



# **Whose IDEA Is This?**

## ***A Resource Guide for Parents***

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Office for Exceptional Children  
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## CONTENTS

<b>Steps to Getting Services</b> .....	2
<b>Answers to Frequently Asked Questions</b>	
Prereferral/Request Assistance .....	10
Referral .....	10
Notices .....	10
Surrogate Parents.....	12
Consent.....	12
Evaluation .....	13
Reevaluation .....	16
Independent Educational Evaluation .....	17
Individualized Education Program (IEP) .....	18
Extended School Year Services .....	23
Student Transfer.....	23
Transition .....	24
Records.....	25
Resolving Disagreements .....	27
Due Process .....	29
How to Resolve Conflicts or Concerns .....	35
Nonpublic Schools .....	38
Discipline .....	40
<b>Appendix</b>	
Commonly Used Terms .....	50
Disability Conditions Defined .....	56
Due Process Complaint Notice and Request for a Due Process Hearing.....	58

Note: New provisions are underlined. These new provisions reflect special education changes enacted by the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA 2004), Public Law 108-446. This updated guide incorporates the addendum to Whose IDEA is This? issued on July 1, 2005. Requirements under Ohio law and rules which exceed the federal requirements are unchanged.

## EPS TO GETTING SERVICES

### WHAT HAPPENS IF MY CHILD IS HAVING TROUBLE LEARNING IN SCHOOL?

You are encouraged to actively take part in all steps described below by asking questions, providing information, and helping make decisions about your child's education.

	PARENT(S)	SCHOOL DISTRICT
<b>PREREFERRAL / REQUEST FOR ASSISTANCE</b>	<ul style="list-style-type: none"><li>• Contacts the teacher to discuss any concerns</li><li>• Provides information that might be helpful</li><li>• Requests intervention assistance</li><li>• Participates in determining suspected disability through the intervention team process</li></ul>	<ul style="list-style-type: none"><li>• Contacts the parent(s) for information</li><li>• Attempts different strategies and documents results</li><li>• Contacts parent(s) to participate in a meeting to determine if a referral is needed when a disability is suspected through the intervention team process</li><li>• Uses intervention assistance team to suggest new interventions and documents results in writing</li></ul>

	PARENT(S)	SCHOOL DISTRICT
<b>REFERRAL</b>	<ul style="list-style-type: none"> <li>• Makes written request for a multifactored evaluation for a suspected disability, if needed</li> <li>• Receives copy of <i>Whose IDEA Is This?</i></li> <li>• Asks for information about area parent support groups</li> <li>• Gives informed consent in writing. Your consent for an evaluation can not be interpreted as consent for initial placement</li> </ul>	<ul style="list-style-type: none"> <li>• Makes referral for multifactored evaluation if your child is suspected of having a disability</li> <li>• Contacts the parent(s), explains referral process and provides copy of <i>Whose IDEA is This?</i></li> <li>• Provides copy of written notice to parents</li> <li>• Asks the parent(s) for consent to evaluate if district suspects a disability</li> <li>• Receives written parental permission for evaluation</li> </ul>

	PARENT(S)	SCHOOL DISTRICT
<p><b>EVALUATION</b></p>	<ul style="list-style-type: none"> <li>• Participates in evaluation team activities including determination of eligibility</li> <li>• Provides information for evaluation process (e.g., medical, family and educational history; perception of your child's strengths and needs)</li> </ul>	<ul style="list-style-type: none"> <li>• Contacts the parent(s) to participate in the evaluation process</li> <li>• Provides the parent(s) with written notice that includes a description of the planned evaluation</li> <li>• Collects information from parent(s), teachers, and others</li> <li>• Completes evaluation</li> <li>• Conducts evaluation team meeting to which the parent(s) has been invited</li> <li>• Summarizes and interprets evaluation results</li> <li>• Determines eligibility for special education services. If your child is eligible, an IEP meeting will be conducted within 120 days of referral or within 90 days of signed parental consent</li> <li>• Provides the parent(s) with a copy of the evaluation team report</li> </ul> <p>If your child is <b>not eligible</b> for special education services, the school district</p> <ul style="list-style-type: none"> <li>• Provides the parent(s) with a copy of the evaluation team report</li> <li>• Determines appropriate modifications and/or interventions</li> <li>• Considers eligibility for services under Section 504</li> <li>• Provides the parent(s) with a copy of <i>Whose IDEA Is This?</i> if there is a disagreement about the evaluation results and the parent(s) requests an independent evaluation</li> </ul>

	PARENT(S)	SCHOOL DISTRICT
<b>BEFORE THE IEP MEETING</b>	<ul style="list-style-type: none"> <li>• Requests copy of the district's suggestions for the IEP</li> <li>• Reviews <i>Whose IDEA Is This?</i></li> <li>• Seeks support, if needed</li> <li>• Invites person(s) who has special expertise or knowledge of your child to IEP meeting, if needed</li> <li>• Prepares and shares with school district in advance, written concerns, questions, and suggestions for the IEP</li> </ul>	<ul style="list-style-type: none"> <li>• Notifies the parent(s) and/or student of IEP meeting and who will attend and of the availability of <i>Whose IDEA Is This?</i></li> <li>• Determines mutually agreed time and place for the meeting</li> <li>• Prepares and shares with the parent(s) in advance, written concerns, questions and suggestions for the IEP</li> <li>• Invites your child to IEP meeting, when appropriate, and always when transition is being discussed</li> </ul>

	PARENT(S)	SCHOOL DISTRICT
<p><b>DURING THE IEP MEETING</b></p>	<ul style="list-style-type: none"> <li>• Participates in IEP activities including: <ul style="list-style-type: none"> <li>○ Sharing information about your child's strengths and needs</li> <li>○ Assisting in development of measurable annual goals and short-term objectives or benchmarks</li> <li>○ Determining jointly the appropriate special education and related services to be provided</li> </ul> </li> <li>• Gives consent or denies consent for initial placement for your child to receive special education and related services to enable your child to be involved and progress in the general curriculum</li> </ul> <p>*If you refuse to consent for one service, the district cannot deny the benefit of other services to your child</p>	<ul style="list-style-type: none"> <li>• Reviews the evaluation results and eligibility jointly with the parents</li> <li>• Develops IEP which includes: <ul style="list-style-type: none"> <li>○ Your child's strengths and needs</li> <li>○ Measurable annual goals and short-term objectives or benchmarks</li> <li>○ Appropriate special education and related services for your child to be involved and progress in the general curriculum</li> <li>○ Consideration of special factors</li> </ul> </li> <li>• Provides the parent(s) with written notice. If the parent refuses to consent for one service, the district cannot deny the benefit of other services to the child.</li> <li>• Gives the parent(s) a final copy of the IEP after the meeting</li> <li>• Gives staff working with your child implementation information</li> </ul>

	PARENT(S)	SCHOOL DISTRICT
<p><b>ANNUAL REVIEW</b></p>	<ul style="list-style-type: none"> <li>• Requests copy of the district's suggestions for the IEP</li> <li>• Gathers school papers and other information that may be helpful at the meeting</li> <li>• Reviews <i>Whose IDEA Is This?</i></li> <li>• Brings support person(s) to meeting, if desired</li> <li>• Reviews current IEP</li> <li>• Prepares and shares with school district in advance, written concerns, questions and suggestions for the IEP</li> <li>• Gives written consent if there is a change of placement on the continuum. Permission is not required for a change of placement due to discipline</li> </ul>	<ul style="list-style-type: none"> <li>• Contacts the parent(s) to participate in the annual review in the same manner as the initial IEP meeting</li> <li>• Gathers information on your child's progress</li> <li>• Prepares and shares with the parent(s) in advance, written concerns, questions and suggestions for the IEP</li> <li>• Reviews current IEP</li> <li>• Provides the parent(s) with written notice</li> <li>• Gives the parent(s) a final copy of the IEP after the meeting</li> <li>• Gives staff working with your child implementation information</li> </ul>

