SUMMARY OF PROCEDURAL SAFEGUARDS

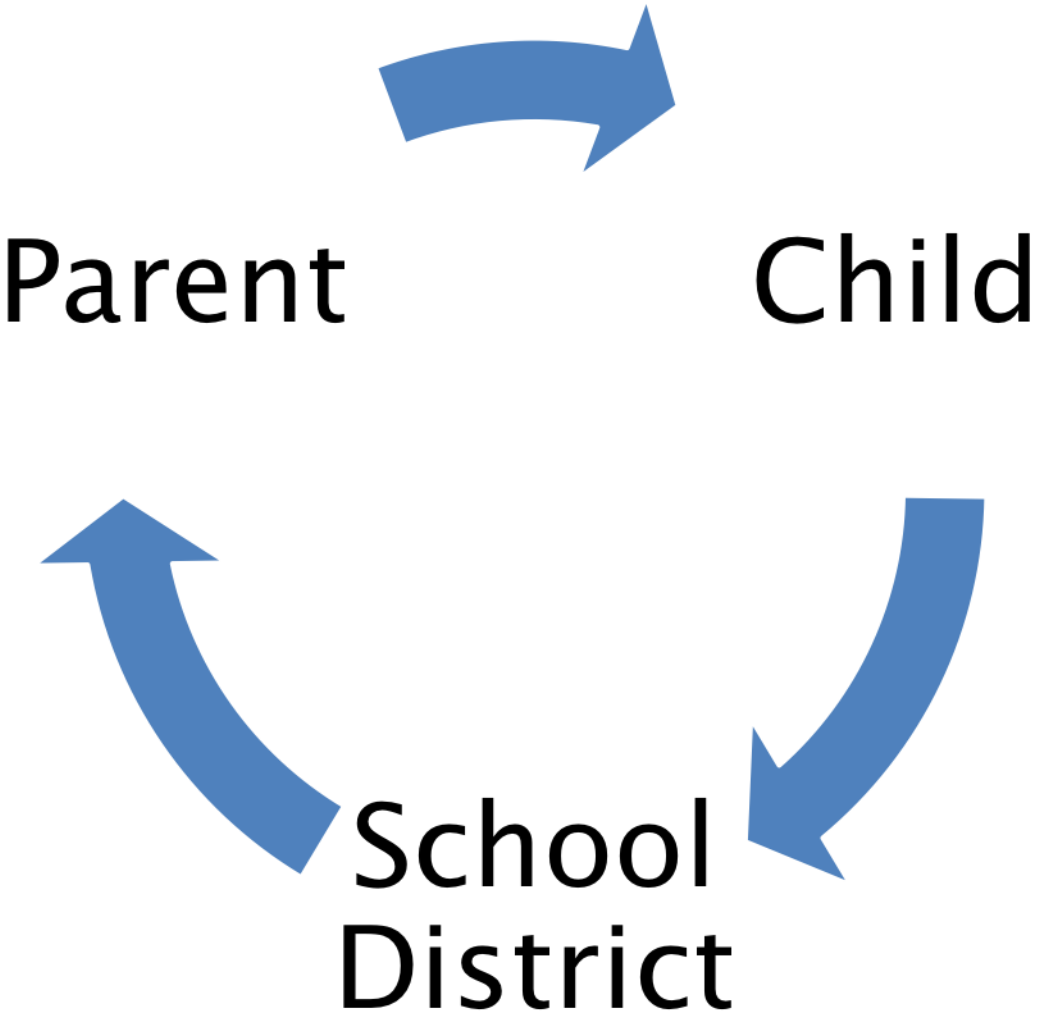
1. **Procedural safeguards notice.** The school must provide you with a written explanation of your rights under both IDEA and Mississippi's laws. You'll get this as a printed procedural safeguards packet. You can request a verbal explanation and/or additional packets at any time.
2. **Parent participation.** You have a legal right to participate in meetings about your child's education, including IEP meetings. You have the right to call an IEP team meeting at any time, and may bring a support person, such as an advocate, with you to the meetings.
3. **Access to educational records.** You have the right to see and get an explanation of your child's school records. You can also ask for the school district to make corrections to your child's records.
4. **Confidentiality of information.** The school must protect your child's confidentiality. This includes personal information, such as your child's name, address, social security number and other personal details.
5. **Informed consent.** The school must get your informed consent before evaluating your child for special education services or providing special education services for the first time. You have to give your permission in writing before the school can move forward.
6. **Prior written notice.** The school must give you written notice before it changes your child's educational experience. As a result, whenever the school wants to add or deny services it must tell you what it proposes to do and why.
7. **Independent educational evaluation.** If you disagree with the school's evaluation results, you have the right to get an independent educational evaluation (IEE). An IEE is an evaluation of your child's skills and needs by someone who's not employed by the school. The school must consider the results of the IEE, but is not required to accept the findings.
8. **Understandable language.** When the school provides written notice, it must use language that's understandable to the general public. The notice must be in your native language.
9. **Dispute resolution.** You have the right to disagree with the school about what is best for your child. If you have a disagreement, IDEA provides several dispute resolution options. You can: negotiate and talk things out with the school; use mediation, where a neutral third party helps you and the school resolve a dispute; file a due process complaint; file a complaint with the State; and/or file a complaint with the Office for Civil Rights for the U.S. Department of Education.
10. **"Stay put" rights.** If you disagree with a proposed change to your child's IEP services or placement, the "stay put" protection keeps your child's current IEP in place while you and the school work things out. The filing of a Due Process petition triggers the "stay put" provision, allowing your child to continue receiving services under their current IEP until the dispute is resolved.

