

Procedural Safeguards Available to Parents of Children with Disabilities

– July 2007 –

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Introduction

This document provides parents of students with disabilities, from birth to age 26, an overview of their educational rights with respect to special education. This document incorporates all procedural safeguards to parents and students with disabilities afforded under the Individuals with Disabilities Education Act (IDEA) and the IDEA implementing regulations.

Procedural Safeguards' Notice

A Procedural Safeguards' Notice shall be provided to parents at least one time per year, except a copy also shall be given to the parents on:

1. An initial referral or parental request for evaluation;
2. The first occurrence of the filing of a due process hearing;
3. Parental request; or
4. The day on which the decision to take disciplinary action involving a change in placement is made.

Parent Consent

“Consent” means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) the parent understands and agrees, in writing, to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. However, if a parent revokes consent, that revocation is not retroactive.

Parent consent is not required before reviewing existing data as part of an evaluation or reevaluation, or when administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students. Parent consent is not required for the screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation and shall not be considered to be an evaluation for eligibility for special education and related services.

The public agency must obtain informed parental consent before conducting an initial evaluation, any reevaluation, or initially placing a student with disabilities in a program providing special education and related services. Consent for an initial evaluation may not be construed as consent for initial placement. If a parent does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the student through a due process hearing. If a parent fails to respond to a request for a reevaluation, the public agency may conduct a reevaluation if it can demonstrate that reasonable measures to obtain parental consent have been taken.

To conduct an initial evaluation, the district must seek parental consent and provide notice, which includes the following:

1. The reason(s) and nature for an evaluation; and
2. A description of the types of special education programs and

services available within the Regional Educational Service Agency (RESA).

A local school district shall not provide initial special education programs and services to a student if the parent refuses to consent to those programs or services.

Limitation

A public agency may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the public agency, except as required by the IDEA.

Prior Notice to Parents

The public agency must provide prior written notice to the parents of a child with disabilities each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student. The notice must include:

1. A description of where a parent can obtain a copy of the Procedural Safeguards' document;
2. A description of the action proposed or refused by the public agency, an explanation of why the public agency proposes or refuses to take action, and a description of any options the public agency considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the public agency uses as a basis for the proposal or refusal;
4. A description of any other factors which are relevant to the public agency's proposal or refusal; and,
5. A list of sources that the parent may contact to obtain assistance in understanding the content of the prior notice.

The notice must be written in language understandable to the general public, and be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency shall have the notice translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice. The public agency must maintain written evidence that these requirements have been met.

Parent Involvement

Each public agency shall provide notice to ensure that parents of children with disabilities have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a FAPE.

Meeting

A public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each individualized education program (IEP) meeting, or are given the opportunity to participate. A meeting does not include informal

or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Each public agency shall ensure that the parents of each student with a disability are included as members of any group that makes decisions on the educational placement of their child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency shall use other methods to ensure their participation. An initial placement may not be made without the consent of a parent. However, other placement decisions may be made by a group without the involvement of the parent(s) if the public agency is unable to obtain the parent's participation in the decision. The public agency must have a record of its attempt to ensure the parent(s) involvement.

The public agency shall make reasonable efforts to ensure that the parent understands and is able to participate in any group discussion relating to the educational placement of his or her child, including arranging for an interpreter for the parent with deafness or whose native language is other than English.

Evaluation Procedures

"Evaluation" means procedures used in accordance with 34 CFR §§300.530 to 300.536. An evaluation will determine whether a student is a student with a disability, the nature and extent of the special education and related services that the student needs, and provide information relating to the student's involvement and progress in the general curriculum. Preschool children must also be assessed to determine participation in appropriate activities. The term also means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

The parent has the right to:

1. Have an interpreter/translator present if the primary language is not English or if the student is deaf/hearing impaired or visually impaired, unless it is clearly not feasible to do so;
2. Be assured that testing does not discriminate on the basis of race, language, or cultural background;
3. Be assured that the assessments and other evaluation materials used to assess a student are provided and administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is not feasible to provide or administer;
4. Have evaluation instruments validated for the specific purpose(s) for which they were intended and administered by trained personnel in conformance with the instructions provided by their producer;
5. Have the student assessed in all areas of suspected disability using instruments that assess specific areas of educational need and do not produce merely a single intelligent quotient score. No single measure or assessment is to be used as the