	PARENT(S)	SCHOOL DISTRICT
<b>REEVALUATION</b>	<ul style="list-style-type: none"> <li>• Reviews <i>Whose IDEA Is This?</i></li> <li>• Participates in the review of existing information about your child</li> <li>• Participates in the reevaluation process</li> <li>• May request additional assessment</li> <li>• Gives written consent or denies consent for additional assessment</li> <li>• Participates in determining continued eligibility for special education services</li> <li>• Requests an evaluation sooner than three years if desired, especially if there is a change in your child's needs</li> </ul>	<ul style="list-style-type: none"> <li>• Invites the parent(s) to participate in the reevaluation process</li> <li>• Explains reevaluation process including the parent's right for additional assessment to determine continued eligibility</li> <li>• Provides copy of <i>Whose IDEA Is This?</i> to the parent(s)</li> <li>• Provides the parent(s) with written notice</li> <li>• Obtains written parental permission for reevaluation if additional assessments are necessary</li> <li>• Gives the parent(s) information about which staff members will evaluate and the kinds of assessments, if any, to be used in the reevaluation</li> <li>• Convenes a reevaluation team meeting to which the parent(s) has been invited</li> <li>• Affords the parent(s) the opportunity to participate in making the determination about their child's continued eligibility</li> <li>• Provides the parent(s) with a copy of the evaluation team report</li> </ul>

	<b>PARENT(S)</b>	<b>SCHOOL DISTRICT</b>
<b>INDEPENDENT EDUCATIONAL EVALUATION</b>	<ul style="list-style-type: none"> <li>• Informs school in writing of any disagreement with the district's evaluation</li> <li>• May request a list of independent evaluators</li> <li>• Obtains an independent educational evaluation</li> </ul>	<ul style="list-style-type: none"> <li>• Informs the parent(s) of the right to an independent educational evaluation if there is a disagreement with the school district's evaluation</li> <li>• Asks for the parent's reason for objecting to the district's evaluation</li> <li>• Provides information about where an independent educational evaluation may be obtained</li> <li>• Provides for the independent educational evaluation or provides the parent(s) with written notice and informs them of the need for a due process hearing if the evaluation team believes that the school district's evaluation is fair and accurate</li> </ul>

## ANSWERS TO FREQUENTLY ASKED QUESTIONS

### PREREFERRAL/REQUEST FOR ASSISTANCE

#### ***What do I do if my child is having difficulty learning in school?***

You may

- Contact the teacher to discuss your concerns and provide information that might be helpful;
- Request intervention assistance; and/or
- Participate in a meeting to determine if your child is suspected of having a disability.

#### ***What if the teacher reports that my child is having difficulty learning in school?***

The school district may

- Contact you for information;
- Attempt different strategies and document the results;
- Use an intervention assistance team to generate additional ideas and document the results; and/or
- Contact you to participate in a meeting to determine if your child is suspected of having a disability.

**No matter where you are in the prereferral process, at any time you may request a multifactored evaluation if you suspect your child has a disability.**

### REFERRAL

#### ***Who can make a referral?***

If your child is suspected of having a disability and might need special education services, a referral for evaluation may be made by:

- You, the parent;
- School personnel; and/or
- State educational agency or other state agency.

#### **If the referral is made by**

- You - It should be made in writing to the school district stating that you suspect

your child has a disability, and that you are asking for a multifactored evaluation.

- School personnel - You will be contacted by someone from the school district.

#### **After a referral is made and the district suspects a disability and before the evaluation begins**

- You must be given prior written notice, described below, within 30 days of the date of referral.
- The school district must get your informed consent in writing to evaluate your child.
- If you refuse to give your consent to evaluate, the school district may use mediation or due process procedures.

### NOTICES

#### ***What is the procedural safeguards notice?***

It is the parent resource guide, *Whose IDEA Is This?*, which includes your rights under special education law and sources for you to contact for assistance (see page 35).

#### **When must the school district provide me with the procedural safeguards notice?**

The school district must give you a copy of *Whose IDEA Is This?* only one time a year, except the district must also give you a copy at each of the following times:

- Upon initial referral or parental request for evaluation;
- Upon the reevaluation of the child;
- Upon notification of an IEP meeting;
- Upon the filing of a due process complaint;
- Upon a change in placement for disciplinary action;
- Upon request by a parent.

A school district may place a current copy on its Internet website if such website exists; posting *Whose IDEA is This?* on a school district's Internet website shall not be the sole method of providing the procedural safeguards notice.

**May I choose to receive from the school district notices required under procedural safeguards by an electronic mail (e-mail) communication?**

Yes, you may choose to receive notices required under procedural safeguards by electronic mail (e-mail) communication if the school district makes such option available.

***What is prior written notice?***

You should receive information, in writing, within a reasonable time before the school district proposes or refuses to begin or change the identification, evaluation, educational placement or provision of a free appropriate public education (FAPE) to your child.

This prior written notice must

- Describe the action proposed or refused by the school district;
- Explain why the agency proposes or refuses to take action;
- Describe other options that the IEP team considered and the reasons why those options were rejected;
- Provide a description of each evaluation procedure, assessment, record or report the school district used as a basis for their decision;
- Provide a description of the factors that are relevant to the school district's decision;
- Include a statement that you have protection under procedural safeguards and, if this prior written notice is not an initial referral for evaluation, the school district will give you a copy of *Whose IDEA Is This?*; and
- Identify sources for you to contact for assistance in understanding prior notice rights.

Eligibility criteria have been established for each of the disability conditions recognized in federal and state law. These disability conditions are defined, beginning on page 55.

Prior notice to parents must be written in language understandable to the public, and must be provided in your native language or other method of communication, unless it is clearly not feasible to do so. If your native language or other method of communication is not a written language, the school district will translate the notice orally or by other means. The school district must keep a written record that this has been done.

If you disagree with the school district regarding any of the information in the prior written notice, see page 27.

## SURROGATE PARENTS

### ***What is a surrogate parent?***

A surrogate parent is someone appointed by the school district who acts in the place of a child's parent when

- The parent cannot be identified;
- The school district cannot locate the parent after reasonable efforts; or
- The child is a ward of the state.  
The surrogate parent for a child who is a ward of the state may alternatively be appointed by the judge overseeing the child's care, provided the surrogate meets the requirements to be a surrogate parent.

The child is an unaccompanied homeless youth.

A surrogate parent shall represent the child in all educational matters including:

- Identification;
- Evaluation;
- Educational placement of the child; and
- Provision of FAPE to the child including participation in the IEP process.

A surrogate parent must be someone who

- Has received state approved training to represent the child adequately;
- Is not an employee of the school district or of a public agency involved in the education or care of the child (this includes public children's service agencies);
- Has no conflict of interest with the child he or she represents; and
- Has the knowledge and skills to adequately represent the child.

## CONSENT

### ***What does consent mean?***

Consent means

- You have been given **all** information necessary to make an informed decision about the proposed activity. This

information must be provided in your native language or other mode of communication.

- You understand and agree in writing to the proposed activity. The document(s) you sign must describe the activity and list any records that will be released. It must also list who will receive these records.
- You understand that giving your consent is voluntary and that you may withdraw your consent at any time. However, if you withdraw consent, that withdrawal does not overturn an action that has occurred after the consent was given and before the consent was withdrawn.

### ***When must the school obtain my written consent?***

In Ohio, the school district must have your written consent under four conditions:

- Before the initial evaluation begins;
- Before special education and/or related services are started for the first time;
- If there is a change in placement on the continuum of services, except for removal for disciplinary reasons (see page 40); and
- If you and/or the IEP team determine the need for additional assessment during the reevaluation process.