The rights listed above are not the only procedural safeguards in IDEA. Be sure to look closely at the school's procedural safeguards packet. You can also reach out to Mississippi's Parent Training and Information Center for more information:

MSTI Project
2 Old River Place, Suite M
Jackson, MS 39202
(601)-969-0601

PROCEDURAL SAFEGUARDS

Your Family's Special Education Rights



Mississippi Department of Education
Office of Special Education

Revised December 17, 2013

Procedural Safeguards Requirements under the Individuals with Disabilities Education Act Amendments of 2004 (IDEA 2004) and State law

As a parent, you are an important member of your child's multidisciplinary team. A multidisciplinary team makes decisions about evaluations and eligibility. Another multidisciplinary team, called the Individualized Education Program (IEP) Committee, develops recommendations for special education services for your child. You have the opportunity to participate in the multidisciplinary team meeting discussions and decision-making processes about your child's needs for special education.

The following information relates to procedural safeguards explaining your rights under Federal and Mississippi law. One can expect these rights in order to ensure parental involvement in the special education programs.

Please adhere to the amended sections 37-23-137 of the Mississippi Code of 1972 as it relates to provision of Procedural Safeguards to a child with a disability.

A copy of this Procedural Safeguards Notice must be provided only one time each school year, with the following exceptions:

a. Upon initial referral or your request for an evaluation or reevaluation;
b. Upon the receipt of the first MDE State complaint in a school year;
c. Upon the receipt of the first request for a due process hearing in a school year;
d. In accordance with the discipline procedures when a change in placement occurs;
e. Upon your child's initial IEP Committee meeting; and
f. Upon your request to receive a copy.

The revisions reflect the new mandates of the *Individuals with Disabilities Education Act Amendments of 2004*. The Federal Regulations were issued on April 14, 2006, and became effective October 13, 2006. Additional amendments were issued on December 1, 2008, and became effective December 31, 2008.

Additional information regarding special education and these procedural safeguards is available by contacting your local special education supervisor or school principal, a parent advocacy organization, or the Division of Parent Outreach at the Mississippi Department of Education, Office of Special Education at 1-877-544-0408.

This document conforms to the U.S. Department of Education's Model Procedural Safeguards Notice (July 2009) and includes specific Mississippi requirements.

This document is available electronically at: http://www.mde.k12.ms.us/special-education/special-education-for-parents

Questions regarding this document may be referred to:

Parent Outreach Division
Mississippi Department of Education
359 North West Street
P.O. Box 771
Jackson, MS 39205-0771
601-359-3498
1-877-544-0408

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GENERAL INFORMATION

Notification Before Child Find Activities

Before any major activity to identify, locate, or evaluate children in need of special education and related services (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 these activities.

Prior Written Notice §300.503

Notice

Unless you waive the timeline, written notice must be given to you seven (7) calendar days before the school district:

1. Proposes 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; **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.

The school is required to send written explanations of any proposed changes to your student's educational plan. The school also must send a written notice if it denies one of your requests. The notice has to be detailed and is required to be written in understandable language (that is, in your native language and without a lot of technical terms)

Content of Notice

The written notice must:

1. Describe the action that the school district proposes or refuses to take;
2. Explain why the school 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 rights under the procedural safeguards provisions in Part B of the Individuals with Disabilities Education Act (IDEA);
5. Inform you on how to 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 one to contact help in understanding Part B of the IDEA;
7. Describe any other choices that your child's IEP Committee considered and why those choices were rejected; **and**
8. Provide a description of other reasons as to 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 one uses, unless it is clearly not feasible to do so.