- sole criterion for determining an appropriate special education program for the student;
6. Be assured that if a test is administered to a student with impaired sensory, physical, or speaking skills, the test results accurately reflect what the test intends to measure rather than the student's disability;
 7. Have the initial evaluation made by a multidisciplinary evaluation team (MET), which includes a teacher or person knowledgeable in the area of the suspected disability;
 8. Be assured that the student is assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, behavioral factors, general intelligence, academic performance, communicative status, and motor ability;
 9. Have an evaluation that is sufficiently comprehensive to identify all of the student's special education and related services' needs, whether or not commonly linked to the disability category in which the student has been classified;
 10. Provide the MET with information about the student's suspected disability, along with any evaluation the parent may have obtained for the student;
 11. Be assured that a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the student, including information provided by the parent and information related to enabling the student to be involved in and progress in the general curriculum;
 12. Have an initial evaluation conducted by a MET and convene an IEP meeting within 30 school days after the school has received the written permission to evaluate. This timeline may be extended by agreement between the parents and the agency;
 13. Expect a reevaluation every three years, unless the parent and the local school district agree that a reevaluation is unnecessary;
 14. Request a reevaluation not more frequently than once a year, unless the parent and local educational agency agree otherwise;
 15. Be notified of each evaluation procedure, test, record, or report the IEP Team used in determining eligibility and the need for special education programs or services; and
 16. Be assured that a local district will coordinate prior assessments of students with disabilities who transfer from one school district to another in the same academic year as necessary and expeditiously as possible to ensure prompt completion of full evaluations.

Independent Educational Evaluation

An "independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. An "IEE at public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

The parent of a student with a disability or suspected

disability has the right to obtain an IEE of the child. A parent has the right to an IEE at public expense if the parent disagrees with any evaluation obtained by the public agency. However, the public agency may initiate a due process hearing to show that its evaluation is appropriate. The public agency shall respond, in writing, to the parent's request for an IEE within seven calendar days of the parent's written request. If the final decision is that the evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. If the parent obtains an IEE at his/her own expense, the results of the evaluation must be considered by the public agency in any decision made with respect to the provision of a FAPE to the student, and may be presented as evidence at a due process hearing regarding the student.

If a hearing officer requests an IEE as part of a hearing, the cost of the evaluation must be at public expense. Each public agency shall provide to the parent, on request, information about where an IEE may be obtained. When an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the public agency uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an IEE.

Mediation

Mediation is available to all parties whenever a dispute arises with respect to special education, including but not limited to when a hearing is requested or when a complaint is made. The IDEA mediation requirements are:

1. Mediation is free and voluntary, including costs of meeting to encourage mediation;
2. Mediation cannot be used to deny a parent's right to a due process hearing;
3. Mediation must be conducted by a qualified and impartial mediator;
4. The state must maintain a list of individuals who are qualified mediators who are knowledgeable about the laws and regulations on special education;
5. Mediation shall be scheduled in a timely manner in a convenient location;
6. Both parties must agree with the selection of the mediator;
7. Parties who resolve the complaint through the mediation process shall execute a legally binding agreement;
8. Discussions occurring during mediation must be confidential and may not be used as evidence in subsequent due process or civil proceedings; and
9. Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins.

Impartiality of Mediator

An individual who serves as a mediator:

1. May not be an employee of any local educational agency or any state agency;
2. May not be an employee of a state educational agency that is providing direct services to a student who is the subject of the mediation process; and

3. Must not have a personal or professional conflict of interest.

Written Agreement

A legally binding agreement executed as the result of the parties resolving the complaint through mediation shall:

1. State that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
2. Be signed by both the parent and a representative of the agency who has the authority to bind such agency; and,
3. Be enforceable in any state court of competent jurisdiction or in a district court of the United States.

Impartial Due Process Hearing

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

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

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

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

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

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

complaining party.

The due process hearing complaint must contain the following information:

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

A model due process hearing complaint form is available on the MDE Web site: www.michigan.gov/ose-eis.

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

State Office of Administrative Hearings and Rules

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

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

The SOAHR will also:

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

Local Educational Agencies' Response to a Due Process Complaint

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

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

4. A description of the other factors that is relevant to the LEA's proposed or refused action.

Other Party Response to a Due Process Complaint

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

Sufficiency of a Complaint

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

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

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

Complaint Amendment

The due process hearing complaint may be amended only if:

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

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

Subject Matter of a Hearing

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

Resolution Session

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

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

parent is accompanied by an attorney.