Your consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

### ***What happens if I do not consent to the initial evaluation?***

If you do not provide consent for an initial evaluation under the consent for initial evaluation provisions or you fail to respond to a request to provide the consent, the school district may pursue the initial evaluation of your child by filing a due process complaint against you.

Does the school district have to obtain my consent for services?

An agency that is responsible for making a free appropriate public education available to your child with a disability shall seek to obtain informed consent from you before providing special education and related services to your child.

What happens if I refuse to consent to services?

If you refuse to consent to services under the consent for services provisions, the school district shall not provide special education and related services to your child by filing a due process complaint against you.

If you refuse to consent to the receipt of special education and related services, or if you fail to respond to a request to provide such consent:

- The school district shall not be considered to be in violation of the requirement to make available a free appropriate public education to your child for the failure to provide your child with the special education and related services for which the school district requests such consent; and
- The school district shall not be required to convene an IEP meeting or develop an IEP for your child for the special education and related services for which the school district requests such consent.

**What are the requirements to obtain consent for wards of the state?**

If the child is a ward of the state and is not residing with the child's parent, the school district shall:

- IN GENERAL: Make reasonable efforts to obtain the informed consent from the parent of the child for an initial evaluation to determine whether the child is a child with a disability.

- EXCEPTION: The school district shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if:

1. Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;
2. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

RULE OF CONSTRUCTION: The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

***When in the evaluation process is my consent not needed?***

Your consent is not required

- When reviewing existing information for either evaluation or reevaluation; or
- When giving tests to all children unless consent is required for everyone.

## **EVALUATION**

***What does evaluation mean?***

Evaluation is a process used to gather information to assist in determining whether your child has a disability and determining the type and amount of services your child may need.

The purpose of evaluating your child is to

- Get a complete picture of your child's abilities as a starting point for planning educational services;
- Make recommendations about ways to meet your child's educational needs; and
- Determine eligibility for special education services.

**Who may initiate a request for an initial evaluation to determine if the child is a child with a disability?**

Consistent with the other provisions of this guide that apply to parental consent, either a parent of a child, or a state educational agency, other state agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

***When does my child need an evaluation?***

Your child needs an initial evaluation when the school district suspects that your child has a disability. If your child is already receiving special education and related services, a reevaluation must be conducted at least every three years, unless the parent and the school district agree that a reevaluation is unnecessary. This reevaluation is done to assure that your child is still eligible to receive special education and related services, and to determine if the services are appropriate. If your child transferred from one school district to another school district in the same academic year, your child's assessment will be coordinated with your child's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

The evaluation of your child must

- Be multifaceted, or assess more than one area of your child's functioning;
- Be multidisciplinary, or performed by a group of professionals;
- Be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
- Be unbiased, or given in such a way so as not to discriminate against your child, regardless of his or her cultural background, race or disability;
- Use background information provided by you, the parent. This could include any reports from professionals outside the school district;
- Gather information related to helping your child be involved in and progress in the general curriculum, or, for preschool children, to participate in appropriate activities;

- Are used for purposes for which the assessments or measures are valid and reliable; and
- Are administered by trained and knowledgeable personnel in accordance with any instruction provided by the producer of such assessments.

The evaluation must address all of the areas related to the suspected disability, including where appropriate:

- Health;
- Vision;
- Hearing;
- Social and emotional status;
- General intelligence;
- School performance (achievement);
- Communication status (listening, speaking and writing);
- Movement/usage of muscles (motor abilities);
- Ability to do (aptitudes);
- The child's surroundings (environments) and their effect upon learning;
- Adaptive behavior.

You may request that other areas be assessed as part of your child's evaluation.

All required evaluation components, including medical, are provided by the school district at no cost to you. When all of the evaluation components have been gathered, the school district must arrange a meeting with the evaluation team, including you, to

- Review evaluation results;
- Summarize and interpret the evaluation team report;
- Determine if your child has a disability; and
- Write an IEP, if necessary.

**If my child has trouble with reading or math, is my child considered to be a child with a disability?**

Your child will not be determined to be a child with a disability if the determinant factor for such determination is:

- Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined by section 1208(3) of the Elementary and Secondary Education Act of 1965);
- Lack of instruction in math; or
- Limited English proficiency.

**How will the district determine whether my child has a specific learning disability?**

In determining whether your child has a specific learning disability:

- A school district is not required to take into consideration whether your child has a severe discrepancy between achievement and intellectual ability in oral expression, listening, comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.
- A school district may use a process that determines if your child responds to scientific, research-based intervention as a part of the evaluation procedures.

**What is the timeframe for determining if my child is a child with a disability?**

IN GENERAL: The initial evaluation shall consist of procedures: to determine whether your child is a child with a disability within 60 days of receiving your consent for the evaluation; and to determine the educational needs of your child.

EXCEPTION: The 60-day timeframe does not apply if:

- Your child enrolls in a school served by the school district after the 60-day timeframe has begun and prior to a determination by your child's previous school district as to whether your child is a child with a disability, but only if:
  1. The subsequent school district is making sufficient progress to

- ensure a prompt completion of the evaluation; and
2. You and the subsequent school district agree to a specific time when the evaluation will be completed;

or

- You repeatedly fail or refuse to produce your child for the evaluation.

NOTE: The 60-day period tracks the time between the consent for evaluation and the initial evaluation. The 30, 90, and 120-day time periods, which are established in Rule 3301-51-07 (D) and are referenced in this guide, are still in effect since they track different time periods which apply to the development of the initial IEP.

The school district will provide you with a copy of the evaluation team report. If your child has a disability, the IEP must be developed not more than 90 days after your written consent for the evaluation has been received by the school district. The IEP meeting must be conducted within 30 days of determining that the child needs special education and related services.

## **REEVALUATION**

### ***What is the purpose of reevaluation?***

The primary purpose of reevaluation is to determine if the student continues to be eligible for special education and related services and/or needs a change in services.

### ***When must a reevaluation be done?***

IN GENERAL: A reevaluation shall be conducted:

- If the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of your child warrant a reevaluation;
- If you or your child's teacher requests a reevaluation;
- When your child transitions from preschool to school-age services;
- In order to make a change in disability category;
- Before determining that your child is no longer a child with a disability.
- When related services are being considered for addition to an existing IEP."

LIMITATION: A reevaluation shall occur:

- Not more frequently than once a year, unless you and the local educational agency otherwise; and
- At least once every three years, unless you and the local educational agency agree that a reevaluation is unnecessary.

### ***What happens when it is time to reevaluate your child for special education services?***

The school district will

- Invite you to participate in the re-evaluation process;
- Explain the reevaluation process, including your right to additional assessment to determine your child's continued eligibility for special education and/or related services;
- Provide you with a copy of *Whose IDEA Is This?*;
- Provide you with prior written notice; and
- Obtain your written consent if new assessments are necessary or if they were requested by you.

However, the reevaluation process, including new assessments, may proceed if the school district demonstrates and documents reasonable efforts (i.e., phone calls, written notice, home visits) to obtain your consent and you fail to respond.

### ***What happens during a reevaluation?***

The IEP team, including you, reviews current data, and based on this review

- Determines if and what additional testing (provided by the school district) is necessary to determine continued eligibility and if a change in services is needed; or
- Determines that no additional information is required to continue eligibility or that changes in service are not necessary. You will be notified of the reasons why no further data is needed and that your child continues to be eligible for special education and related services.

If it is determined that no additional assessment is needed, the district must let you know that you have a right to request an assessment to determine whether your child continues to be a child with a disability and continues to need special education and related services.

## **INDEPENDENT EDUCATIONAL EVALUATION**

### ***What if you disagree with the school district's evaluation?***

You may obtain an independent educational evaluation if you disagree with the school district's evaluation results.

### ***What is an independent educational evaluation?***

An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.