If one's native language or other mode of communication is not a written language, one's 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. One understands the content of the notice; **and**

3. There is written evidence that 1 and 2 above have been met.

Native Language
§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 nor[illegible] language, [illegible] communic[illegible]

The school district is not allowed to evaluate your child for special education services without giving you notice and getting your consent.

Electron[illegible]
§300.505

If one's sc[illegible]nts the choice of r[illegible] email, one may choose to receive the following by email:

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

Parental Consent Definition
§300.9

Consent

Consent means:

1. One has been fully informed in one's native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which one is giving consent;
2. one understands and agrees 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. One understands that the consent is voluntary on their part and consent may be withdrawn at any time.

If one wishes to revoke (cancel) consent after their child has begun receiving special education and related services, one must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the school district is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

Parental Consent
§300.300

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

Your school district must make reasonable efforts to obtain your informed consent for an initial

Just because you consent to having your child evaluated does not mean that the school district can start special education services for your child

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.

Your school district may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other services, benefit, or activity, unless another IDEA, Part B requirement requires the school district to do so.

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 for your child by utilizing IDEA's [illegible] process complai[illegible] and impartial du[illegible] procedures. You[illegible] ot violate its obliga[illegible] and evaluate you[illegible] pursue an evalua[illegible] these circumstan[illegible]

The school district must try to get your informed consent before providing special education and related services to your child

Special rules for initial evaluation of wards of the State

If a child is a ward of the State and is not living with either 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 to an individual other than the parent and that individual has provided consent for an initial evaluation.

Ward of the State, defined by 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 who meets the definition of a *parent* as defined in IDEA.

Parental consent for services

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 or later revoke (cancel) your consent in writing, your school district may **not** use the procedural safeguards (i.e., mediation, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (decided by your child's IEP Committee) 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 or later revoke (cancel) your consent in writing 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 FAPE available to your child for its failure to provide those services to your child; **and**
2. Is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district may not continue to provide such services, but must first provide you with prior written notice, as described under the heading Prior Written Notice, before discontinuing those services.

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, 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, for a reevaluation, and to locate parents of wa s. The rec in thes

You can cancel your consent in writing at any time. The school district cannot continue to provide special education services to your child if you cancel your consent

2. Copies of correspondence sent to the parents and any responses received; **and**
3. Detailed records of visits made to or place of he results of

The school district must have your informed consent to re-evaluate your child, unless you fail to respond to the district's efforts to get your consent

Ot ents

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ata as part of ation 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, unless another IDEA, Part B requirement requires the school district to do so.

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request to provide
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process hearing) ar
consider your child
equitable services (
available to parenta
school children with disabilities).

If you don't agree with the school's evaluation of your child, you can get an independent evaluation for free. The school district cannot require you to explain why you object to the evaluation. The school district must provide you with information about where you can get an independent evaluation and about the district's criteria for independent evaluations.

Independent Educational Evaluations

§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 IEE, the school district must provide you with information about where you may obtain an IEE and about the school district's criteria that apply to IEEs.

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 that are available in the State to meet the requirements of Part B of the IDEA.

Parent's right to evaluation at public expense

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

1. If you request an IEE of your child at public expense, your school district must, without unnecessary delay, **either**: (a) File a *request for a* due process hearing to show that its evaluation of your child is appropriate; **or** (b) Provide an IEE 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 IEE, but not at public expense.
3. If you request an IEE 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 IEE of your child at public expense or filing a request for a due process hearing to defend the school district's evaluation of your child.

The school district is required to consider the results of an independent evaluation

You are entitled to only one IEE 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 IEE 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 IEEs, in any decision made with respect to the provision of 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 IEE for your child as part of a due process hearing, the cost of the evaluation must be at public expense.

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

Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an IEE at public expense.

The school district cannot put conditions on independent evaluations that are different from those that the school district uses for its own evaluations. That is, they can't require extra things for independent evaluations

Audio Recording of Individual Education Program Meeting MS Code Section 37-23-137

The parent or guardian, or the local educational agency (LEA), has the right to participate in the development of the IEP and to initiate their intent to audio record the proceedings of the individualized education program (IEP) meetings. The parent or guardian or local educational agency shall notify the members of the IEP team of their intent to record a meeting at least twenty-four (24) hours prior to the meeting.