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

The resolution session need not be held if:

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

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

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

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

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

Administrative Law Judge

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

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

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

Decision of the Administrative Law Judge

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

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

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

1. Impeded the student's right to a FAPE;
2. Significantly impeded the parent's opportunity to participate

in the decision-making process regarding the provision of a FAPE to the parent's child; or

3. Caused a deprivation of educational benefits.

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

Due Process Hearing Rights

Any party to a hearing has the right to:

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

A parent involved in hearings has the right to have the student who is the subject of the hearing present, to open the hearing to the public, and to have the record of the hearing provided at no cost.

A hearing must be conducted at a time and place that is reasonably convenient to the parent and student involved.

State Level Review

Any party aggrieved by the findings and decision in a due process hearing that originated prior to July 1, 2006, may request a state level review of the local hearing officer's (LHO) decision. The request for review must be filed with the MDE within 25 calendar days of receipt of the LHO's decision. Upon receipt, the MDE will forward the request to the SOAHR which will appoint an ALJ to conduct the review.

The ALJ conducting the review shall:

1. Examine the entire hearing record;
2. Ensure that the procedures at the hearing were consistent with the requirements of due process;
3. Seek additional evidence, if necessary. (If a hearing is held to receive additional evidence, the hearing rights described above apply.);
4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
5. Make an independent decision on completion of the review;
6. Give a copy of written or, at the option of the parent, electronic findings-of-fact and the decision to the parties; and,
7. Conduct reviews involving oral arguments at a time and place which is reasonably convenient to the parent and student involved.

An ALJ may grant specific extensions of time at the request of either party.

Civil Action

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

Student's Status During Proceedings

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

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

DISCIPLINE

Placement in Alternative Educational Setting

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student with a disability who violates a code of student conduct.

School Personnel Authority

School personnel may remove a student with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten school days (to the extent such alternatives are applied to students without disabilities).

If school personnel seek to order a change in placement that would exceed ten school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which the procedures would be applied to students without disabilities, except as provided in Section 612(a)(1) of the IDEA, although it may be provided in an interim alternative educational setting.

Section 612(a)(1) of the IDEA states that a FAPE is available to all students with disabilities residing in the state, including students with disabilities who have been suspended or expelled from school.

A student with a disability who is removed from his or her current placement under "special circumstances" (irrespective of whether the behavior is determined to be a manifestation of the student's disability) or removed under "school personnel authority" shall continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

Manifestation Determination

Except as provided under “school personnel authority,” within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student’s file, including the student’s IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the student’s disability; or
2. If the conduct in question was the direct result of the local educational agency’s failure to implement the IEP.

If the local educational agency, the parent, and relevant members of the IEP Team determine that either the conduct in question was caused by, or had a direct and substantial relationship to the student’s disability, or the conduct in question was the direct result of the local educational agency’s failure to implement the IEP, then the conduct shall be determined to be a manifestation of the student’s disability.

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the student’s disability, the IEP Team shall:

1. Conduct a functional behavioral assessment and implement a behavioral intervention plan for such student, provided the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;
2. Review the behavioral intervention plan if the student already has such a behavioral intervention plan and modify it, as necessary, to address the behavior; and
3. Except as provided under “special circumstances,” return the student to the placement from which the student was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

Special Circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student’s disability in cases where a student:

1. Carries or possesses a weapon to or at school, on school premises, or to a school function under the jurisdiction of a state or local educational agency;
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency.

Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision and of all procedural safeguards accorded under this section.

Determination of Setting

The interim alternative educational setting shall be determined by the IEP Team.

Appeal

The parent of a child with a disability who disagrees with any decision regarding placement or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, may request a hearing.

Authority of a Hearing Officer

A hearing officer shall hear and make a determination regarding an appeal. In making the determination, the hearing officer may order a change in placement of a student with a disability. In such situations, the hearing officer may:

1. Return a student with a disability to the placement from which the student was removed; or
2. Order a change in placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such student is substantially likely to result in injury to the student or to others.

Placement During Appeals

When an appeal has been requested by either the parent or the local educational agency:

1. The student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period as applied to students without disabilities, whichever occurs first, unless the parent and the state or local educational agency agree otherwise; and
2. The state or local educational agency shall arrange for an expedited hearing which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

Protections for Students Not Yet Eligible for Special Education and Related Services

A student who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in the IDEA if the local educational agency had “knowledge” (see below) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

Basis of Knowledge

A local educational agency shall be deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;
2. The parent of the student has requested an evaluation of the student; or
3. The teacher of the student or other personnel of the local educational agency has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of such agency or to other supervisory personnel of the agency.

