously been decided in a due process hearing involving the same parties (you and the school district), 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.

FILING A 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.

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

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

Due Process Complaint Procedures

FILING A DUE PROCESS COMPLAINT

34 CFR §300.507

General

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you 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 to you if you could not file a due process complaint within the timeline because:

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**

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2. The school district withheld information from you that it was required to provide you under Part B of the IDEA.

Information for parents

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

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action unless the school district specifically misrepresented that it had resolved the issues identified in the complaint; or the school district withheld information from you that it was required to provide you.

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

DUE PROCESS COMPLAINT

34 CFR §300.508

General

In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

You or the school district, whichever one filed the complaint, must also provide the State Educational Agency with a copy of the complaint.

Content of the complaint

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to you or the school district at the time.

In order to request a hearing, you or the school must submit a due process complaint to the other party. That complaint must contain all of the content listed above and kept confidential. Whichever party filed the complaint, must also provide the State Educational Agency with a copy of the complaint.

Notice required before a hearing on a due process complaint

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

A due process hearing will not be held until you or the school district, files a due process complaint that includes the information listed above

Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that

the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due

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process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

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

Complaint amendment

You or the school district may make changes to the complaint only if:

1. 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**
2. By 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 school district) 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.

You or the school district may make changes to the complaint if the other party approves of the changes in writing and is given the chance to resolve complaint through a resolution meeting or by no later than five days before the due process hearing begins, the hearing officer grants permission for the changes. If the complaining party makes changes to the due process 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.

Local educational agency (LEA) or school district response to a due process complaint

If the school district 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 school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

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

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

Other party response to a due process complaint

Except as stated under the sub-heading immediately above, **Local educational agency (LEA) or school district 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.