

Procedural Safeguards Manual for Parents

(Parental Rights in Special Education)

Division of Learning and Results
August 2013



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Department of Education
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Des Moines, Iowa 50319-0146
State Board of Education

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Procedural Safeguards

Introduction

Parents have rights, known as procedural safeguards, which apply to every aspect of the special education process.

State and federal laws and regulations outline what needs to happen to ensure that children with identified disabilities and on an Individualized Education Program (IEP) receive a free appropriate public education (FAPE).

This document serves as *your* procedural safeguards notice and will help you understand the rights available to you and your child through a federal law, the Individuals with Disabilities Education Act (IDEA) and the Iowa Administrative Rules of Special Education. Some of the areas reviewed in this document are:

- Notice
 - Informed Consent
 - Recordkeeping
 - Evaluations,
 - Mediation
 - Due Process
 - Attorney Fees
 - Age of Majority and
 - Discipline
-

Where Can I Find Further Assistance?

Agencies Who Can Help

If you would like further verbal explanation of your rights, contact any of the following for more help:

- Your local district superintendent or principal
 - Your Area Education Agency (AEA)
 - The Iowa Department of Education (DE)
 - The Iowa Parent Training and Information Center, ASK Resource Center
 - Disability Rights of Iowa
 - Centers for Independent Living
-

Local District Superintendent or Principal (LEA)

Both you and the district share in the education of your child. If you or school personnel have concerns about the education of your child, use every opportunity to hold early and open discussions about your concerns. If your child is receiving special education services, become actively involved in the development of your child's IEP.

Area Education Agency (AEA)

Ask for:

- Director of Special Education
- The AEA's Conflict Resolution Coordinator, also known as Resolution Facilitator

- The AEA’s Parent & Educator Connection program

Phone numbers for each AEA:

AEA 1	Elkader	800-632-5918
AEA 267	Cedar Falls	800-542-8375
AEA 8	Pocahontas	800-669-2325
AEA 9	Bettendorf	800-947-2329
AEA 10	Cedar Rapids	800-332-8488
AEA 11	Johnston	800-362-2720
GHAEA	Council Bluffs	800-432-5804
GPAEA	Ottumwa	800-622-0027
NWAEA	Sioux City	800-352-9040

**The Iowa
Department of
Education (DE)**

Division of Learning and Results
Bureau of Learner Strategies and Supports
Grimes State Office Building
400 E 14th Street
Des Moines, Iowa 50319-0146
515-281-3176
515-242-5988 FAX
<http://www.educateiowa.gov/>

**The Iowa
Parent
Training and
Information
Center (PTI)**

ASK Resource Center
5665 Greendale Road, Suite D
Johnston, IA 50131
1-800-450-8667
515-243-1713
FAX 515-243-1902
info@askresource.org
<http://www.askresource.org>

**Disability
Rights Iowa
(DRI)**

400 East Court Avenue Suite 300
Des Moines, Iowa 50309
515-278-2502
515-278-0571 (TDD)
800-779-2502
515- 278-0539 FAX
info@disabilityrightsowa.org
<http://www.disabilityrightsowa.org>

**Centers for
Independent
Living (CIL)**

Central Iowa CIL
4132 E. 10th Street
Des Moines, IA 50309
Phone: 515-563-9337
FAX: 515-563-9337

Evert Conner Rights and Resources CIL
26 E Market Street
Iowa City, IA 52240
Phone: 319-933-3870

Illinois Iowa CIL (IICIL)
3708 11th St., PO Box 6156,
Rock Island, IL 61231
309-793-0090(V/TTY)
1-877-541-2505(V/TTY)
FAX: 309-283-0097
iicil@iicil.com

General Information About Parental Safeguards

When Do I Get a Copy of the Procedural Safeguards?

You will receive a copy of the procedural safeguards for your child with a disability one time a year.

Additionally, a copy also must be given to you:

- Upon an initial referral or your request for evaluation for your child;
 - Upon your filing of a first due process complaint or first state complaint in that school year;
 - Whenever a decision is made to take a disciplinary action that constitute a change of placement; and
 - Upon your request for your procedural safeguards.
-

What Notice Must the DE Give Me About the Procedural Safeguards?

The DE must give notice that is adequate to fully inform you about the procedural safeguards under IDEA. They include:

The Parental Safeguard Manual is available in:

- English
- Spanish
- Bosnian
- Serbo-Croatian
- Vietnamese
- Arabic, and
- Laotian

Note: These translations of the Parental Safeguard Manual are available on the DE web site at:

http://www.educateiowa.gov/index.php?option=com_content&task=view&id=602&Itemid=1604

A description of:

- The children on whom personally identifiable information is maintained;
- The types of information sought;
- The methods the State intends to use in gathering the information (including the sources from whom information is gathered); and
- The uses to be made of the information.
- 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.
- A description of all of the rights of parents and children regarding this information, including the rights under FERPA (34 C.F.R. part 99).

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

NOTES:

Other Sources of Information

Other sources of information about IDEA 2004, the Iowa Administrative Rules of Special Education and other rules and regulations that are important for parents of know:

Web sites with information about parental safeguards:

- Iowa Administrative Rules of Special Education
http://educateiowa.gov/index.php?option=com_content&task=view&id=624&Itemid=592
- Individuals with Disabilities Education Improvement Act (IDEA) 2004
<http://idea.ed.gov>

Note: For your reference, requirements for the contents of the Procedural Safeguard Manual for Parents are found in 20 USC § 1415(d) of the Individuals with Disabilities Education Act (IDEA) 2004.

- Family Educational Rights and Privacy Act (FERPA):
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Other resources and references:

- Working Things Out When Things Go Wrong – a printed document from the Iowa Department of Education (DE)
- National Dissemination Center for Children with Disabilities, NICHY, <http://www.nichcy.org>, is a web site with many publications regarding IDEA 2004, procedural safeguards and other disability information.
- PACER Center, <http://www.pacer.org/legislation/idea/index.asp> has a summary of IDEA 2004 at the time of this printing, as well as other information for families who have children with disabilities.
- The DE website for Conflict Resolution at:
http://educateiowa.gov/index.php?option=com_content&view=article&id=1280&Itemid=3480

Check with your child’s classroom teacher, building principal or AEA representative (the AEA person who most often talks to you about your child) for further information.

NOTES:

Confidentiality of Information & Educational Records

Access to Educational Records

Public agencies must permit you to inspect and review any education records that are collected or maintained or used by the educational agency through provisions in both IDEA and the Family Educational Rights and Privacy Act (FERPA).

The agency must comply with a request to review or inspect the records without unnecessary delay – no longer than 45 calendar days and before any meeting regarding an IEP or any hearing or resolution meeting.

Examining Educational Records

As a parent of a child with a disability, you must be afforded an opportunity to inspect and review all education records of your child with respect to:

- Identification;
 - Evaluation;
 - Educational placement of your child; and
 - The provision of a free appropriate public education (FAPE) to your child.
-

Child's Records

Each agency must provide parents, on request, a list of the types and locations of educational records collected, maintained or used by an agency.

Cost for Copy of Records

Each agency may charge a fee for the copies of records if the fee does not effectively prevent you from your right to review and inspect the records. The agency may not charge a fee to search for or to retrieve the information.

Right to Inspect and Review

The following are included in your right to inspect and review:

- The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- The right to request that the agency provide copies of the records containing the information if failure to provide the copies would effectively prevent you from exercising the right to inspect and review the records;
- The right to have your representative inspect and review the records.

Note: The agency may presume the parent has authority to inspect and review the education records unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

Definition: Personally Identifiable Information

Personally identifiable information means specific information such as:

- Your child's name;
 - Your name as parent;
 - Home address;
 - A social security number; and
 - A listing of personal characteristics that describe a child in a way that other people could identify the child with a reasonable certainty.
-

**Protected
Records**

With the exception of access by parents, and authorized employees, the agency maintaining the records, the district or AEA, must keep a record of parties obtaining access to education records including:

- Name of the party;
- Date access was given; and
- The purpose for which the party is authorized to use the records.

Note: If the record includes information on more than your child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

**Records
Believed to be
Inaccurate**

If you believe that the information collected, maintained or used is inaccurate or misleading or violates the privacy or other rights of your child, you may request the agency that maintains the information to amend the record.