### ***What is the purpose of an independent educational evaluation?***

If you disagree with your school district's evaluation, you have the right to an independent educational evaluation at public expense. *Public expense* means that the school district either pays for the full cost of the educational evaluation or ensures that the evaluation is provided at no cost to you without delay. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and qualifications of the examiner, must meet the same criteria that the school district uses when it initiates an evaluation. Except for these criteria, the school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

In addition, an independent educational evaluation may be requested by a hearing officer. In this case, the independent educational evaluation *must* be at public expense.

*NOTE: If you request an independent educational evaluation, the school district may ask you for the reason why you object to the district's evaluation. You are not required to provide an explanation and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the district's evaluation.*

***What if the school district believes its evaluation is valid?***

It is the school district's responsibility to request without delay a due process hearing to show that its evaluation is valid. However, if the final decision is that the district's evaluation is appropriate, you still have the right to an independent educational evaluation at *your* expense. If you get an independent educational evaluation at your expense, the school district must consider those results in planning your child's program. Those results may also be presented as evidence in an impartial due process hearing.

***Where can you get an independent educational evaluation?***

At your request, the school district must provide you with information about where an independent educational evaluation may be obtained and the school district's criteria for conducting an independent educational evaluation.

**INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

***What is an individualized education program?***

An individualized education program (IEP) is a written plan for a child with a disability that is developed and implemented according to federal and state regulations. This plan includes:

- A description of your child's strengths and needs (present levels of academic achievement and functional performance). This description should include how your child's disability affects his/her involvement and progress in the general curriculum. For preschool children, this description should include how the disability affects your child's participation in appropriate activities;
- A statement of measurable annual goals, including short-term instructional objectives or benchmarks and academic and functional goals designed to meet your child's educational needs that result from his/her disability. These goals and objectives should enable your child to be involved in and progress in the general curriculum. They must also meet your child's other educational needs;
- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to your child or on behalf of your child. There should also be a statement of the program modifications or supports for school personnel that will be provided for your child to
  - Advance toward reaching the annual goals;
  - Be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
  - Be educated and participate with other children with and without disabilities.

- An explanation of the extent, if any, to which your child will not participate with nondisabled children in the regular class and other school activities;
- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of your child on State and districtwide assessments. If the IEP team determines that your child shall take an alternate assessment on a particular State or district wide assessment of student achievement a statement of why:
  - 1 Your child cannot participate in the regular assessment; and
  - 2 The particular alternate assessment selected is appropriate for your child.
- The projected date for the beginning of the services and modifications described in the IEP and the anticipated frequency, location and duration of those services and modifications;
- Beginning at least one year before your child reaches the age of majority under state law (18 years in Ohio), a statement that your child has been informed of all rights under IDEA, that will transfer to him/her when he/she reaches age 18; and
- A statement of how your child's progress toward the annual goals will be measured, how you will be regularly informed and the extent to which this progress is sufficient to enable your child to achieve the goals by the end of the year.

- courses of study (e.g., participation in advanced placement courses or a vocational education program);
- Beginning at age 16 and updated annually thereafter:
  1. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
  2. The transition services (including courses of study) needed to assist your child in reaching those goals;
- A positive behavior plan if your child's behavior interferes with his or her learning or that of others;
- Physical education programs that address your child's individual needs;
- Your child's need for extended school year services;
- The need for Braille instruction if your child has a visual impairment;
- The communication needs of your child, which include listening, speaking, reading and writing. If your child is deaf or hard of hearing, the IEP team shall consider your child's language and communication needs, opportunities for direct communication with his/her classmates, teachers, and therapists in your child's language and communication mode;
- Your child's language needs as they relate to the IEP if he/she has limited English proficiency (LEP); and
- Your child's need for assistive technology devices and services.

The IEP Team shall also review and consider the following special factors:

- Your child's participation in various testing programs including proficiency tests;
- The transition of your child from preschool special education services (ages 3-5) to school-age special education services;
- Beginning at age 14 and updated annually, a statement of transition service needs that focus on your child's

***What are the arrangements for an IEP meeting?***

The IEP meeting is arranged by the school district. The following details should be addressed:

- You and/or your child should be notified of the meeting early enough to ensure that you will have an opportunity to attend.
- The meeting should be scheduled at a mutually agreed upon time and place.

- The meeting notice should include the purpose, time, location and who will be attending.
- If you cannot attend, the school district shall use other methods to allow you to participate in the meeting, such as individual or conference telephone calls.
- If you cannot attend or participate, a meeting may be conducted without you.
- The school district must have a record of its attempts to reach you.
- The school district shall take whatever action is necessary to ensure that you understand the meeting including arranging for an interpreter if you are a person with a hearing impairment or if your native language is other than English.
- The school district shall give you a copy of your child's completed IEP at no cost to you.

#### ***Who should be a member of the IEP team?***

The school district shall ensure that the IEP team for each child includes:

- You, the parent(s);
- Your child, when appropriate, but always invited at the age of 14 and older;
- At least one of your child's regular education teachers (if your child is, or may be, participating in the regular education environment);
- At least one special education teacher or, where appropriate, at least one of your child's special education providers (e.g., occupational therapist or speech-language pathologist);
- A representative of the school district who is qualified to provide or supervise the provision of specially designed instruction for children with disabilities. The district representative should also be knowledgeable about the general curriculum and about the availability of resources of the school district;
- A person who can explain the instructional implications of the evaluation results and how they affect your child in school;

- An individual with expertise or special knowledge about your child and invited by you or the school district; and
- A representative of any other agency likely to be responsible for providing or paying for transition services.

#### ***When is a member of the IEP team not required to attend an IEP meeting? How may a member of the IEP team be excused from attending an IEP meeting?***

A member of the IEP Team is not required to attend an IEP meeting or may be excused from attending the meeting as follows:

- A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:
  1. You and the local educational agency consent to the excusal; and
  2. The member submits, in writing to you and the IEP Team, input into the development of the IEP prior to the meeting.
- Your agreement under bullet one and consent under bullet two must be in writing.
- If your child was previously served under part C of IDEA, an invitation to the initial IEP meeting shall, at your request, be sent to the part C service coordinator or other representatives of

the part C system to assist with the smooth transition of services.

**How may changes to IEPs and meetings be handled?**

Changes to IEPs and meetings may be handled as follows:

- In making changes to your child's IEP after the annual IEP meeting for a school year, you and the school district may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify your child's current IEP.
- To the extent possible, the school district shall encourage the consolidation of reevaluation meetings for your child and other IEP Team meetings for your child.
- Changes to the IEP may be made either by the entire IEP Team or, as provided in bullet one, by amending the IEP rather than by redrafting the entire IEP. Upon request, you shall be provided with a revised copy of the IEP with the amendments incorporated.

**May the parents and school district use alternative means of meeting participation?**

Yes. When conducting IEP team meetings and placement meetings pursuant to the sections of IDEIA on educational placements, mediation, and resolution session, and carrying out administrative matters under section 615 of IDEIA, Procedural Safeguards (such as scheduling, exchange of witness lists, and status conferences), you and the school district may agree to use alternative means of meeting participation, such as video conferences and conferences calls.

## ***What is the responsibility of the IEP team?***

IEP meeting participants shall complete the following sequence of activities:

### **Step 1: Discuss Future Planning**

Everyone has dreams for the future, which guide actions, thoughts and plans. Putting dreams into words is part of the ongoing, long-range planning for your child with a disability. As part of that effort, the IEP team will discuss the student's preferences and interests.

### **Step 2: Discuss Present Levels of Academic Achievement and Functional Performance**

The IEP team will review relevant information about your child. This information includes progress on the current IEP, the evaluation team report, input from you and your child, interventions, assessments, observations, and special factors. This information provides a "picture" of your child including his/her strengths and needs.

### **Step 3: Identify Your Child's Specialized Educational Needs for this IEP**

The IEP team will determine the area(s) of your child's specialized educational needs and his/her present levels of academic achievement and functional performance.