Confidentiality of Information Definitions §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.

You have the right to view your child's education records. The school is required to respond to your request to view these records without delay and before any IEP meeting or due process hearing

Personally Identifiable
§300.32

Personally identifiable means information that includes:

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
§300.612

The Mississippi Department of Education (MDE) will 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 Mississippi;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the MDE 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 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.

Access Rights
§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 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 IEP, or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than **forty-five (45) calendar days** after you have made the 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 Mississippi law governing such matters as guardianship, separation and divorce.

Record of Access §300.614

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

Records on More T Child §300.615

If any education record i information on more tha parents of those children to inspect and review on information relating to t be informed of that spec

List of Types and L Information §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 §300.617

Each participating agency may charge a fee for copies of records that are made for you under Part B of 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 IDEA.

Amendment of Records at Parent's Request §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of 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 §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.

If you see something in your child's records that is inaccurate, misleading, or violates your child's privacy, you can ask the school district to change the information. The school district must, if you request it, provide you an opportunity for a hearing to challenge information in your child's education records.

Hearing Proce

§300.621

A hearing to chal
education records
according to the p
hearings under Fa
Rights and Privac

Generally, the school district must get your consent before sharing personally identifiable information about your child with third parties

Result of a Hearing

§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

§300.622

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

Your consent, or consent of an eligible child who has reached the age of majority (twenty-one) under Mississippi 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 in which you reside, 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
§300.623

Each participating ag
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identifiable informat
storage, disclosure a
stages.

One official at each
must assume respons
the confidentiality of
identifiable informat

All persons collecting or using personally identifi
receive training or
MDE's policies ar
regarding confider
IDEA and FERPA

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

Destruction of Information
§300.624

Your school district must inform you when personally identifiable information collected, maintained or used under Part B of IDEA 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.

This section explains what you can do if you disagree with a decision the school district makes regarding your child's educational services

Two options: 1) Formal state complaint; and 2) Due process complaint

FORMAL STATE COMPLAINT PROCEDURES

Difference Between Due Process Hearing Request and Formal State Complaint Procedures

The regulations for Part B of IDEA set forth separate procedures for formal State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a formal State complaint alleging a violation of any Part B requirement by a school district, the MDE or any other public agency. Only you or a school district may file a request for a due process hearing on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. While staff of the MDE generally must resolve a formal State complaint within a **sixty (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 **forty-five (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 formal State complaint and due process complaint, resolution and hearing procedures are

described more fully on the next three pages. The MDE has available model forms to help you file a due process complaint and to help you or other parties to file a formal State complaint.

Adoption of Formal State Complaint Procedures

§300.151

General

The MDE has written procedures for:

1. Resolving any formal State complaint, including a formal State complaint filed by an organization or individual from another State;
2. The filing of a formal State complaint with the MDE;
3. Widely disseminating the formal 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.

If you file a formal state complaint and MDE finds that the school district failed to provide your child appropriate services, MDE will take "corrective action," which means they may require the school district to provide compensatory services or monetary reimbursement

Remedies for denial of appropriate services

In resolving a formal State complaint in which the MDE has found a failure to provide appropriate services, the MDE will address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); **and**
2. Appropriate future provision of services for all children with disabilities.

If you submit a formal state complaint, MDE must issue a decision in writing that addresses each part of your complaint and gives reasons for its final decision

Formal State Complaint Procedures

§300.152

Time limit, procedures

MDE includes in its formal State complaint procedures a time limit of **sixty (60)** calendar days after a formal State 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 formal State complaint;
3. Provide the school district or other public agency with the opportunity to respond to the formal State complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the formal State complaint; **and** (b) an opportunity for a parent who has filed a formal State 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 IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the formal State complaint and contains: (a) findings of fact and conclusions;

You can't make a formal state complaint about an issue that has already been decided in a due process hearing

and (b) the reasons for MDE's final decision.

Time extension, final decision, and implementation

The MDE's procedures described above also:

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

Formal State complaints and due process hearings

If a formal 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 formal State complaint contains multiple issues of which one or more are part of such a hearing, MDE will set aside any part of the formal State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the formal State complaint that is not a part of the due process hearing will be resolved using the time limit and procedures described above.

If you make both a formal state complaint and a due process complaint, MDE will wait for the results of the due process hearing on issues that are in both complaints before making its own decision.