The district or AEA shall decide whether to amend the information in accordance with the request within a reasonable amount of time. If the district or AEA decides to refuse to amend the information, it shall inform you of the refusal and advise you of the right to a hearing. (The hearing requirements are from FERPA and not those in IDEA.)

**FERPA
Hearing**

Upon refusal to amend information in a child's record, the district shall inform you of the refusal and advise you of your right to a hearing according to FERPA requirements.

The hearing will result in one of two decisions:

1. If the decision is that the information is misleading, inaccurate or otherwise in violation of the privacy or other rights of your child, the agency must amend the information accordingly and inform you in writing.
2. If the decision is that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the agency will inform you of the decision. The district or AEA will also inform you of your right to place in the records it maintains on your child, a statement commenting on the information or setting forth your reasons for disagreeing with the decision of the agency.

Note: Any explanation placed in the records of your child must be maintained by the agency as part of the record as long as the record or contested portion is maintained by the agency. If the records or the contested portion is disclosed by the agency to any other party, your explanation must also be disclosed.

**Permission to
Release
Records**

Parental consent, or consent of an eligible child who has reached the age of majority must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies (e.g., another district in which you are going to enroll your child), **unless** the information is contained in education records and FERPA authorizes disclosure without parent consent.

NOTES:

Protecting Confidentiality and Privacy

Each agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages of records.

Other obligations from the law include:

- One official at each agency must assume responsibility for ensuring the confidentiality of personally identifiable information.
 - All people collecting or using personally identifiable information must receive confidentiality and privacy training under Part B of the IDEA and FERPA.
 - Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.
-

Records No Longer Needed

The district and AEA must inform you when personally identifiable information collected, maintained or used under IDEA 2004 is no longer needed to provide educational services to your child.

If the district or AEA determines that the information is no longer needed to provide educational services, then the information must be destroyed at your request.

There is some information in your child's record that is kept as part of a permanent record and may be maintained without time limitations. That information includes such items as name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed.

Parental Consent

Consent

Consent means you:

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

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

Consent for Initial Evaluation

Your district and AEA cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent.

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

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

**Refuse to
Consent for
Initial
Evaluation**

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 district or AEA may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures.

Your district or AEA will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

**Initial
Evaluation
When Ward of
the State**

If a child is a ward of the State and is not living with his/her parent, the district and AEA do not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

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

Note: "Ward of the State," as used in the IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child without a foster parent;
 2. Considered a ward of the State under State law; or
 3. In the custody of a public child welfare agency.
-

**Consent to
Start Special
Education and
Related
Services**

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

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

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

**Refusal of
Consent to
Services**

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

1. Are not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for failure to provide those services to your child; and
 2. Are not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.
-

**Revoking
Consent for
Services**

You may revoke your consent for continued special education and related services for your child.

You must do so in writing.

Before services stop, you must receive a prior written notice from the public agency.

If you revoke your consent for continued special education and related services for your child, the district and AEA do not have to amend your child's special education records because you revoked your consent for further services.

After You Revoke Consent

Your child will be a general education student only. None of the protections of the IDEA will apply to your child.

Consent for Reevaluation

Your district must obtain your informed consent before it reevaluates your child, unless your district can show 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 district or AEA may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation.

As with initial evaluations, your district or AEA does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

Efforts to Obtain Consent

Your district or AEA must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluation and to locate parents of wards of the State for initial evaluations.

The documentation must include a record of attempts in these areas, such as:

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

Other Specific Instances for Consent

The IDEA and its implementing regulations set forth additional times when your consent is required. These involve sharing information about your child.

These times are:

1. Your consent must be obtained the first time the district or AEA seeks to access your public insurance or benefits or private insurance to help pay for providing your child a FAPE.
 2. Your consent must be obtained before the district or AEA releases personally identifiable information to participating agencies who are providing or paying for transition services.
 3. If your child is enrolled or will enroll in an accredited nonpublic school located in a different AEA or district, your consent must be obtained before any personally identifiable information about your child is released between the district and/or AEA where you reside and the district and/or AEA where the accredited nonpublic school is located.
-

Other Information about Consent

Your consent is not required before your district or AEA may:

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

test or evaluation, consent is required from all parents of all children.

Note: Your 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.

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

Participation in Meetings

Meetings Including Parents

As a parent of a child with a disability, you must be afforded an opportunity to participate in meetings with respect to:

- The identification, evaluation, and educational placement of the child; and
 - The provision of a free appropriate public education (FAPE) to the child.
-

Meeting Notices

Each district and AEA must provide notice to ensure that parents of children with disabilities have the opportunity to participate in meetings.

The notice will be provided to you early enough for you to have an opportunity to attend and will provide the following information:

- The purpose,
- Time, and
- Location of the meeting, and
- Who will be in attendance (name and position).

The meeting will be scheduled at a mutually agreeable time and place.

Note: There are additional notice requirements for certain meetings about:

- Children transitioning from Early ACCESS, and
 - Children who are considering postsecondary goals and transition services.
-

What is a Meeting?

Is it a “meeting” whenever public agency employees discuss my child?

No. A meeting does not include:

- Informal or unscheduled conversations involving district and AEA personnel.
 - A conversation on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in the child’s IEP.
 - Preparatory activities that district and AEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
-

Placement Decisions

Each district and AEA must ensure you are a member of any group that makes decisions on the educational placement of your child.

Not Able to Participate

If you cannot participate in a meeting in which a decision is to be made relating to the educational placement of your child, the district and AEA must use other methods to ensure your participation.

Those may include:

- Individual or conference telephone calls, or
 - Video conferencing.
-

Decisions Without Parent Participation

A group may make a decision without your involvement if the district is unable to obtain your participation in the decision.

The school must have a record of its attempts to ensure your involvement.

Independent Educational Evaluations

Definition Independent Educational Evaluation (IEE)

An independent educational evaluation (IEE) is an evaluation of your child that is conducted by a qualified examiner who is not employed by the district or AEA.

The AEA has set forth the criteria for the IEE in its board policy.

Request an IEE

You have a right to obtain an IEE of your child if you disagree with an evaluation of your child obtained by your district and AEA, subject to considerations.

- A parent has the right to an IEE if the parent disagrees with an evaluation obtained by the AEA.
 - A parent is entitled to only one IEE at public expense each time a public agency conducts an evaluation with which the parent disagrees.
 - A parent is not entitled to an IEE until the AEA's evaluation is completed.
-

School Response to IEE Request

If you request an IEE the school or AEA may do 1 or more of the following things:

- The public agency could ask you why you object to the public evaluation, but you are not required to provide this explanation.

Note: An explanation may not unreasonably delay either providing the IEE at public expense or a school or AEA initiated due process hearing.

- The public agency could agree with you and provide the IEE at public expense.
- The public agency could ask for a hearing to show why the completed evaluation is appropriate. In that case, an administrative law judge (ALJ) would make a decision about whether the district or AEA is correct.

Note: Even if the evaluation is determined to be appropriate through a hearing process, you may still get an IEE; but the district or AEA will not be required to pay for it.

Parent Initiated IEE If the evaluation meets the criteria of the AEA, the information must be considered in decisions made with respect to FAPE for your child.

In a due process hearing, any party may use the information as evidence.

Paying for an IEE Unless the public agency requests a due process hearing about whether it should pay for the IEE, it pays for the full cost of the IEE or ensures that the IEE is at no cost to you.

If an ALJ requests an IEE, it must be at public expense.

Other Things to Know

- If you are seeking an IEE at public expense, the AEA will provide information about where an IEE may be obtained and the agency criteria.
- The AEA may not impose conditions or timelines, other than its criteria in getting the IEE.
- The AEA criteria must be consistent with your right to an IEE.
- You are entitled to only one IEE of your child at public expense each time your district or AEA conducts an evaluation of your child with which you disagree.

Prior Notice

Purpose Your participation in decisions for your child’s education is important; the laws require assurances that you are involved during specific activities along the way. Those specific activities and decisions affect your child’s special education services.

“Prior notice” is a written communication to you from the public agency when the public agency is:

- Proposing or refusing to initiate, or
- Proposing or refusing to change the:
 - Identification,
 - Evaluation or
 - Educational placement or,
 - Provisions of FAPE for your child.

The notice must be given to you a reasonable time before the district or AEA implements that action, but after the decision on the proposal or refusal has been made.