### **Step 4: Identify Measurable Goals, Including Objectives and Academic and Functional Goals, and Assessment Procedures**

The IEP team will develop measurable annual goals and objectives and academic and functional goals with accompanying assessment procedures, which enable your child to be involved with and progress in the general education curriculum. The team then determines what services are necessary to meet your child's needs.

### **Step 5: Identify Needed Services, Based on Peer-Reviewed Research to the Extent Practicable**

The IEP team decides how often, what services, based on peer-reviewed research to the extent practicable, will be necessary, and who will provide them. This section of the IEP should include accommodations/modifications/ assistive devices and a statement of program modifications or supports for school personnel that are needed for the child to progress within the general curriculum and participate in extracurricular and other nonacademic activities.

### **Step 6: Determine Least Restrictive Environment (LRE)**

Your child's placement is presumed first to be the general education environment. If the team determines that a different setting is needed for any service delivery, the IEP team will provide an explanation of the extent, if any, to which your child is not participating with nondisabled children.

### ***How is my child's IEP reviewed and/or revised?***

Your child's IEP must be reviewed at least annually and revised, if appropriate. However, your child's IEP may be reviewed/revised at any time during the school year at your request or at the school district's request. You may wish to consider a revision of the IEP to address

- Any lack of expected progress toward the annual goals and in the general curriculum;
- Results of any reevaluation conducted;
- Information about your child provided to you or by you;
- Your child's anticipated needs; or
- Other matters.

### ***What happens before your child reaches the age of majority (18 years in Ohio)?***

At least one year before your child reaches the age of majority, his/her IEP must include a statement that he/she has been informed that all rights will transfer to him/her at age 18.

## **EXTENDED SCHOOL YEAR SERVICES**

### ***What are extended school year (ESY) services?***

Extended school year services are special education and related services, which are provided outside the normal 180-day school year. You and the participants on the IEP team may consider your child's need for extended school year services. The provision of extended school year services is determined on an individual basis and at no cost to you.

The IEP team members shall consider the following:

- Whether ESY services are a necessary, not just beneficial, component of FAPE;
- Whether ESY services are required to prevent significant regression of skills or knowledge due to an interruption of instruction between school years; and

- Whether ESY services are required to prevent significant regression of skills or knowledge retained by the child that cannot be recouped in a reasonable amount of time.

ESY services may be the same or different from your child's regular school year services, as determined by the IEP team. The provision of ESY services is **not** automatic year after year.

## **STUDENT TRANSFER**

### ***What are the requirements when your child transfers school districts?***

The requirements when your child transfers school districts are as follows:

- TRANSFER WITHIN THE SAME STATE: If your child with a disability transfers school districts within the same academic year, enrolls in a new school, and had an IEP that was in effect in the same state, the school district shall provide your child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with you until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with federal and state law.
- TRANSFER OUTSIDE STATE: If your child with a disability transfers school districts within the same academic year, enrolls in a new school, and had an IEP that was in effect in another state, the school district shall provide your child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with you until such time as the school district conducts an evaluation, if determined to be necessary by the district, and develops a new IEP, if appropriate,

that is consistent with federal and state law.

- TRANSMITTAL OF RECORDS: To facilitate the transition for your child:
  1. The new school in which your child enrolls shall take reasonable steps to promptly obtain your child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to your child, from the previous school in which your child was enrolled, pursuant to the provisions of FERPA; and
  2. The previous school in which your child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

## TRANSITION

### ***What does "transition" mean?***

Transition is the process of planned activities that may result in changes in services and the personnel who provide those services. There are at least three times in a child's educational career when transition activities should occur. These include:

- The move from early intervention services to preschool special education services;
- The move from preschool special education services to school-age special education services; and
- The move from school-age special education services to community life.

See page 54 for a definition of transition services.

### **Moving from early intervention services to preschool special education services**

If your child is receiving early intervention services (available for children, ages birth through two) and it is suspected that your child might have a disability and may be eligible for preschool special education services, the following activities should occur:

- One hundred twenty (120) days prior to your child's third birthday, the early intervention service coordinator should schedule a meeting with you to discuss preschool special education services. Your consent is required to share information with the school district.
- If you consent to share information with the school district, you and the other participants at the meeting (early intervention service providers and school district personnel) will review records and determine whether or not your child is suspected of having a disability.

If your child is suspected of having a disability, the school district will

- Inform you of your educational rights and procedural safeguards;
- Share information about preschool special education services;
- Obtain your consent for evaluation;
- Determine the need for additional evaluation information; and
- Plan your child's assessment.

The evaluation and IEP process must be completed within 90 days from your consent. If your child is eligible for preschool special education services, the IEP must be implemented by your child's third birthday.

### ***What happens if my child is not eligible for preschool special education services?***

If your child is not eligible for preschool special education services, with your consent, referrals to other community services and programs may be made. You may also request an independent educational evaluation (see page 17) and/or an impartial due process hearing (see page 29).

### **Moving from preschool special education services to school-age special education services**

If your child has been receiving preschool special education services, and is approaching school age, the IEP team will

- Meet to determine appropriate school-age educational services;
- Review current information from your child's educational program; and
- Recommend instructional strategies that will support your child's success in the general curriculum.

If the MFE team determines that your child needs school-age special education services, the IEP team will

- Review current assessment data (e.g., data that are less than one year old);
- Determine and recommend additional assessment information necessary according to school-age special education rules; and
- Develop the IEP.

If the IEP team determines that your child does not need school-age special education services, you will be provided with prior written notice, which includes your right to challenge this decision through due process.

### **Moving from school-age special education services to community life**

If your child has been receiving school-age special education services, a statement of transition service needs that focuses on your child's courses of study (e.g., participation in advanced placement courses or a vocational education program) must be included on his/her IEP beginning at age 14 or younger, if determined appropriate by the IEP team.

Beginning at age 16 (or younger, if appropriate), the IEP must include a statement of needed transition services for your child including, if appropriate, a statement of the interagency responsibilities or any needed linkages. Transition activities include:

- Instruction;
- Related services;
- Community experiences;
- The development of employment and other post-school adult living objectives; and

- If appropriate, acquisition of daily living skills and functional vocational evaluation.

### ***What happens when graduation is an option for my child?***

Graduation with a regular diploma is a change in placement, which requires prior written notice to you and/or your child. Also, an IEP meeting should be held. Children can continue to receive services from the school district through age 21 as long as they do not accept a diploma from the school. If graduating with a regular diploma or upon reaching age 22, a reevaluation is not required prior to termination of services. If your child's eligibility terminated because your child graduated with a regular diploma or reached age 22, the school district shall provide your child with a summary of his/her academic achievement and functional performance, which shall include recommendations on how to assist your child in meeting his/her postsecondary goals.

### **RECORDS**

#### ***Can you see your child's educational records?***

You have the right to see all records that are collected, maintained or used by the district relating to your child. This includes records regarding the identification, evaluation and educational placement of your child, as well as the provision of FAPE. The school district shall comply with your request to see your child's records without unnecessary delay (no more than 45 days). If you request them, educational records must be provided before any IEP meeting or hearing related to your child's identification, evaluation or educational placement.

When your child reaches the age of majority (18 years in Ohio), the district shall ensure that all rights regarding educational records are transferred to him/her (except for a student who has been determined to be incompetent under State law). However, if the

school district has received evidence that a probate court has appointed a guardian for a child with a disability, the district shall appoint the legal guardian to represent the educational interests of the child until the child reaches age 22, if the child is not a ward of the state. The parent(s) must be notified of any transfer of rights.

*NOTE: The school district must provide any notice required under the procedural safeguards section to both you and your child.*

### **What are your rights concerning educational records?**

Your rights to inspect and review educational records include the following:

- The right to get an explanation and interpretation from your school district or any agency performing a required school service;
- The right to have your representative inspect and review the educational records; and
- The right to receive copies of the educational records if not having copies would prevent you from exercising your right to inspect and review the educational records (e.g., if you lived in a different state and could not physically get to the school).