Exception

A local educational agency shall not be deemed to have knowledge that the student is a student with a disability if the parent of the student has not allowed an evaluation of the student or has refused services under this part or the student has been evaluated and it was determined that the student was not a student with a disability.

Conditions That Apply if No Basis of Knowledge

If a local educational agency does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to disciplinary measures applied to students without disabilities who engaged in comparable behaviors.

Limitations

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services except that, pending the results of the evaluation, the student shall remain in the educational placement determined by school authorities.

Referral to An Action by Law Enforcement and Judicial Authorities

Nothing in the IDEA shall be construed to prohibit an agency from reporting a crime committed by a student with a disability to appropriate authorities or to 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 student with a disability.

Transmittal of Records

An agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

Students Enrolled in Private Schools

A public agency may not be required to pay for the cost of education (including special education and related services) if:

1. The parent does not inform the IEP Team before removing his or her child from the public school that he or she is rejecting the proposed placement of the IEP Team;
2. The parent does not make the student available for evaluation; or
3. The action is determined to be “unreasonable” by the judicial system.

The parent must inform the IEP Team, in writing, of his or her concerns and intent to enroll his or her child in a private school at public expense. This notice must be received by the public agency ten business days prior to the removal of the student and enrollment in a private school.

Transfer of Parental Rights at Age of Majority

When a student with a disability reaches the age of majority (age 18 in Michigan if a legal guardian has not been appointed by the court), the public agency shall provide notice to both the student and the parent that all rights accorded to the parent transfer to the student. All rights accorded to the parent transfer to students who have reached the age of majority and who are incarcerated in an adult or juvenile federal, state, or local correctional institution.

Surrogate Parents

Each public agency shall assign an individual to act as a surrogate for the parent to protect the education rights of a student when:

1. No parent can be identified;
2. The public agency, after reasonable efforts, cannot discover the whereabouts of a parent;
3. The student is a ward of the state under the laws of the state; or
4. The student is an unaccompanied homeless child or youth.

The method for determining whether a student needs a surrogate for the parent, and for assigning a surrogate for the parent to a student, is the responsibility of the public agency. The Policy for the Appointment of Surrogate Parents is available on the MDE Web site at www.michigan.gov/mde.

Public agencies appointing a surrogate for the parent to a student ensures that the person:

1. Has no interest that conflicts with the interests of the student that he/she represents;
2. Has knowledge and skills to adequately represent the student;

3. Is not an employee of the public agency which is involved in the education or care of the student;
4. Who otherwise qualifies to be a surrogate parent is not an employee of the public agency solely because he or she is paid by the public agency to serve as a surrogate parent; and
5. Is assigned not more than 30 days after there is a determination by the agency that the student needs a surrogate.

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

1. The identification, evaluation, and educational placement of the student; or
2. The provision of a FAPE to the student.

Access to Records

Each public agency shall permit the parent to inspect and review all records relating to his or her child with respect to the identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student, which are collected, maintained, or used by the public agency under this part. The public agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the student, and in no case more than 45 days after the request has been made. A parent requesting records for use at an IEP Team meeting, a hearing, or an appeal shall be given access to the requested records immediately.

The right to inspect and review educational records under this section includes:

1. The right to a response from the participating public agency to reasonable requests for explanations and interpretations of the records;
2. The right to have a representative of the parent inspect and review the records; and
3. The right to request that the public agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

A public agency may presume that the parent has authority to inspect and review records relating to his or her child unless the public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

If any educational record includes information on more than one student, the parents of each of those children shall have the right to inspect and review only the information relating to their child, or to be informed of that specific information. Each public agency shall provide parents, on request, a list of the types and locations of educational records collected, maintained, or used by the public agency.

Record of Access

Each public agency shall keep a record of parties obtaining access to educational records collected or maintained, except access by the parent and authorized employees of the participating public agency. Records of access shall include the name of the

party, the date access was given, and the purpose for which the party is authorized to use the records.

Fees for Searching, Retrieving and Copying Records

A participating public agency may not charge a fee to search for or to retrieve information from the student's educational record. A public agency may charge a fee for copies of records which are made for the parent if the fee does not effectively prevent the parent from exercising his or her right to inspect and review those records.

Amendment of Records at Parent's Request

A parent who believes that information in educational records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of his or her child, may request the participating public agency which maintains the information to amend the information.