Definition It is a written communication from a district or AEA that includes information about a variety of items, depending on the issue.

You may get prior notice about anything that is proposed or refused for your child in relation to special education services.

Prior Written Notice must be provided for:

- The initiation of a service.
- A change in a special education service.
- Issues related to identification of special education services.
- The educational placement of your child, if there is a change.
- Evaluations that are needed.

- Anything related to the provision of FAPE if the IEP Team's inquiry leads to the conclusion that a substantial or material change has occurred.
-

Information in Notice

Notice must include:

1. A description of the proposed or refused action.
 2. An explanation of why an action is being proposed or refused.
 3. A description of each evaluation procedure, assessment, record or report that the agency used as a basis for the proposed or refused action.
 4. A statement saying you and/or your child has protection under the procedural safeguards in the law. If this notice is not an initial referral for evaluation you will be told how you may get a copy of these procedural safeguards.
 5. Sources for parents to contact to obtain assistance in understanding the sections of the law covered in the procedural safeguards manual.
 6. A description of other options the IEP Team considered and the reasons why those options were rejected.
 7. A description of any other factors that are relevant to the agency's decision to propose or refuse the action.
 8. Notice requires parents be informed where they can get a copy of the procedural safeguards.
-

Notice Looks Like

Prior Written Notice will be a form or a written letter.

The notice must be written in language understandable to the general public; and provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

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

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

If your public agency offers parents the choice of receiving documents by email, you may choose to receive prior written notice by email.

NOTES:

Dispute Resolution Options

Introduction

There are several options if you have a disagreement with a district, an AEA, or another public agency involved in your child's education.

IDEA outlines procedures for:

- State Complaints;
 - Due Process Complaints;
 - Due Process Hearings.
-

State Complaints

Any individual or organization may file a State complaint alleging a violation of any Part B requirement by a district (LEA), Area Education Agency (AEA), State Educational Agency (SEA), or any other public agency.

SEA staff must resolve a State complaint within 60-calendar-days, unless the timeline is extended.

Due Process Complaints

Only you or a district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the:

- Identification of a child with a disability;
- Evaluation of a child with a disability;
- Educational placement of a child with a disability, or
- Provision of a free appropriate public education (FAPE) for the child.

An administrative law judge must hear a due process complaint and issue a written decision within 45-calendar-days unless the ALJ grants a specific extension of the timeline at your request or the district's request.

Due Process Hearings

Whenever a due process hearing request is filed, you, the AEA, or the district involved in the dispute must have an opportunity for an impartial due process hearing.

The DE must ensure that not later than 45 days after the expiration of the 30 calendar day period for resolution meetings:

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

An ALJ may grant specific extensions of time beyond the 45 calendar days at the request of either party.

Note: The 30 day calendar period begins when the district, AEA, any other parties and the DE all receive the due process hearing request.

NOTES:

State Complaint Procedure

Procedure The DE has written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another state, through the filing of a state complaint with the DE.
2. Disseminating of state procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

In resolving a state complaint in which the DE has found a failure to provide appropriate services, the DE must address:

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

State Complaint Time Limits

The DE includes in its complaint procedures a time limit of 60 calendar days after a State complaint is filed to:

- Carry out an independent on-site investigation, if the DE determines that an investigation is necessary;
 - Give the filer of the state complaint the opportunity to submit additional information, either orally or in writing, about the allegations in the state complaint;
 - Provide the district or AEA with the opportunity to respond to the state complaint, including, at a minimum:
 - At the discretion of the district or AEA, a proposal to resolve the state complaint; and
 - With the consent of the parent (or the individual or organization that filed the state complaint), an opportunity for the district or AEA to engage the parent or individual or organization in mediation, or alternative means of dispute resolution.
 - Review all relevant information and make an independent determination as to whether the district or the AEA is violating a requirement of IDEA.
 - Issue a written decision to the filer of the state complaint that addresses each allegation in the state complaint and contains:
 - Findings of fact and conclusions; and
 - The reasons for the DE's final decision.
-

State Complaint Extension Timelines

The DE's procedures also:

- Permit an extension of the time limit only if:
 - Exceptional circumstances exist with respect to a particular complaint; or
 - The parent and the district or AEA agree to extend the time to conduct mediation or other dispute resolution activities.
- Include procedures for effective implementation of the DE's final decision, if needed, including:
 - Technical assistance activities;
 - Negotiations; and
 - Corrective actions to achieve compliance.

If a written complaint is received that is also the subject of a due process hearing, the State must set aside the state complaint until the conclusion of the hearing. If an issue raised in a state complaint has previously been decided in a due process hearing involving the same parties:

- The due process hearing decision is binding on that issue; and
- The SEA must inform the filer of the state complaint to that effect.

Filing a State Complaint

An organization or individual may file a signed written complaint.

The complaint must include:

1. A statement that a district or AEA has violated a requirement of Part B of IDEA 2004;
 - The facts on which the statement is based;
 - The signature and contact information for the complainant; and
 - If alleging violations about a specific child:
 - The name and address of the residence of the child;
 - The name of the school the child is attending;
 - In the case of a homeless child or youth (within the meaning of § 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - A description of the nature of the problem of the child, including facts relating to the problem; and
 - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
2. The state complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.
3. The party filing the state complaint must forward a copy of the complaint to the district and AEA serving the child at the same time the party files the complaint with the DE.

A model form to file a state complaint can be found on page 40.

Due Process Complaint (also known as request for Due Process Hearing)**When to File a Due Process Complaint**

You may file a due process complaint, also known as a due process hearing request, relating to your child and referring to a proposal or refusal to initiate or change the:

- Identification;
 - Evaluation;
 - Educational placement of your child with a disability; or
 - Provision of FAPE to your child.
-

Filing Time Limit

The due process hearing request must allege that a violation took place not more than two years before you or the district knew or should have known about the alleged action that forms the basis for the due process request.

Exceptions to Time Limits

The time limit shall not apply if you were prevented from requesting the hearing for the following reasons:

- Specific misrepresentations by the district or AEA that it had resolved the issues identified in the hearing request; or
 - The district or AEA withheld information from you that it was required to provide you as required by IDEA.
-

**Obtaining
Legal
Assistance**

The DE must inform you of any free or low-cost legal and other relevant services available in the area if:

- You request the information; or
 - You or the agency requests a due process hearing.
-

**Request for
Due Process
Hearing
Requirements**

The due process hearing request must include:

- The name of your child.
- The address of your child’s residence.
- The name of your child’s school and AEA.
- A description of the nature of the problem of your child relating to the proposed or refused action, including facts relating to the problem.
- A proposed resolution of the problem to the extent known and available to you or the district or AEA at the time.

You will not have a due process hearing until you or your attorney files a due process hearing request that meets all requirements.

A model form to file a due process hearing request is found on page 42.

Note: In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the child’s contact information, and the name of the child’s school.

**Determining if
Request Meets
All
Requirements**

The due process hearing request must be considered sufficient unless the party receiving the due process hearing request notifies the ALJ and all parties in writing within 15 calendar days of its receipt that the request does not meet the requirements.

Within five calendar days of receipt of notification, the ALJ must make a determination on whether the request meets the requirements, and immediately notify the parties in writing of that determination.

**Sending Due
Process
Hearing
Request**

You are required to send the due process hearing request to:

- Your child’s resident district;
- AEA;
- DE; and
- Any other parties named.

This request must remain confidential.

All timelines associated with a due process hearing request start only when all required copies have been received by all parties.

The DE is responsible for conducting the impartial due process hearing.

**Changing Due
Process
Hearing
Request**

You may make changes (“amendment”) to your due process hearing request only if:

1. The other parties consent to the changes in writing and are given the chance to resolve the due process hearing request through a resolution meeting; or
2. The ALJ grants permission, except that the ALJ may only grant permission to amend at any time not later than five days before the due process hearing begins.

When a due process hearing request is changed, the timelines all begin again for the impartial due process hearing or the resolution meeting.

**District/AEA
Response to
Request**

If the district and/or AEA has not sent a prior written notice to you regarding the subject matter contained in the due process hearing request you wrote, the district must, within 10 calendar days of receiving the due process hearing request, send to you a response that includes:

- An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;
- A description of other options that your child’s IEP Team considered and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- A description of the other factors that are relevant to the agency’s proposed or refused action.