Personally identifiable information may be released to individuals without consent consistent with the Family Educational Rights and Privacy Act (FERPA).

Your written consent must be obtained before the release of any personally identifiable information to individuals other than officials of participating agencies who provide educational services to your child.

Personally identifiable information includes, but is not limited to:

- The name of your child, your name, or the name of another family member;
- Your child's address or your family's address;

- A personal identifier, such as your child's social security number or student number;
- A list of personal characteristics, or other information that would make it possible to identify your child; and
- Other information that would make the student's identifiable information easily traceable.

The school district shall presume that you have the authority to inspect and review educational records relating to your child, unless the school district has been advised that you do not have the authority under Ohio law governing such matters as guardianship, separation and divorce.

If educational records include information on more than one child, you have the right to inspect and review only the information relating to your child, or to be informed of any information relating to your child.

At your request, the school district must provide you with a list of the types and locations of all student educational records collected, maintained or used by the district.

### **What is the school district's general responsibility in protecting your child's records?**

The school district must protect the confidentiality of personally identifiable information at the collection, storage, disclosure and destruction stages. One official from the school district shall assume the responsibility for ensuring the confidentiality of this information. The school district must also provide training to all staff involved in collecting or using the information regarding the State's policies and procedures.

The school district must keep a record of the people obtaining access to educational records. This record must include the name of the person, the access date and the purpose for which the person is authorized to use the records.

### ***What are your rights concerning the destruction of records?***

The school district must inform you when records are no longer needed to provide special education services to your child. The information must be destroyed if you request it. However, a permanent record of a student's name, address, and phone number, his/her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

### ***How do I get my child's educational records changed?***

If you believe that any information in your child's educational records is inaccurate, misleading, or violates the privacy or other rights of your child, you may ask the school district to change the information. The school district must decide whether to change the information within a reasonable amount of time.

If the school district refuses to change the information as you requested, you must be informed of the refusal and of your right to a records hearing (according to the Family Educational Rights and Privacy Act). The records hearing gives you a chance to challenge the information in the educational records to ensure that it is not inaccurate, misleading, or in violation of the privacy or other rights of your child.

After the records hearing, if the school district agrees with you, it must change the information and let you know in writing. If the school district disagrees with you, you will be able to write a statement about your concerns. This statement will be placed in your child's educational records, and must be kept by the school district as long as the records are kept. Anytime your child's records are shared, your statement must be included.

### ***What are the costs for reviewing your child's educational records?***

The school district may not charge a fee to search for or to retrieve information.

A fee for copies of educational records may be charged to you as long as the fee does not prevent you from inspecting your child's educational records.

## **RESOLVING DISAGREEMENTS**

### ***What happens when you disagree over identification, evaluation, placement or the provision of FAPE?***

There may be a time when you and the school district disagree. Many disagreements can be resolved by communicating with your child's teacher, principal or other school district personnel. There are also procedures established by state and federal rules and regulations to address your concerns. They include:

- Case conference
- Administrative review
- Mediation
- Impartial due process hearing
- State complaint procedures

However, you may choose to go directly to an impartial due process hearing or a state complaint. The school district also has this option of going directly to a hearing.

### **Case conference**

A case conference is an informal procedure used to provide you and the school district with an opportunity to discuss and resolve issues related to the provision of appropriate educational services to your child. If you wish to have a conference with your child's teacher or other school staff members, call the principal of the building in which your child is enrolled.

### **Administrative review**

You have the right to present complaints to the superintendent regarding your child's evaluation and placement, and the provision of appropriate educational services to your

child. The administrative review process is as follows:

- When the superintendent receives your written request, you will be contacted to set up a meeting, without undue delay, and at a mutually convenient time and place (not necessarily at the school building).
- You and the school district have the right to invite others to participate in the administrative review, including legal counsel.
- Every effort should be made to resolve any disagreements at the administrative review.
- The superintendent shall notify all parties, in writing, of his or her decision within 20 days after the review.

### **Mediation**

After all efforts have been exhausted at the school district level, a trained, qualified and impartial representative of the Ohio Department of Education (ODE) may be asked to mediate a dispute involving any matter, including matters arising prior to the filing of a complaint. Both you and the school district must agree to this process. The school district will schedule a mutually agreed time and place for the mediation in a timely manner.

The following points are important to know about the mediation:

- Mediation cannot deny or delay your right to a due process hearing or any other rights under IDEA.
- Discussions occurring during the mediation shall be confidential and may not be used as evidence in any impartial due process hearing or civil proceeding.
- No part of the mediation shall be electronically recorded.
- The mediator may not be an employee of a school district or state agency that is providing direct service to students.
- If the mediator otherwise qualifies, he/she cannot be eliminated solely because he/she is paid by the agency.

- The mediator must not have a personal or professional conflict of interest.
- Both you and the school district must be involved in selecting the mediators and agree with the selection.
- The Ohio Department of Education maintains a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.
- The mediator may not be called as a witness in future proceedings.
- The school district or designated agency involved in the disagreement shall send a representative who has the authority to commit resources.
- If the mediation agreement requires a change(s) in your child's IEP, an IEP meeting shall be held within 20 days, or as agreed to in the mediation agreement.
- If the dispute is resolved, each party shall receive a signed copy of the mediation agreement at the end of the meeting.
- If you requested a due process hearing and agreement is reached during the mediation, you must withdraw your request for the due process hearing. This withdrawal could be part of the mediation or in a separate letter to the school district.
- If an agreement is reached and an impartial due process hearing was not required, the school district and the parent will implement all terms of the agreement.
- The state shall bear the cost of the mediation process including costs of meetings.

### **Is the mediation agreement a binding agreement?**

If a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding written agreement that sets forth such resolution and that:

- States 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:

- Is signed by both the parent and a representative of the agency who has the authority to bind such agency; and
- Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

*NOTE: A school district may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet with an impartial person who is under contract with Ohio's parent training and information center (see page 35) or another appropriate dispute resolution organization. This person would explain the benefits of the mediation process and encourage the parents to use it. The meeting would be held at a time and location convenient to the parents. The state shall bear the cost of this meeting. The school district may not deny or delay a parent's right to a due process hearing if the parent fails to participate in this meeting.*

## **DUE PROCESS**

### ***What is an impartial due process hearing?***

An impartial due process hearing is a formal, administrative procedure that is held to resolve disagreements. Disagreements may be about the identification, evaluation and placement of your child, or the provision of FAPE to your child. An impartial due process hearing may be requested by parents, the school district or other public agencies (e.g., county boards of mental retardation and developmental disabilities, developmental centers, and the Department of Youth Services).

An impartial hearing officer (IHO) will conduct the hearing. The IHO cannot be an employee of the school district or any public agency involved in the education or care of your child. Also, the IHO cannot have a personal or professional interest that may interfere with

his or her objectivity. The cost of the hearing officer is paid by your school district. However, the hearing officer is not considered an employee of the school district solely because he or she is paid to serve as a hearing officer.

In Ohio, a hearing officer must be an attorney and is required to complete periodic training provided by ODE. The state and local school district maintains a list of hearing officers and their qualifications. Each public agency shall also keep this list.

### **Are there any limitations on the issues that I can raise at a due process hearing?**

You will not be allowed to raise issues at the due process hearing that were not raised in your due process complaint notice, unless the other party agrees otherwise.

NOTE: The term "due process complaint notice" is used here in the context of a due process hearing request. See the attached form "Due Process Complaint Notice and Request for a Due Process Hearing." The form may be used to provide your due process complaint notice and request a due process hearing.

### **May I file a separate due process complaint on an issue that I did not raise in a due process complaint that I already filed?**

Yes. You may file a separate due process complaint on an issue separate from a due process complaint that you already filed.