The public agency shall decide whether to amend the information in accordance with the request within a reasonable period of time upon receipt of the request. If the public agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR §300.568 of the federal regulations implementing the IDEA.

The public agency shall, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

If, as a result of the hearing, the public agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent of the right to place in the educational records maintained on the student, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency. Any explanation placed in the records of the student under this section must be maintained by the public agency as part of the records of the student as long as the record or contested portion is maintained by the public agency. If the records of the student or the contested portion are disclosed by the public agency to any party, the explanation must also be disclosed to the party.

Confidentiality

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using this information. Parental consent need not be obtained if the information is to be used to meet a requirement under the IDEA. An educational agency sub-

ject to the Family Educational Rights and Privacy Act (FERPA) may not release information from education records to participating agencies without parental consent unless authorized to do so under the FERPA.

Destruction of Information

The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the student.

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

Complaints

“Complaint” means a written and signed allegation that includes the facts on which the allegation is based, by an individual or an organization, that there is a violation of any of the following:

1. Any current provision of the Rules;
2. 1976 PA 451, MCL 380.1 et seq., as it pertains to special education programs and services;
3. The IDEA of 1997, 20 U.S.C., Chapter 33, §1400 et seq., and the regulations implementing the Act, 34 CFR. Part 300;
4. An RESA plan for the delivery of special education programs and services;
5. An IEP Team report, hearing officer decision, or court decision regarding special education programs or services; or
6. The state application for federal funds under the IDEA.

Should the parent suspect a violation, the parent should contact the RESA's director of special education or the superintendent's designee. This person may attempt to resolve the concerns informally, but the parent must be told of his/her right to file a formal complaint. The parent must also be given a copy of the Administrative Rules for Special Education (Rules) dealing with complaints (Part 8 of the Rules) and a copy of the Complaint Procedures for Special Education. The complainant may request assistance in writing a formal complaint.

If the parent files a formal complaint, the RESA must investigate the complaint and give the parent a copy of the findings within 21 calendar days. If, after reviewing the public agency's report, the parent disagrees with the findings, the parent may appeal to the MDE. If the RESA does not act in a timely manner to investigate the parent's concerns, the parent may request the MDE to investigate the concerns. A written report shall be completed within 60 calendar days from the RESA's or the MDE's receipt of the complaint, unless the timeline is extended for exceptional circumstances relative to the complaint. A denial of an extension request is final.

Rule of Construction

Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the

rights of students with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

IEP Addendum

The purpose of the IEP Addendum is to make minor changes to the IEP during the year it is in effect. If substantial or comprehensive changes need to be made to a student's IEP, an IEP Team meeting should be convened to develop a new, complete IEP Team Report.

The IEP Addendum may not be used for the following purposes:

1. To determine or redetermine any special education eligibility;
2. To change the type of program for the student; or
3. To exit the student from special education.

The parent must be informed of the purpose, time and location of the meeting and who will be in attendance. An invitation to an IEP Addendum meeting must clearly state the purpose by indicating what aspect(s) of the current IEP are being considered for amendment. The parent must be informed that the student's current IEP will remain in effect until the next review or reevaluation date, the IEP Addendum cannot be implemented if the parent refuses consent, and the parent is entitled to a full review of the IEP upon request.

Because an addendum to an IEP is never an initial IEP placing a student into special education, the parent's signature on the IEP Addendum form is not required to implement the IEP. However, the parent must have the opportunity to sign the IEP Addendum in disagreement before it is implemented, following the conditions and timelines at R 340.1722a.

School-Based Medicaid

The Social Security Act, as amended in 1988 by the Medicare Catastrophic Coverage Act, specifically provides for medical assistance (Medicaid) to cover services that are included in the student's IEP or IFSP pursuant to the Individuals with Disabilities Education Act (IDEA). The program identified medically necessary services already provided to schools e.g. speech therapy, social work, nursing, occupational therapy, physical therapy and psychological services, and allows the school, as a service provider, to bill under Medicaid, thus ensuring federal participation in the cost of providing these services. All special education students who are Medicaid eligible are included under this act. Enrollment by a school district for Medicaid billing is not expected to result in any change in the student's program or services provided by the school district or any other agency.



St. Clair County
Regional Educational Service Agency
499 Range Road • PO Box 1500
Marysville, MI 48040
(810) 364-8990 • Fax (810) 364-7474
www.sccresa.org