The district and AEA receiving a due process hearing request must, within 10 calendar days of receiving the due process hearing request, send to you a response that specifically addresses the issues in the due process hearing request.

Copies of this response should also be sent to the DE.

Civil Action

Civil Action

Any party 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.

Such action may be brought in state or federal district court, without regard to the amount in controversy.

Any party who disagrees with the decision of the ALJ shall have 90 calendar days from the date of the decision of the ALJ to file a civil action.

In any civil action, the court:

- Receives the records of the administrative proceedings;
- Hears additional evidence at the request of a party; and
- Bases its decision on the preponderance of the evidence;
- Grants the relief the court determines to be appropriate.

Resolution Meeting

**Resolution
Meeting**

Within 15 calendar days of receiving notice of your due process hearing request, and before the due process hearing, the district and AEA must:

- Convene a meeting with you and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in your due process hearing request that:
 - Must include a representative of the district and AEA who has decision-making authority

- o on behalf of the district and AEA.
 - o May not include an attorney of the district or AEA unless an attorney accompanies you.
-

Purpose

The purpose of the resolution meeting is for you to discuss your due process hearing complaint request, and the facts that form the basis of request for the hearing, so that the district and AEA have the opportunity to resolve the dispute.

Holding a Resolution Meeting

A resolution meeting must be held unless:

- You, the district, and AEA agree in writing to waive the meeting; or
- You, the district, and AEA agree to use the mediation process available through the DE.

The parties identified in the due process hearing request will need to send documentation to the DE demonstrating that the resolution meeting was held **OR** that all parties agreed to waive the resolution meeting.

Resolution Meeting Attendees

You, the district, and AEA determine the relevant members of the IEP Team to attend the resolution meeting.

Resolution Period

The 30 calendar day period begins when the district, the AEA, any other parties, and the DE all receive the due process hearing request.

During that time there are opportunities to resolve the issues in the due process hearing request.

If the district has not resolved the issues presented in the request to your satisfaction within 30 calendar days, the due process hearing must occur.

If the district fails to hold the resolution meeting within 15 calendar days of receiving notice of your request, **OR** fails to participate in the resolution meeting, you may ask an ALJ to order that the 45 calendar day due process hearing timeline begin.

Importance of the Resolution Meeting

When you have filed a due process hearing request, and you, the district/AEA or other parties have not waived the resolution meeting, your failure to participate in the resolution meeting has a consequence.

If after making reasonable efforts and documenting the efforts, the district is not able to obtain your participation in the resolution meeting, the district or AEA may, at the end of the 30 calendar day resolution period, **request that an ALJ dismiss your due process hearing request.**

Documentation of the efforts must include a record of attempts to arrange a mutually agreed upon time and place such as:

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

Resolution Meeting Settlement Agreement

If a resolution to the dispute is reached at the resolution meeting you and the other parties must execute a legally binding agreement that is:

- Signed by you and a representative of the district who has the authority to bind the district; and
 - Enforceable in any State court of competent jurisdiction or in a district court of the United States.
-

Resolution Meeting Review Period

If you and the district/AEA enter into an agreement as result of a resolution meeting any party (you, the district, or the AEA), may void the agreement within 3 business days of the time that both you and the district/AEA signed the agreement.

Mediation

Mediation Availability

Mediation must be made available to you to allow you and the public agencies to resolve disagreements involving any matter under IDEA.

You can ask for mediation:

- Without filing a due process complaint.
- Before filing a due process complaint.
- After filing a due process complaint.

The DE must ensure that procedures are established and implemented to allow parties to resolve disputes through a mediation process.

The request for mediation form is found on page 44.

Mediation Procedures

The procedures must ensure that the mediation process:

- Is voluntary on the part of the parties (you, the district and the AEA);
 - Is not used to deny or delay your right to a due process hearing or to deny any other rights you have under IDEA; and
 - Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
-

Mediators

The DE must:

- Maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
 - Select mediators on a random, rotational, or other impartial basis.
 - Bear the cost of the mediation process, including the costs of meetings with a disinterested party when the choice is to not use mediation.
-

Mediator Impartiality

An individual who serves as a mediator:

- May not be an employee of the DE, the AEA, or the district that is involved in the education or care of the child; and
- Must not have a personal or professional interest that conflicts with the mediator's objectivity.

Although a mediator is paid by the DE, they are not considered an employee of the DE.

Mediation Process

- Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient for you and the other parties.
 - If you and the district resolve a dispute through the mediation process, you, the district, and AEA must enter into a legally binding agreement that:
 - States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
 - Is signed by you and a designee who has the authority to represent the LEA, AEA or other parties.
 - A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.
 - The parties to mediation will be required to sign a confidentiality pledge prior to start of the mediation.
-

Not Sure About Using Mediation

The AEA may establish procedures to offer to parents and districts that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party.

A disinterested party is one of the following:

- A person under contract with an appropriate alternative dispute resolution entity; or
- ASK Resource Center (The Iowa PTI); or
- A community parent resource center.

The disinterested party would explain the benefits of and encourage the use of the mediation process to you.

Child's Status During Mediation

Except for mediations involving disciplinary removals (see pages 26-30), while a mediation is pending, and for ten days after any such mediation conference at which no agreement is reached, unless the state or local agency and the parents of the child agree otherwise, the child involved in any such mediation conference must remain in his or her current educational placement.

Impartial Due Process Hearing

Impartial Due Process Hearing

Whenever a due process hearing request is filed, you, the AEA, or the district involved in the dispute must have an opportunity for an impartial due process hearing.

- The DE arranges for the hearing.
 - A person with the title of administrative law judge (ALJ) listens to the evidence at a due process hearing and makes a decision.
 - The DE must keep a list of the persons who serve as ALJs. The list must include a statement of the qualifications of each of those persons.
-

**Administrative
Law Judge
(ALJ)**

At a minimum, an ALJ must not be:

- An employee of the DE, the AEA or the district that is involved in the education or care of the child; or
- A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

An ALJ must:

- Possess knowledge of, and the ability to understand, the provisions of the IDEA 2004, Federal and State regulations pertaining to IDEA, and legal interpretations of the IDEA by Federal and State courts;
- Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

Although an ALJ is paid by an agency, they are not considered an employee of the agency.

**Placement of
Child**

Except for hearings involving disciplinary removals (see pages 26-30), your child must remain in his or her current educational placement during the period of the impartial due process hearing, unless all parties agree otherwise.

If a child is in an interim alternative educational placement at the time of the impartial due process hearing, the child must remain in that setting pending the decision of the ALJ or the expiration of the time period occurs.

If the due process hearing request involves an application for initial admission to public school, your child, with your consent, must be placed in the public school until the completion of the hearing.

If the decision of an ALJ in a due process hearing conducted by the DE agrees with you that a change of placement is appropriate, that placement must be treated as an agreement between the State and you.

**Issues
Discussed at
Hearing**

The party requesting the due process hearing shall not be allowed to raise any issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees.

**Time Limit for
Request of Due
Process
Hearing**

You, the district, or AEA must request an impartial hearing within two years of the date that you, the district, or AEA knew or should have known about the alleged action that forms the basis of the due process hearing request.

The time limit does not apply if you were prevented from filing a due process hearing request due to:

- Specific misrepresentations by the district or AEA that it had resolved the problem forming the basis of the due process hearing request; or
 - The district or AEA withheld information from you that was required to be provided to you under IDEA.
-

Rights During a Hearing

Any party to a hearing conducted has the right to:

- Be accompanied and advised by a lawyer and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 - Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
 - Obtain a written or electronic, word-for-word record of the hearing; and
 - Obtain a written or electronic finding of fact and decisions.
-

Disclosure of Additional Information

At least five business days before a due process hearing, you and all other parties must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the other parties intend to use at the hearing.

An ALJ 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 parties.

Parent Rights

When you are involved in hearings you must be given the right to:

- Have your child, who is the subject of the hearing, present;
- Open the hearing to the public; and
- Have the record of the hearing and the findings of fact and decisions provided at no cost to you.

The due process hearing must be scheduled at a time and place that is reasonably convenient to you and your child.

Grounds for ALJ Decision

An ALJ must make a decision on substantive grounds based on a determination of whether the child received a FAPE.