### **What is the deadline for requesting an impartial due process hearing?**

You must request an impartial due process hearing within 2 years of the date you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint notice, except that the timeline shall not apply to you if you were prevented from requesting the hearing due to:

- Specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint; or
- The school district's withholding of information from you that was required under this part to be provided to you.

***How do you request an impartial due process hearing?***

You request an impartial due process hearing by filing a due process complaint notice and hearing request as follows:

When you request an impartial due process hearing, it must be in writing, and the request must be sent to the superintendent of the district of residence and a copy to the Office for Exceptional Children.

- State that you are requesting an impartial due process hearing;
- Provide your child's name;
- Indicate the address of the residence of the child or the available contact information in the case of a homeless child;
- 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)), provide the available contact
- State the name of the school the child is attending;
- Provide a description of the nature of the problem of the child relating to the proposed or refused initiation or change of the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child, including facts relating to such problem;
- Offer a proposed resolution to the problem to the extent known and available to you at the time.

You may not have a due process hearing until you, or the attorney representing you, files a due process complaint notice that meets the

requirements that apply to the complaint notice.

A request form is included in the appendix of this document.

Upon receipt of your request, the school district will provide you with a copy of *Whose IDEA Is This?*

If the school district requests an impartial due process hearing, you will receive written notice and a copy of *Whose IDEA Is This?*

After an impartial due process hearing is requested

- You will be told about the availability of mediation.
- The Office for Exceptional Children must send you and the school district a list of three impartial due process hearing officers and their qualifications by certified mail.
- You and the school district must agree upon an impartial due process hearing officer. If you agree, the school district will contact the Office for Exceptional Children with the name of the agreed upon impartial due process hearing officer.
- If you and the school district do not agree upon an impartial due process hearing officer, the school district must notify the Office for Exceptional Children immediately. The Office for Exceptional Children will then appoint an impartial due process hearing officer from the list that you received.
- If the Office for Exceptional Children does not receive any notification within 10 days of the certified mailing of an agreed upon choice of an impartial due process hearing officer, a hearing officer will be appointed by the Office from the list that you received.
- If you or the school district requests a hearing, the school district shall inform you of any free or low-cost legal or other relevant services available in your area.

- Arrangements for the location, date, and time of the impartial due process hearing will be made by school district personnel.
- At least five business days before the impartial due process hearing, each party (you and/or the school district) shall disclose to all other parties all evaluations completed by that date and recommendations that you or the school district intend to use at the hearing. If either you or the school district do not provide this information, the hearing officer may keep that party from introducing new information at the hearing without the consent of the other party.
- An impartial due process hearing will be held and a decision will be sent to all parties. The school district must ensure that this happens within 45 days, unless a specific extension of time beyond the 45 days has been requested, in writing, by either you or the school district and granted by the IHO.
- The decision made at an impartial due process hearing is final unless an appeal is filed within 45 days by you or the school district.

If you are involved in an impartial due process hearing, you have the right to

- Have your child present;
- Request that the hearing be open to the public;
- Be accompanied and advised by legal counsel and/or by individuals with special knowledge or training with respect to children with disabilities;
- Present evidence and confront, cross-examine and compel the attendance of witnesses;
- Stop the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing;
- Have the hearing conducted at a time and place that is reasonably convenient to you and your child; and
- Choose a written or electronic word-for-word copy of the hearing officer's findings and decisions. This copy must be provided at no cost to you.

**Will my due process complaint notice be sufficient to allow me to have a due process hearing? What happens if the school district believes my due process complaint notice is not sufficient?**

The due process complaint notice shall be deemed to be sufficient unless:

- Within 15 days of receiving your due process complaint notice, the school district notifies the hearing officer and you in writing that the school district believes your due process complaint notice has not met the requirements that apply to the complaint notice.
- Within 5 days after receiving this notification from the school district, the hearing officer shall determine whether your due process complaint notice on its face meets the requirements that apply to the due process complaint notice.
- After making this determination, the hearing officer shall immediately notify you and the school district in writing of his/her determination.

**What will the school district do after it receives my due process complaint?**

If the school district has not sent a prior written notice to you regarding the subject matter contained in the your due process complaint notice, the school district shall, within 10 days of receiving your due process complaint, send to you a response that shall include:

- An explanation of why the agency proposed or refused to take the action raised in the complaint;
- A description of other options that the 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 factors that are relevant to the school district’s proposal or refusal.

SUFFICIENCY: A response filed by school district shall not be construed to preclude the school district from asserting that your due process complaint notice was insufficient where appropriate.

***If the school district is the party filing the due process complaint, what must I do when I receive a copy of the district’s due process complaint?***

Within 10 days of receiving the school district’s due process complaint, you must send to the school district a response that specifically addresses the issues raise in the school district’s complaint.

***May I amend my due process complaint notice?***

You may amend your due process complaint notice only if:

- The school district consents in writing to the amendment; or
- The hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

NOTE: The applicable timeline for a due process hearing shall recommence at the time you file an amended notice, including the timeline for a resolution session.

***What happens before the due process hearing?***

A resolution session will take place.

PRELIMINARY MEETING: Prior to the opportunity for an impartial due process hearing, the school district shall convene a meeting with you and the relevant member or members of the IEP Team who have specific

knowledge of the facts identified in the complaint:

- Within 15 days of receiving your due process complaint notice;
- Which shall include a representative of the public agency who has decision-making authority on behalf of such agency;
- Which may not include an attorney of the school district unless you are accompanied by an attorney; and
- Where you discuss your complaint, and the facts that form the basis of the complaint, and the school district is provided the opportunity to resolve the complaint, unless you and the school district agree in writing to waive such meeting, or agree to use the mediation process described in the mediation section of this guide.

***If my complaint is resolved at the preliminary meeting, what is the next step?***

**WRITTEN SETTLEMENT AGREEMENT:**

In the case that a resolution is reached to resolve the complaint at the preliminary meeting, you and the school district shall execute a legally binding agreement that is –

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

REVIEW PERIOD: If you and the school district execute a written settlement agreement, either you or the school district may void the agreement within 3 business days of the agreement’s execution.

***What happens if my complaint is not resolved through the resolution session?***

If the school district has not resolved the complaint to your satisfaction within 30 days of the receipt of the due process complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing shall commence.

**How will the hearing officer make his/her decision?**

IN GENERAL: Subject to the Procedural Issues provision below, a decision made by the hearing officer shall be made on substantive grounds based on a determination of whether your child received a free appropriate public education.

PROCEDURAL ISSUES: In matters alleging a procedural violation, a hearing officer may find that your child did not receive a free appropriate public education only if the procedural inadequacies:

- Impeded your child's right to a free appropriate public education;
- Significantly impeded your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to your child; or
- Caused a deprivation of educational benefits.

RULE OF CONSTRUCTION: Nothing in this provision shall be construed to preclude a hearing officer from ordering a school district to comply with procedural requirements under this section.

RULE OF CONSTRUCTION: Nothing pertaining to the hearing shall be construed to affect your right to file a complaint with the State educational agency.

**What is your child's status during proceedings?**

While waiting for the decision of any hearing, review or judicial proceeding, your child must remain in his or her present educational placement unless you and the State or the

school district agree otherwise. This is referred to as "stay-put."

If the hearing involves initial admission to public school and your child is of school age, your child (with your consent) will be placed in the public school program until the completion of all the proceedings.

**What if you or the school district disagree with the decision?**

If you or the school district disagree with the decision made by a hearing officer, either party aggrieved may appeal to the Ohio Department of Education in writing. The letter of appeal must be sent to the State Board of Education in care of the Office for Exceptional Children within 45 days of the hearing officer's decision. Upon receipt of the letter of appeal, the Ohio Department of Education will appoint a state level review officer (SLRO) to conduct an impartial review of the hearing officer's decision. The SLRO

- Examines the entire impartial due process hearing record;
- Ensures that the procedures at the impartial due process hearing were consistent with the requirements of due process;
- Seeks additional evidence, if necessary. If a hearing is held to receive additional evidence, the impartial due process hearing rights apply (see page 29);
- May grant specific extensions of time if you or the school district make a request;
- Makes an independent decision on completion of the review.