If an issue raised in a formal State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the school district), then the due process hearing decision is binding on that issue and the MDE will inform the complainant that the decision is binding.

A formal State complaint alleging a school district's or other public agency's failure to implement a due process hearing decision will be resolved by the MDE.

This is how you file a formal state complaint

Filing a Formal State Complaint §300.153

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

The formal State complaint must include:

1. A statement that a school district or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; 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;

If you file a formal state complaint, make sure you include: 1) That the school district violated your child's special education rights under the IDEA; 2) How the school district violated your child's rights; 3) Your signature and contact information; and 4) Your child's information (name, address, name of school, description of your child's problem, and a proposed solution to that problem)

(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 formal State complaint at the time the formal State complaint is filed.

You have one year to file a formal state complaint

The formal State complaint must allege a violation that occurred not more than **one (1)** year prior to the date that the formal State complaint is received as described under the heading ***Adoption of Formal State Complaint Procedures***.

You need to send a copy of your complaint to the school district

The party filing the formal State complaint must forward a copy of the formal State complaint to the school district or other public agency serving the child at the same time the party files the formal State complaint with the MDE. Additionally, the school district or other public agency must forward a copy of any and all responses they send to the MDE regarding said formal complaint.

DUE PROCESS COMPLAINT PROCEDURES

Filing a Due Process Complaint §300.507

General

You can file a due process complaint against the school for any of these reasons. You have two years to 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 FAPE to your child.

The due process complaint must allege a violation that happened not more than **two (2)** 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 if you could not file a due process complaint within the timeline because:

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

If you or the school district files a due process complaint, the school district must give you information about low-cost/ free legal services in the area

Due Process Complaint §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 MDE 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

This is what you need to include in your due process complaint. Make sure you send a copy to the school district AND to MDE

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 the complaining party (you or the school district) at the time.

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), file 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 **fifteen (15)** calendar days of receiving the complaint, that the receiving party believes the due process complaint does not meet the requirements listed above.

Within **five (5)** calendar days of receiving notification that the receiving party (you or the school district) 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 (5)** 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 **fifteen [15]** calendar days of receiving the complaint) and the time period for resolution (within **thirty [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 **ten (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 IEP Committee 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

If the school district did not send a prior written notice to you, it must respond to your due process complaint within 10 days of receiving it. The response must include the four things listed in this section

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***, LEA or school district response to a due process complaint***, the party receiving a due process complaint must, within **ten (10)** calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

Model Forms §300.509

There are model forms on MDE's website that can help you file a due process complaint--but you don't need to use those forms as long as you file a document that has all of the required information

The MDE has developed model forms to help you file a due process complaint and to help you and other parties file a formal State complaint. However, the MDE or school district does not require you to use these model forms. In fact, you can use this form or another appropriate form, so long as it contains the required information for filing a due process complaint or a formal State complaint.

Mediation §300.506

This is a third option for resolving a disagreement between you and the school

General

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

Requirements

Mediation is when a neutral third person helps you and the school district negotiate a solution to the disagreement. The school district cannot use mediation as a way to prevent you from filing a due process complaint

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the school district's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school district may develop procedures that offer parents and schools that choose not to use the mediation process an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in Mississippi; **and**
2. Who would explain the benefits of, and encourage the use of, the mediation process to you.

MDE has a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. MDE selects mediators on a rotational and impartial basis.

MDE is responsible for the cost of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); **and**
2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be kept confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal Court or State Court of a State receiving assistance under Part B of IDEA.

Impartiality of mediator
The mediator:

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

A person who otherwise qualifies as a mediator is not an employee of a school district or MDE solely because they are paid by MDE or school district to serve as a mediator.

Resolution Process

§300.510

Resolution meeting
Within **fifteen (15)** calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member or members of the IEP Committee who have specific knowledge of the facts identified in your due process complaint. The meeting:

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

You and the school district determine the relevant members of the IEP Committee to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the school district agree in writing to waive the meeting; **or**

Mediation is free to you. Any meetings for mediation must be held at a time and place that is convenient for you

Anything that is said during a mediation meeting is confidential. That means you can't use anything the school district said during mediation in a future due process complaint or in any lawsuit

Within 15 days of receiving your due process complaint, the school district must hold a meeting with you and the IEP Team. You can bring an attorney to this meeting

You must participate in this meeting unless both you and the school agree not to have it, or if you agree to use mediation

The school district has 30 days to resolve your due process complaint. If the problem is not resolved by then, there will be a due process hearing

2. You and the school district agree to use the mediation process, as described under the heading ***Mediation***.

Resolution period
If the school district has not resolved the due process complaint to your satisfaction within **thirty (30)** calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

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

Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

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

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

If the school district fails to hold the resolution meeting within **fifteen (15)** calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask the hearing officer to begin the **forty-five (45)** calendar-day due process hearing timeline.