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

- Impeded your child's right to a FAPE;
- Significantly impeded your opportunity to participate in the decision-making process regarding the provision of a FAPE to your child; or
- Caused a deprivation of educational benefit.

Nothing in these provisions shall mean an ALJ can not order a district or AEA to comply with IDEA's procedural requirements.

Additional Hearing Requests

Nothing prevents you from filing a separate due process hearing request on an issue separate from a hearing request already filed.

Finality of ALJ Decision

A decision made in a hearing is final, including a hearing related to disciplinary procedures, except that any party involved in the hearing may appeal the decision to court. A party who disagrees with the ALJ's decision, has the right to bring a civil action challenging the due

process hearing decision. Such action may be brought in state or federal district court, without regard to the amount in controversy.

Others Informed of Decision

The DE, after deleting any personally identifiable information, must:

- Transmit the findings and decisions to the Iowa Special Education Advisory Panel; and
- Make those findings and decisions available to the public.

Timeline for Hearing Decision

The DE must ensure that not later than 45 days after the expiration of the 30 calendar day period for resolution meetings or the adjusted period for resolution meetings:

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

An ALJ may grant extensions beyond the 45 calendar day at the request of either party.

Rule of Construction

Definition and Purpose

Nothing in 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 right of children with disabilities.

An exception is before the filing of a civil action under these laws seeking relief that is also available under IDEA, the due process procedures must be exhausted to the same extent as would be required if the party filed the action IDEA.

This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process hearing request, resolution meeting and impartial due process hearing procedures) before going directly into court.

Attorney Fees

Award of Attorney Fees

In any action or proceeding brought the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing party.

Determining Reasonable Fees

Fees must be based the rates:

- In the community where the action or hearing arose; and
- On the kind and quality of services furnished.

No bonus or multiplier may be used in the calculation of the fees.

Fees to be Paid by Your

If your attorney filed a due process complaint the court, in its discretion, may award reasonable attorney's fees as part of the costs to a prevailing SEA, AEA or LEA, if the court

Attorney finds the due process complaint is:

- Frivolous, unreasonable or without foundation; or
- Continues to litigate after the litigation clearly becomes frivolous, unreasonable or without foundation.

Fees to be Paid by You or Your Attorney The court, in its discretion, may award reasonable attorney’s fees as part of the costs to a prevailing SEA, AEA or LEA, if your request of a due process complaint hearing or later court case was presented for any improper purpose, , such as:

- To harass;
- To cause unnecessary delay; or
- Unnecessarily increase the cost of the action or proceeding.

Prohibited Fees and Related Costs Attorney fees and related costs may not be reimbursed for services performed subsequent/after the time of a written offer of a settlement to you, if:

- The offer to settle the dispute is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedures; or
- In the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
- The offer is not accepted within 10 calendar days; and
- The court of ALJ finds that the relief finally obtained by the parents is not more favorable to parents than the offer of settlement.

Attorney fees may not be awarded for any meeting of the IEP Team, unless the meeting is convened as a result of an administrative proceeding or judicial action.

A resolution session shall not be considered a meeting convened as a result of an administrative hearing or judicial action or an administrative hearing and attorney fees may not be awarded.

Exception to Settlement Limitation An award of attorney fees and related costs may be made to a parent who:

- Is the prevailing party.
- Is substantially justified in rejecting a settlement offer.

Reducing Attorney Fees Attorney fees may be reduced if the court finds:

- You, or your attorney, unreasonably protracted the final resolution of the controversy;
- The amount unreasonably exceeds the hourly rate prevailing in the community;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing the parent did not provide the district or the AEA the appropriate information in the due process hearing request notice.

Exception to Reduction Provision of reducing attorney fees do not apply if the court finds the LEA, AEA or SEA:

- Unreasonably protracted the final resolution of the action
- There was a violation of Section 615 of IDEA, the IDEA procedural safeguards section.

Notes:

Behavior and Discipline Procedures

Authority of School Personnel

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

General To the extent that they also take such action for children without disabilities, school personnel may, for not more than 10 school days in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension.

School personnel may also impose additional removals of the child of not more than 10 school days in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see the heading “Change of Placement Because of Disciplinary Removals” for the definition).

Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, the school district must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading “Services.”

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

Services

More Than 10 Days A child with a disability who is removed from the child’s current placement for more than 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 the subheading, “Special Circumstances”) must:

- Continue to receive educational services (have available a free appropriate public education), so as 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; and
 - 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.
-

Less Than 10 Days

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

If the removal is a change of placement (see the heading, “Change of Placement Because of Disciplinary Removals”), the child’s IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child’s IEP.

Manifestation Determination

Definition

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for 10 school days in a row or less and not a change of placement), the school district, you, and other relevant members of the IEP Team (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:

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

Manifestation as a Result of Disability

If the review determines that either of those conditions was met, the conduct must be determined to be a manifestation of the child’s disability.

Result of Failure to Implement the IEP

If the review determines 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.

Action When a Result of Manifestation of Disability

If the review determines that the conduct was a manifestation of the child’s disability, the IEP Team must either:

- 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
- If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading “Special Circumstances,” the school district must return your child to the placement from which your 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 your child’s disability, school personnel may remove a student to an interim alternative educational setting (determined by the child’s IEP Team) for not more than 45 school days, if your 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 Iowa Department of Education or a school district;
 2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the Iowa Department of Education 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 Iowa Department of Education or a school district.
-

**Special
Circumstances
Definitions**

- Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
 - Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
 - Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
 - Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.
-

Notification

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

Appeal

General

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

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

The school district may file a due process complaint 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
ALJ**

An ALJ must conduct the due process hearing and make a decision. The ALJ may:

1. Return your child with a disability to the placement from which your child was removed if the ALJ determines that the removal was a violation of the requirements described under the heading “Authority of School Personnel,” or that 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 45 school days if the ALJ determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.
 3. 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.
-

Expedited Due Process Hearing Procedures

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, except as follows:

- The Department of Education must arrange for an expedited due process hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing.
- Unless you and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days of receiving notice of the due process complaint.
- The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.

You or the school district may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings.

Placement During Appeals

General

When you or the school district file a due process complaint (or request mediation) related to disciplinary matters, your child must (unless you and the Department or school district agree otherwise) remain in the interim alternative educational setting:

- Pending the decision of the ALJ, 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.

This is an exception to the general rule that the child remains in the current placement while a due process complaint or mediation is pending.

Change of Placement Because of Disciplinary Removals

General

A removal of your child with a disability from your child’s current educational placement is a change of placement if:

1. The removal is for more than 10 school days in a row; or
2. Your child has been subjected to a series of removals that constitute a pattern because:
 - a. The series of removals total more than 10 school days in a school year;
 - b. Your child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
 - c. Additional factors, such 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.

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.

Whether in-school suspension counts as a day of removal depends on if the district can answer all three of these questions “yes.”

1. Will your child be able to appropriately participate in the general education curriculum?
2. Will your child be able to receive the services specified in your child’s IEP?
3. Will your child be able to participate with children without disabilities to the extent provided in your child’s current placement?

Determination of Placement

Authority The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are changes of placement, and removals under the block headings of “Additional Authority” and “Special Circumstances.”

Protections for Children Not Yet Eligible for Special Education

General Information If your child does not have an IEP and violates a student code of conduct, you may assert any of the protections in this notice if both of the following are true:

1. The district had knowledge that your child had a disability, and
2. The district had that knowledge before your child violated the student code of conduct.

Definition of Prior Knowledge A child who is not eligible for special education and related services:

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

- The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;
- The parent requested an evaluation related to eligibility for special education and related services under IDEA; or
- The child’s teacher or other district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the district’s director of special education or to other supervisory personnel of the district.

Exceptions to Prior Knowledge A district would not be deemed to have such knowledge if:

- The child’s parent has not allowed an evaluation of the child or refused special education services; or
- The child has been evaluated and determined to not be eligible under the IDEA.

No Prior Knowledge

If prior to taking disciplinary measures against the child, a district does not have knowledge that a child is a child with a disability, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

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

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

If the child is determined to be a child with a disability, taking into consideration information from the evaluation and information provided by the parents, the district must provide special education and related services in accordance with IDEA.

Referral To and Action by Law Enforcement and Judicial Authorities

Referring Child to Law Enforcement

IDEA does not:

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

District Responsibility

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

- Must ensure that copies of the child’s special education and disciplinary records are transmitted to the law enforcement agency; and
 - May transmit copies of the child’s special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).
-

Provisions for Surrogate Parents

Appointing Surrogate Parents

Each district, AEA, and the state must ensure that the rights of a child are protected when:

- No parent can be identified;
 - The district or AEA, after reasonable efforts, cannot locate a parent;
 - The child is a ward of the State under the laws of Iowa;
 - In the case of a child who is a ward of the State, the judge presiding over the child’s case alternatively may appoint a surrogate parent (The criteria are listed below.); or
 - The child is an unaccompanied homeless youth.
-

**AEA
Responsibility**

The duties of an AEA include the assignment of an individual to act as a surrogate for the parents. This must include a method for:

- Determining whether a child needs a surrogate parent;
 - Assigning a surrogate parent to the child.
-

**Surrogate
Parent Criteria**

The AEA may select a surrogate parent in any way permitted under State law. The AEA must ensure that a person selected as a surrogate parent:

- Is not an employee of the DE, the AEA, the district, or any other agency that is involved in the education or care of the child;
- Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
- Has knowledge and skills that ensure adequate representation of the child.

Although a surrogate parent may be paid by an agency, they are not considered an employee of the agency.

**Unaccompanied
Homeless Youth**

In the case of an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates, until a surrogate can be appointed who meets all of the requirements.

**Responsibilities
of Surrogate
Parent**

The surrogate parent may represent the child in all matters relating to:

- The identification, evaluation, and educational placement of the child; and
 - The provision of a free appropriate public education (FAPE) to the child.
-

**Appointment of
Surrogate
Parent**

The AEA must appoint a surrogate not more than 30 days after an AEA determines that the child needs a surrogate parent.

Transfer of Rights to the Child

**Transfer of
Educational
Record Rights**

Iowa provides policies and procedures of the extent to which children are afforded rights of privacy, taking into consideration the age of your child and type or severity of the disability.

Educational record rights transfer to your child at 18.

Educational records shall be made available to the parents if the eligible individual is determined to be a dependent student as defined in the Internal Revenue Code.

**Transfer of
Rights: IDEA**

A parent's rights under the IDEA will transfer to your child at the age of majority.

The age of majority is 18 in Iowa, and in these instances:

- All minors attain their majority through marriage;
- A person who is less than 18 but who is tried, convicted, and sentenced as an adult.

An exception to age of majority at 18 is a child with a disability who has legally been determined to be incompetent under Iowa law.

Notification of Transfer of Rights

The district will provide notice required under the law to both you and your child. All other rights given to you will transfer to your child (this includes youth who are incarcerated in a juvenile or an adult Federal, Iowa or local correctional institutions).

Beginning at least one year before your child reaches the age of majority under Iowa law, your child's IEP shall include a statement that he or she has been informed of the special education rights that will transfer to your child at the age of majority.

As a parent, you will receive the notices required under the law. You will be able to attend and participate at IEP meetings when the student, district or AEA invites you.

There may be situations where you will be allowed to continue to make decisions for your child, even after your child has attained the age of majority. For example, a court could appoint you as your adult child's guardian, with the power to make educational decisions.

For more information about situations where you would be able to make decisions for your adult child, contact your AEA or one of the organizations listed on pages 1 through 3.

Unilateral Placement of Children by Parents in Private Schools When a Free Appropriate Public Education (FAPE) is an Issue

Private School or Facility Costs

IDEA does not require that the district or AEA pay for the cost of education in a private school or facility, including special education and related services for your child with a disability, if:

- The district made FAPE available to your child; and
- You elected to place the child in a private school or facility.

If there is a disagreement between you and district regarding the availability of an appropriate program for your child, the question of who will pay is subject to an impartial due process hearing.

Note: Iowa law requires children with disabilities who are enrolled by their parents in Iowa accredited nonpublic schools receive special education and related services provided by a public agency in the manner and to the same extent as children with disabilities in public schools..

Reimbursement for Private School Placement

If, prior to enrolling your child in a private school without consent or referral by the district, your child had been determined an eligible individual under IDEA and received special education and related services at school, a court or an ALJ may require the district to reimburse you for the cost of the enrollment if:

- The court or ALJ finds that the agency had not made FAPE available to your child in a timely manner prior to the enrollment in the private school; and
- The private placement is appropriate.

Note: An ALJ or court may find the private placement appropriate even if it does not meet

the state standards that apply to education provided by DE, AEAs, and districts.

**Reimbursement
Reduced or
Denied**

Reimbursement may be reduced or denied if:

- At the most recent IEP meeting you attended prior to the removal you did not inform the IEP Team that you were rejecting the placement proposed to provide a FAPE to your child, including stating your:
 - concerns with the proposed placement and
 - intent to enroll your child in a nonpublic school at public expense.
 - You did not give written notice 10 business days (including any holidays that occur on a business day) before the removal including your concerns and the reasons why;
 - Prior to the removal the district or AEA requested an evaluation and you did not make the child available; or
 - If a court finds that your actions were unreasonable.
-

**Exceptions to
Reduction or
Denial**

According to IDEA, the cost of reimbursement must not be reduced or denied if:

- The district prevented you from providing the required notice.
- You did not get notice of these requirements.
- Compliance would likely result in physical harm to the child.

The costs of reimbursement may, at the discretion of the court or an ALJ, not be reduced or denied for failure to provide the required notice if:

- You are illiterate and unable to write in English; or
 - Compliance would likely result in serious emotional harm to your child.
-

NOTES:

Appendix A: Definitions

Why are specific words, used in a legal context, important to understand?

Because the language used in law is so specific, we have included a few definitions to help you understand the law. As parents, you need to have an increased awareness of what you are reading – ‘must’ and ‘shall’ in the law are different from ‘may’, as an example. *Must* and *shall* are ‘need to happen’ items. May suggests there is a choice to do something or not do something. Not every term defined in the law is included here. Talk to your district personnel, AEA consultants, other parents, Parent & Educator Connection (PEC) program staff in your AEA, and ASK Resource Center (PTI) staff for help in understanding what some other words mean.

Day; Business Day; School Day

Day means calendar day unless otherwise indicated as business day or school day. Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of a business day). School day has the same meaning for all children in school, including children with and without disabilities.

Free Appropriate Public Education or FAPE

Special education and related services that

1. are provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of the State, including the requirements of IDEA 2004;
3. include an appropriate preschool, elementary school, or secondary school education, and
4. are provided in conformity with an individualized education program (IEP).

Homeless Children

The meaning given the term in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.
The term “homeless children and youths” --
(A) means individuals who lack a fixed, regular, and adequate nighttime residence; and
(B) includes--
(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings
(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
(iv) migratory children who qualify as homeless because the children are living in circumstances described in clauses (i) through (iii).

Individualized Education Program or IEP

A written record of an eligible individual’s special education services developed, reviewed, and revised with an IEP Team. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary for the eligible individual to receive needed services appropriate to the individual’s special learning needs.

Individualized Education Program Team or IEP Team

A group of individuals that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

Native Language

When used with respect to an individual who is limited English proficient, means the following:
The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child
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 an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

Parent

Means:

- A natural or adoptive parent of a child;
- A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- A guardian (but not the State if the child is a ward of the State);
- An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- A surrogate parent who has been appointed.

Personally Identifiable

Information that contains:

- The name of the child, the child's parent, or other family member;
- The address of the child;
- A personal identifier, such as the child's social security number or student number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Prior Written Notice

Prior Written Notice is the notice to parents of the action proposed or refused as a part of the special education IEP process.

Parents have the right to receive written notice prior to when the district or area education agency (AEA) proposes or refuses to initiate or change the identification, evaluation, or placement of their child or the provision of a free appropriate public education.

This notice must be provided within a reasonable time of any proposed action.

The proposal or refusal must be an issue over which an IEP team has the authority to make a decision.

Appendix B: Definitions- Special Disciplinary Circumstances

Controlled Substance

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))

For a listing, check

<http://www.justice.gov/dea/pubs/scheduling.html>

Illegal Drug

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 the Controlled Substances Act or under any other provision of Federal law.

Serious Bodily Injury

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.

The term "serious bodily injury" means bodily injury, which involves—

A substantial risk of death;

Extreme physical pain;

Protracted and obvious disfigurement; or

Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

http://www.law.cornell.edu/uscode/18/usc_sec_18_00001365----000-.html

Weapon

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.