Adjustments to the thirty (30) calendar-day resolution period
If you and the school district agree in writing to waive the resolution meeting, then the **forty-five (45)** calendar day timeline for the due process hearing starts the next day.

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

If you and the school district agree to use the mediation process but have not yet reached agreement, at the end of the **thirty (30)** calendar day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school district withdraws from the mediation process during this continuation period, then the **forty-five (45)** calendar day timeline for the due process hearing starts the next day.

You can resolve the issue at the resolution meeting before the complaint goes to a hearing. That agreement is legally binding on both you and the school district

Written settlement agreement
If a resolution to the dispute is reached at the resolution meeting, you and the

If you have second thoughts about the agreement you made at the resolution meeting, you have 3 days to change your mind

school district must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school district who has the authority to bind the school district; **and**
2. Enforceable in any State court of competent jurisdiction (a State court that has the authority to hear this type of case) or in a district court of the United States.

Agreement review period
If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within **three (3)** business days of the time that both you and the school district signed the agreement.

HEARINGS ON DUE PROCESS COMPLAINTS

Impartial Due Process Hearing
§300.511 • MS Code §37-23-143

This is what happens if your due process complaint is not resolved at the resolution meeting

General
Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections. Mississippi is a "One-Tier" state, which means that the MDE is responsible for convening due process hearings and any appeal from a due process hearing decision is filed directly with a court of competent jurisdiction.

Impartial hearing officer
At a minimum, a hearing officer:

1. Must not be an employee of MDE or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because they are paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, and Federal and State Regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State Courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The hearing officer must be neutral and must have knowledge of the IDEA and state/federal special education regulations

The MDE maintains a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

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

The only things you can bring up at the hearing are the issues that you wrote about in your complaint (unless the school district agrees with you that other issues should be discussed). This is why it's important that you raise all potential issues in your complaint!

Timeline for requesting a hearing
You or the school district must request an impartial hearing on a due process complaint within **two (2)** years of the date you or the school district knew or should have known about the issue addressed in the complaint.

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

1. The school district specifically misrepresented that it had

resolved the problem or issue that you are raising in your complaint; **or**

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

Hearing Rights
§300.512

General
You have the right to represent yourself at a due process hearing. In addition, any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by counsel and by persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the due process hearing by an attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least **five (5)** business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
6. Obtain written, or, at your option, electronic findings of fact and decisions.

You have a right to bring an attorney/ advocate to the hearing and be represented by an attorney at the hearing. The school district must give you its evidence at least 5 days before the hearing (and you must give the school district your evidence at least 5 days prior to the hearing as well). You can bring witnesses and cross-examine the school's witnesses

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

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental rights at hearings
You must be given the right to:

1. Have your child present at the hearing;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of facts and decisions provided to you at no cost.

Hearing Decisions
§300.513

Decision of hearing officer
A hearing officer's decision on whether your child received FAPE must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as an incomplete IEP Committee), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to FAPE;
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; **or**
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the procedural safeguards section of the

Federal Regulations under Part B of IDEA (34 CFR §§300.500 through 300.536).

Separate request for a due process hearing
Nothing in the procedural safeguards section of the Federal Regulations under Part B of IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

You can file multiple due process complaints as long as each complaint is about a separate issue

Findings and decision to advisory panel and general public
MDE, after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing to the State special education advisory panel; **and**
2. Make those findings and decisions available to the public.

APPEALS

Finality of Decision, Appeal, Impartial Review

§300.514

Finality of hearing decision
A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions***.

If you disagree with the outcome of the due process hearing, you can appeal it. You must appeal the decision within 90 days of receiving it

Timelines and Convenience of Hearings and Review

§300.515

The MDE must ensure that, not later than **forty-five (45)** calendar days after the expiration date of the **thirty (30)** calendar-day period for resolution meetings **or**, as described under the sub-heading ***Adjustments to the thirty (30) calendar-day resolution period***, not later than **forty-five (45)** calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; **and**
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the **forty-five (45)** calendar-day time period described above at the request of either party (you or the school district).