The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

http://www.law.cornell.edu/uscode/18/usc_sec_18_00000930----000-.html

Appendix C: Acronyms

AEA Area Education Agency

ALJ Administrative Law Judge

BIP Behavioral Intervention Plan

BP Behavior Plan

CIL Center for Independent Living

DE Department of Education

IDEA Individuals with Disabilities Education Act

IEE Independent Educational Evaluation

IEP Individualized Education Program

FAPE Free Appropriate Public Education

FERPA Family Educational Rights and Privacy Act

LEA Local Education Agency

MD Manifestation Determination

SEA State Education Agency

Appendix D: Model Forms

On the following three pages are model forms for the three dispute resolution options described in this Manual. There is a model form to file a state complaint, to request a mediation conference, and to file a due process complaint.

You do not have to use the forms if you want to use one of these options. If you do not use a form, you need to make sure all of the required information is in the written document you send to your child's school, your child's AEA, and the Iowa Department of Education.

If you have questions about any of these forms, please contact your child's school, your child's AEA, or one of the resources listed on pages 1 through 3.



Model Form: IDEA State Complaint

Use this form if you want to file an IDEA state complaint. That process is explained on pages 14 through 16 of the *Procedural Safeguards Manual for Parents (Parental Rights in Special Education)*. After you complete this form, send copies to

- (1) the school district(s) involved,
- (2) the AEA(s) involved, and
- (3) the Iowa Department of Education, Grimes State Office Building, 400 E. Fourteenth St., Des Moines, IA 50319-0146.

Fill out this form completely. Use additional sheets of paper, if necessary.

Date: _____ **I am filing an IDEA state complaint. I request an investigation by the Iowa Department of Education. I allege that the public agencies violated a requirement of the Individuals with Disabilities Education Act and implementing state rules and federal regulations.**

My Name: _____ **Signature:** _____
 My Address: _____
 City: _____ State: _____ ZIP: _____
 Telephone: _____ E-mail (if available): _____

IS THIS COMPLAINT ABOUT A SPECIFIC CHILD? YES/NO IF "YES," PLEASE COMPLETE:

Child's Name: _____ Child's Date of Birth: _____
 Does the child use another name? Yes/No If so, what is it? _____
 Child's Address: _____
 City: _____ State: _____ ZIP: _____

Is the child "homeless"? Yes/No If so, provide contact information for the child. _____
 School District Where Child Lives: _____
 Address: _____
 City: _____ State: _____ ZIP: _____
 School District Where Child Attends: _____
 Address: _____
 City: _____ State: _____ ZIP: _____
 Name of School Building That Child Attends: _____

Note: Questions 1-3 are required if the complaint concerns a specific child. If not, questions 1-3 are recommended.

1. The nature of the problem:

2. The facts of the case relating to the problem:

3. Your proposed resolution to the problem:

4. Did this alleged violation occur not more than one year prior to the date the Iowa Department of Education received this complaint? Yes/No

Is this form completed by someone other than a parent, such as an organization? Yes/No If so, please provide your name, your contact information, and your relationship to a parent, if different from above: _____

Is there someone else not listed on this form who is the child's parent or guardian? Yes/No If so, please provide that person's name, contact information, and relationship to the child: _____

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Model Form: Due Process Complaint (Request for Due Process Hearing)

Use this form if you want to file a due process complaint and request a due process hearing. That process is explained on pages 14 and 16 through 24 of the *Procedural Safeguards Manual for Parents (Parental Rights in Special Education)*. After you complete this form, send copies to

- (1) the school district(s) involved,
- (2) the AEA(s) involved, and
- (3) the Iowa Department of Education, Grimes State Office Building, 400 E. Fourteenth St., Des Moines, IA 50319-0146.

Fill out this form completely. Use additional sheets of paper, if necessary.

Date: _____ **I am filing a due process complaint about my child. I request a due process hearing before an administrative law judge appointed by the Iowa Department of Education.**

Child's Name: _____ Child's Date of Birth: _____

Does your child use another name? Yes/No If so, what is it? _____

Child's Address: _____

City: _____ State: _____ ZIP: _____

Is the child "homeless"? Yes/No If so, provide contact information for the child. _____

School District Where Child Lives: _____

Address: _____

City: _____ State: _____ ZIP: _____

School District Where Child Attends: _____

Address: _____

City: _____ State: _____ ZIP: _____

Name of School Building That Child Attends: _____

My Name: _____

My Address: _____

City: _____ State: _____ ZIP: _____

Telephone: _____ E-mail (if available): _____

Other parent's name: _____

Address: _____

City: _____ State: _____ ZIP: _____

Telephone: _____ E-mail (if available): _____

1. The nature of the problem:

2. The facts of the case relating to the problem:

3. Your proposed resolution to the problem:

Is this form completed by someone other than the parent? Yes/No If so, please provide your name, your contact information, and your relationship to the parent: _____

Is there someone else not listed on this form who is the child's parent or guardian? Yes/No If so, please provide that person's name, contact information, and relationship to the child: _____

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Model Form: Request for Mediation Conference

Use this form if you want to request a mediation conference. That process is explained on pages 20 and 21 of the *Procedural Safeguards Manual for Parents (Parental Rights in Special Education)*. After you complete this form, send copies to

- (1) the school district(s) involved,
- (2) the AEA(s) involved, and
- (3) the Iowa Department of Education, Grimes State Office Building, 400 E. Fourteenth St., Des Moines, IA 50319-0146.

Fill out this form completely. Use additional sheets of paper, if necessary.

Date: _____ **I would like to request a special education mediation conference about my child.**

Child's Name: _____ Child's Date of Birth: _____

Does your child use another name? Yes/No If so, what is it? _____

Child's Address: _____

City: _____ State: _____ ZIP: _____

Is the child "homeless"? Yes/No If so, provide contact information for the child. _____

School District Where Child Lives: _____

Address: _____

City: _____ State: _____ ZIP: _____

School District Where Child Attends: _____

Address: _____

City: _____ State: _____ ZIP: _____

Name of School Building That Child Attends: _____

My Name: _____

My Address: _____

City: _____ State: _____ ZIP: _____

Telephone: _____ E-mail (if available): _____

Other parent's name: _____

Address: _____

City: _____ State: _____ ZIP: _____

Telephone: _____ E-mail (if available): _____

1. The nature of the problem:

2. The facts of the case relating to the problem:

3. Your proposed resolution to the problem:

Is this form completed by someone other than the parent? Yes/No If so, please provide your name, your contact information, and your relationship to the parent: _____

Is there someone else not listed on this form who is the child's parent or guardian? Yes/No If so, please provide that person's name, contact information, and relationship to the child: _____

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Appendix E: IDEA Part B Written Notification regarding Use of Public Benefits or Insurance

NOTE: New federal law changes the notice and consent requirement before public agencies access Medicaid or other public insurance benefits that cover a child. Although not all families are eligible for Medicaid, the Iowa Department of Education is including this required notice in this *Procedural Safeguards Manual* to ensure that all parents who are supposed to receive it do so.

You are receiving this written notification to give you information about your rights and protections under Part B of the Individuals with Disabilities Education Act (IDEA), so you can make an informed decision about whether you should give your written consent to allow your school district or AEA to use your or your child's public benefits or insurance to pay for special education and related services that your school district or AEA is required to provide at no cost to you and your child under IDEA. The IDEA requires that you be informed of your rights and protections when your school district or AEA seeks to use your or your child's public benefits or insurance to pay for special education and related services.

NOTIFICATION REQUIREMENTS

The following sections explain when you must receive this notification and what information must be included in the notification.

You must receive this notification:

- before your school district or AEA seeks to use your or your child's public benefits or insurance for the first time and before it obtains your consent to use those benefits or insurance for the first time (the consent requirement is described below); and
- annually after that.

This notification must be:

- written;
- in language understandable to the general public; and
- in your native language or in another mode of communication you use, unless it is clearly not feasible to do so.

This notification will explain

- the consent that your school district or AEA must obtain from you before it can use your or your child's public benefits or insurance for the first time;
- IDEA's "no cost" provisions that apply to your school district or AEA if it seeks to use your or your child's public benefits or insurance;
- your right to withdraw your consent to the disclosure of your child's personally identifiable information to your State's public benefits or insurance program agency at any time; and
- your school district's continuing responsibility to ensure that your child is provided all required special education and related services at no charge to you or your child, even if you withdraw your consent or refuse to provide consent.

CONSENT REQUIREMENTS

If your school district or AEA has not accessed your public benefits or insurance in the past to pay for services that it was required to provide your child under IDEA at no charge to you or your child, all of the parental consent requirements described below apply.

Before your school district or AEA can use your or your child's public benefits or insurance for the first time to pay for special education and related services under IDEA, it must obtain your signed and dated written consent.

Generally, your school district or AEA will provide you with a consent form for you to sign and date. Note that your school district or AEA is only required to obtain your consent one time.

This consent requirement has two parts.

1. Consent for Disclosure of Your Child’s Personally Identifiable Information to the State agency responsible for administering your State’s Public Benefits or Insurance Program

Under Federal law—the Family Educational Rights and Privacy Act (FERPA) and the confidentiality of information provisions in IDEA—your school district or AEA is required to obtain your written consent before disclosing personally identifiable information (such as your child’s name, address, social security number, student number, IEP, or evaluation results) from your child’s education records to a party other than your school district or AEA, with some exceptions. In this situation, your school district or AEA is required to obtain your consent before disclosing personally identifiable information for billing purposes to the Department of Human Services, the state agency that administers the public benefits or insurance program. Your consent must specify the personally identifiable information that your school district or AEA may disclose (for example, records or information about the services that may be provided to your child), the purpose of the disclosure (for example, billing for special education and related services), and the agency to which your school district or AEA may disclose the information (for example, the Medicaid or other agency in your State that administers the public benefits or insurance program).

If you choose to provide consent and your child’s personally identifiable information is disclosed to the Department of Human Services, you may request and receive from your school district or AEA a copy of the records it disclosed to that agency.

2. Statement to Access Public Benefits or Insurance

Your consent must include a statement specifying that you understand and agree that your school district or AEA may use your or your child’s public benefits or insurance to pay for services under 34 CFR part 300, which are special education and related services under IDEA.

Both parts of this consent requirement apply to the school district or AEA that is responsible for serving your child under IDEA. For example, if your child moves to a new school within the same school district, you would not be required to provide a new consent because the same school district is still responsible for serving your child under IDEA. But if you enroll your child in a new school in a new school district, the new school district that is responsible for serving your child under IDEA must obtain a new consent from you before it can bill your child’s public benefits or insurance program for the first time. The consent you would provide to your child’s new school district must include both parts of the consent as described above. The same analysis would apply to services provided by your AEA. If you move to a different district within the same AEA, you would not need to provide a new consent for AEA services.

Previous consent

If you gave your consent in the past for your school district or AEA to access your or your child’s public benefits or insurance to pay for special education and related services under IDEA, your school district or AEA is not required to obtain a new consent from you if the following two conditions are present:

1. There is no change in any of the following: the type of services to be provided to your child (for example, physical therapy or speech therapy); the amount of services to be provided to your child (for example, hours per week lasting for the school year); or the cost of the services (that is, the amount charged to the public benefits or insurance program); and
2. Your school district or AEA has on file the consent you previously provided. This previous consent must meet the requirements that were in effect under the prior IDEA regulations, and your school district or AEA will know what requirements applied under those prior regulations. An example of a previous consent your school district or AEA may have on file is a parental consent form you gave directly to another agency, such as Iowa’s Medicaid agency.

Even if your school district or AEA is not required to obtain a new consent from you, your school district or AEA still must provide you with this notification before it may continue to bill your or your child's public benefits or insurance program to pay for special education and related services under IDEA.

If your school district or AEA already has on file your consent to use your or your child's public benefits or insurance to pay for special education and related services under IDEA, your school district or AEA must request that you provide a new consent when there is a change in any of the following: the type (for example, physical therapy or speech therapy), amount (for example, hours per week lasting for the school year), or cost of services (that is, the amount charged to the public benefits or insurance program).

An example of a change in the type of services would be that your child would receive speech therapy in addition to physical therapy and therefore, the services billed to your public benefits or insurance program would be different. An example of a change in the amount of services would be if your child was previously receiving 3 hours per week of physical therapy and will now be receiving 2 hours per week. An example of a change in the cost of your child's services would occur if the amount billed to the public benefits or insurance program for a particular service increases or decreases.

If any of these changes occur, your school district or AEA must obtain from you a one-time consent, specifying that you understand and agree that your school district or AEA may access your or your child's public benefits or insurance to pay for special education and related services under IDEA. Before you provide your school district or AEA the new, one-time consent, your school district or AEA must provide you with this notification. Once you provide this one-time consent, you will not be required to provide your school district or AEA with any additional consent in order for it to access your or your child's public benefits or insurance if your child's services change in the future. However, your school district or AEA must continue to provide you with this notification annually.

NO COST PROVISIONS

The IDEA "no cost" protections regarding the use of public benefits or insurance are as follows:

1. Your school district or AEA may not require you to sign up for, or enroll in, a public benefits or insurance program in order for your child to receive FAPE. This means that your school district or AEA may not make your enrollment in a public benefits or insurance program a condition of providing your child the services it is required to provide your child under IDEA at no charge to you or your child.
2. Your school district or AEA may not require you to pay an out-of-pocket expense, such as the payment of a deductible or co-pay amount for filing a claim for services that your school district or AEA is otherwise required to provide your child without charge. For example, if your child's IEP includes speech therapy and your insurance requires a \$25 co-pay or deductible payment for a session, you could not be charged the \$25. Your school district or AEA would need to pay the cost of your co-pay or deductible in order to bill you or your child's public benefits or insurance program for the particular service.
3. Your school district or AEA may not use your or your child's public benefits or insurance if using those benefits or insurance would:
 - a. Decrease your available lifetime coverage or any other insured benefit, such as a decrease in your plan's allowable number of physical therapy sessions available to your child or a decrease in your plan's allowable number of sessions for mental health services;
 - b. Cause you to pay for services that would otherwise be covered by your public benefits or insurance program because your child also requires those services outside of the time your child is in school;
 - c. Increase your premium or lead to the cancelation of your public benefits or insurance; or
 - d. Cause you to risk the loss of your or your child's eligibility for home and community-based waivers that are based on your total health-related expenditures.

WITHDRAWAL OF CONSENT

If you provided your consent for your school district or AEA to disclose your child's personally identifiable information to the Department of Human Services for purposes of accessing a public benefits or insurance program, you have the right under 34 CFR part 99 (FERPA regulations) and 34 CFR part 300 (IDEA regulations) to withdraw that consent at any time.

If you do not want your school district or AEA to continue to bill you or your child's public benefits or insurance program for special education and related services under IDEA, you would need to withdraw your consent to disclosure of your child's personally identifiable information by your school district or AEA to the Department of Human Services. The FERPA and IDEA regulations, however, do not contain procedures for withdrawal of consent to disclosure of your child's personally identifiable information. If you wish to withdraw your consent, you should ask your school district or AEA what procedures you would need to follow. For example, your school district or AEA may ask you to submit your withdrawal request in writing.

WHAT HAPPENS AFTER YOU REFUSE TO PROVIDE YOUR CONSENT OR YOU WITHDRAW YOUR CONSENT?

Without your consent, your school district or AEA cannot bill you or your child's public benefits or insurance program to pay for special education and related services that it is required to provide your child under IDEA at no charge to you or your child. If you withdraw your consent or refuse to provide consent under the FERPA and IDEA regulations, your school district or AEA may not use your withdrawal of consent or refusal to provide consent to disclose personally identifiable information to a public benefits or insurance program to deny your child the special education and related services he or she is otherwise entitled to receive under IDEA. Therefore, if you refuse to provide consent or withdraw consent, your school district or AEA has a continuing responsibility to ensure that your child is provided all required services necessary to receive an appropriate education at no charge to you or your child.

We hope this information is helpful to you in making an informed decision regarding whether to allow your school district or AEA to use your or your child's public benefits or insurance to pay for special education and related services under IDEA.

For additional information and guidance on the requirements governing the use of public benefits or insurance to pay for special education and related services see: <http://www2.ed.gov/policy/speced/reg/idea/part-b/part-b-parental-consent.html>. You can also contact the resources listed at the start of this Manual.