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

The due process hearing must be at a time and place that is convenient to you

Civil Actions, Including the Time Period in Which to File Those Actions

§300.516

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

If you decide to appeal the due process decision, the appeal must be brought in court (state or federal)

Time limitation

The party (you or the school district) bringing the action shall have **ninety (90)** calendar days from the date of the decision of the hearing officer to file a civil action.

Additional procedures
In any civil action, the court:

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

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

Jurisdiction of district courts
The district courts of the United States have authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

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

Before you file a lawsuit, you usually have to file a due process complaint and go through the resolution process discussed above

The Child's Placement While the Due Process Complaint and Hearing Are Pending

§300.518

Except as provided below under the heading ***Procedures When Disciplining Children with Disabilities***, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the MDE or school district agree otherwise, your child must remain in his or her current educational placement.

This is what's called a "stay put" right. Whenever you file a due process complaint, your child remains in their current educational placement (that is, their services don't change) for the time that you and the school district are resolving the issue

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

If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome

of the proceedings, the school district must provide those special education and related services that are not in dispute (those upon which you and the school district both agree).

If a hearing officer in a due process hearing conducted by the MDE agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

Attorney's Fees §300.517

General
In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorney's fees as part of the costs to you, if you prevail (win).

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorney's fees as part of the costs to a prevailing MDE or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the prevailing MDE or school district, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding *(hearing)*.

Award of fees
A court awards reasonable attorney's fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorney's fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
   (a) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than **ten (10)** calendar days before the proceeding begins;
   (b) The offer is not accepted within **ten (10)** calendar days; **and**
   (c) The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

   Despite these restrictions, an award of attorney's fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.
3. Fees may not be awarded relating to any meeting of the IEP

Committee unless the meeting is held as a result of an administrative proceeding or court action.

4. Fees also may not be awarded for mediation as described under the heading **Mediation**.

A resolution meeting, as described under the heading ***Resolution Process,*** is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorney's fees provisions.

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

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorney's fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
4. The attorney representing you did not provide to the school district the appropriate information in the due process request notice as described under the heading ***Due Process Complaint***.

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

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

Authority of School Personnel §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 **ten (10) school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (which must be determined by the child's IEP Committee), another setting, or suspension. School personnel may also impose additional removals of the child of not more than **ten (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 in placement (see ***Change of Placement Because of Disciplinary Removals*** for the definition, page 31).

The school can suspend your child or place your child in an alternative school setting for **not more than 10 days in a row**.

If your child is suspended for more than ten school days in total during a school year, the school must provide services during any future suspensions or removals

Once a child with a disability has been removed from his or her current placement for a total of **ten (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***) and the disciplinary change of placement would exceed **ten (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 Committee determines the interim alternative educational setting 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 [§300.530(d)(2)] may be provided in an interim alternative educational setting.

If your child is suspended for ten school days or less in a school year, the school does not have to provide services unless it would provide services to a child who does not have a disability

Dependent upon local school board policy, a school district may only be required to provide services to a child with a disability who has been removed from his or her current placement for **ten (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 ten (10) school days** *and the behavior is not a manifestation of the child's disability (see subheading,* ***Manifestation determination****) or who is removed under special circumstances (see subheading,* ***Special circumstances****)* 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, which are designed to address the behavior violation so that it does not happen again.

If your child is removed for **more** than ten days and your child's behavior was **NOT** a manifestation of your child's disability, then the school must provide educational services and conduct a functional behavior assessment

After a child with a disability has been removed from his or her current placement for **ten (10) school days** in that same school year, and **if** the current removal is for **ten (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 the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Committee determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim

alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

Manifestation determination

Within **ten (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 **ten (10) school days** in a row or less and not a change of placement), the school district, you, and other relevant members of the IEP Committee (as determined by you 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 you 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.

The school must hold a meeting called a "manifestation determination" whenever your child is removed from school for more than ten days in a row, **or** for more than 10 days in total when the removals show a pattern of behavior

If the school district, you, and other relevant members of the child's IEP Committee 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, you, and other relevant members of the child's IEP Committee 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, you, and other relevant members of the IEP committee determine that the conduct was a manifestation of the child's disability, the IEP committee 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.

If it is determined that your child's behavior was either caused by your child's disability or was the result of the school district's failure to follow your child's IEP, then the school must conduct a functional behavioral assessment and implement/ review a behavioral intervention plan for your child. The school generally must return your child to your child's placement

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 you 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 Committee) for **not more than forty-five (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 MDE or a school district;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a

These are the circumstances where your child can still be removed even if it is determined that their behavior was a manifestation of their disability

controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the MDE 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 MDE 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 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 because of a violation of a code of student conduct, the school district must notify you of that decision, and provide you with a Procedural Safeguards Notice.

If the school district decides to change your child's placement (either by removing your child for more than ten consecutive days or for a pattern of removals that total more than ten days), the school district must notify you

Change of Placement Because of Disciplinary Removals §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 **ten (10) school days** in a row; **or**
2. Your child has been subjected to a series of removals that constitute a pattern because:
   a. The series of removals total more than **ten (10) school days** in a school year;
   b. Your child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; **and**
   c. Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

These are the two ways your child's suspensions/ expulsion would be a change in placement. When there has been a change in your child's placement, there must be a manifestation determination review (discussed above)

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 §300.531

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

Appeal
§300.532

General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) to request a due process hearing if you disagree with:

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

If you disagree with the school's disciplinary decision, or their decision at the manifestation determination review, you can file a due process complaint

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

Authority of hearing officer

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

1. Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading ***Authority of School Personnel***, or that your child's behavior was a manifestation of your child's disability; **or**
2. Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than **forty-five (45) school days** if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

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

Whenever you 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 Complaint Procedures*** and ***Hearings on Due Process Complaints***, except as follows:

1. The MDE or school district must arrange for an expedited due process hearing, which must occur within **twenty (20) school days** of the date the hearing is requested and must result in a determination within **ten (10)** school days after the hearing.
2. 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 (7) calendar days** of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **fifteen (15) calendar days** of receipt of the due process complaint.

There is a faster timeline for due process complaints that are about disciplinary decisions. You and the school district must have a resolution meeting within a week of receiving the complaint, and the hearing should happen within 15 days of receiving the complaint

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

Placement During Appeals §300.533

When, as described above, you or the school district files a due process complaint related to disciplinary matters, your child must (unless you and the MDE or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

If you file a due process complaint about a disciplinary issue, your child will not automatically return to school. Either your child will remain in the alternative educational setting until the hearing officer makes a decision, or your child will return to school after they finish the term of their suspension

Protections for Children Not Yet Eligible for Special Education and Related Services §300.534

General
If your 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 your child was a child with a disability, then your 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 your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; **or**
3. Your child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by your 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. You have not allowed an evaluation of your child or have refused special education services; **or**
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

Conditions that apply if there is no basis of knowledge
If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child is a child with a disability, as described above under the subheadings ***Basis of knowledge for disciplinary matters*** and ***Exception***, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

If your child does not currently receive services under IDEA but: (1) you have told the school that your child may need services; (2) the school has told you that your child may need services; or (3) you requested an evaluation, then your child is protected by the disciplinary procedures listed in this packet

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your 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 you, the school district must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities

§300.535

If the school district reports your child for committing a crime, the district must send copies of your child's special education and disciplinary records to the authorities

Part B of 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 FERPA.

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

General

§300.148

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

Reimbursement for private school placement

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to your child in a timely manner prior to that enrollment

and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the MDE 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 IEP Committee meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Committee that you were rejecting the placement proposed by the school district to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least **ten (10)** business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the school district of that information;
2. If, prior to your removal of your child from the public school, the school district provided prior written notice to you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
3. Upon a court's finding that your 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 you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for the parents' failure to provide the required notice if: (a) You are not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to your child.

Extended School Year (ESY)

General

§300.106

Extended school year (ESY) is the provision of special education and related services to students with disabilities in accordance with their individualized education program (IEP) beyond the normal school year of the local district and at no cost to the parents of the students.

If your child's IEP Team determines that your child should receive extended school year services, those services must be provided for free

1. Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) *below* and *in State Board of Education Policy 7212.*
2. *ESY* services must be provided only if a child's IEP *Committee* determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that

the services are necessary for the provision of FAPE to the child. *Students with disabilities who turn age twenty-one (21) during the school year and who are eligible for ESY services may be served in an ESY program as determined by the IEP Committee.*

3. In implementing the *ESY* requirements, a public agency may not limit *ESY* services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

Definition

The term *ESY* services means special education and related serves that are provided to a child with a disability beyond the normal school year (*180 days*) of the public agency in accordance with the child's IEP, at no cost to the parents of the child and meet the standards of the State Board of Education.