The state shall ensure that an independent decision is reached in a state-level review of an appeal and that a written copy or electronic word-for-word record at your option of the findings and decision is mailed to all parties within 30 days after the receipt of a request for an appeal. The decision made by the SLRO is final. However, if you are still not satisfied with the findings and decision made in a state-level review, you have the right to bring a civil action in state or federal court

without regard to the amount in controversy. You may bring a civil action:

- In a district court of the United States within 90 days from the date of the decision of the state level review officer; or
- In the court of common pleas of the county in which the child's school district of residence is located within 45 days of notification of the order of the state level review officer.

In any action, the court shall receive the records of the administrative proceedings and hear additional evidence. Basing the decision on the preponderance of evidence, the court shall grant the relief it determines to be appropriate.

If the decision of a SLRO agrees with the child's parent(s)' request for a change of placement, the new placement must be treated as "stay-put" for any future court appeals.

### ***Do you pay for your own attorneys' fees?***

You are responsible for paying your own attorney and any expert witness costs. However, if you prevail in any action or proceeding with respect to a due process hearing, you have the right to request that the court grant reasonable attorneys' fees as part of the decision. The court will determine the amount. The school district may not use federal dollars to pay attorneys' fees.

In addition to parents who are the prevailing party, the following prevailing parties may also qualify for attorney fees. The court, in its discretion, may award reasonable attorneys' fees as part of the costs to the following additional parties:

- To a prevailing party who is a State educational agency or school district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent

who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

- To a prevailing State educational agency or school district against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Attorney's fees may not be awarded relating to any meeting of the IEP team unless the IHO, SLRO or court orders the meeting as part of the hearing proceeding or judicial action. Your attorney fees for the meeting may be included as part of your request for reimbursement; otherwise, fee related services to an IEP meeting may not be awarded. The preliminary meeting held under the Resolution Session shall not be considered either a meeting convened as a result of an administrative hearing or judicial action or an administrative hearing or judicial action for purposes of attorney fees.

### ***Can you get attorneys' fees paid for mediation?***

In the case of mediation, the school district is not responsible for payment of your attorney's fees unless stated as part of the mediation agreement.

### ***Are there times when the court may not give you attorneys' fees for services performed after a written settlement offer?***

Yes, if the district had offered you a written settlement offer and the following happened:

- Your attorney charged you for services performed subsequent to the time of a written offer of settlement to you if the offer was made within the required federal timelines;

- You did not accept the offer within 10 days; and
- The court finds that the settlement was as good as, or better than, what the court proposed to award.

Exception: If you can prove that the settlement offer was not appropriate, you may be awarded attorneys' fees and related costs.

***Are there times when the court may reduce the amount of attorneys' fees for services performed after a written settlement offer?***

Yes, if:

- You or your attorney unreasonably prolong the final resolution;
- Your attorney's fees exceed the hourly rate prevailing in your community for similar services by attorneys of reasonable comparable skill, reputation and experience;
- The time spent and legal services provided were excessive; or
- Your attorney did not provide the school district with the appropriate information when filing for the impartial due process hearing.

Exception: If either the state or the school district unreasonably prolonged the final resolution or there was a violation of your procedural safeguards.

*NOTE: No bonus or multiplier may be used in calculating the amount of attorneys' fees awarded by the court.*

**HOW TO RESOLVE CONFLICTS OR CONCERNS**

***If you have questions or concerns about your child's education, whom do you contact?***

The Ohio Department of Education is responsible for ensuring that children with disabilities receive FAPE in the least restrictive environment as defined by the

*Individuals with Disabilities Education Improvement Act of 2004 (IDEIA 2004) and corresponding state rules.*

Anyone who has a question or concern about the education of a child with identified or suspected disabilities is urged to first contact the appropriate personnel at the local school district where the child attends. The personnel would probably include the child's teacher and building principal, followed by the administrator responsible for special education.

Other organizations that might be helpful in addressing your concerns are:

Ohio's Special Education Regional Resource Centers (SERRCs)  
(Your local school district has the address information for the SERRC nearest you.)

The Ohio Coalition for the Education of Children with Disabilities  
Bank One Building  
165 W. Center Street, Suite 302  
Marion, OH 43302-3741  
(800) 374-2806

Ohio Legal Rights Services  
8 East Long Street, 5th Floor  
Columbus, OH 43215  
(800) 282-9181

Inquiries or complaints about the public education of a child with a disability may be submitted to the Ohio Department of Education at the following address:

Office for Exceptional Children  
Assistant Director  
Procedural Safeguards  
25 South Front St., 2<sup>nd</sup> Floor  
Columbus, OH 43215-4183  
614.466.2650

Inquiries and complaints are defined below:

### **General Inquiry**

An inquiry can be in the form of a telephone call, letter, email or fax. An inquiry is asking for information about the Office for Exceptional Children (OEC) complaint procedures, copies of rules and regulations, clarification of an issue or a referral to the correct person in the district, agency or organization. A general inquiry is not a complaint.

### **Complaint**

A complaint is defined as a written issue that a school district may have violated one or more of the federal or state special education laws. These procedures apply to complaints regarding all children who are eligible or may be eligible for special education services under the Individuals with Disabilities Education Act (IDEA) as well as Ohio's rules. The Office for Exceptional Children does not have the authority to investigate issues dealing with Section 504 of the Rehabilitation Act or issues dealing with the Americans with Disabilities Act (ADA).

Public agencies, individuals or organizations may file complaints. Complaints must be about students, groups or categories of students or young children who are eligible or thought-to-be-eligible for special education services. Anonymous complaints will not be investigated.

### **Procedures for Filing a Complaint**

- The complaint must be in writing and signed by the person filing the complaint. Assistance will be provided to anyone who needs help in filing a complaint. Please contact OEC if you need assistance in filing a complaint.
- The problem which is being complained about must have happened not more than one year before the date the complaint is received by OEC (example: if the problem happened on November 1, 2000 and the complaint is received by the OEC on November 2, 2001 this would be too late

to investigate, however, if the problem happened on November 1, 2000 and the complaint is received by OEC on October 31, 2001 this could be investigated because the problem is within the year).

- If the problem is continuing, OEC will determine if it is reasonable to investigate the complaint beyond one year.
- If the person filing the complaint is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received, the complaint will be considered for investigation.
- The complaint should be addressed to the Office for Exceptional Children. The complaint should clearly identify the concern or the problem.
- Once the complaint is received, it is logged and a letter is sent to the district and the person filing the complaint letting them know OEC received the complaint..

### **The complaint investigation**

- The educational consultant will contact the school district and the parent/guardian through a phone call to discuss the issues in more detail and review the complaint process with both parties. During this first phone call, the educational consultant will offer mediation to both parties. Mediation is a voluntary process (neither party has to go through mediation) in which a neutral person (the mediator) helps the parties with the problem they are having. Mediation is voluntary, completely confidential, informal, at no cost to either party, less threatening, less time consuming, and does not delay or deny the right to file a complaint or a request for a due process hearing.
- If an agreement is reached during the mediation, the parties will sign a mediation agreement. The mediation agreement will include a sentence or paragraph, which will withdraw the complaint. Mediation agreements are made in "good faith." Therefore, if one or both of the parties violate the mediation agreement, OEC will not force parties to

follow the agreement. If the mediation agreement is violated, the parties have the following options:

- Work with the district through a case conference or administrative review;
- File another complaint;
- File for a due process hearing; or
- File in a court of competent jurisdiction for enforcement of the mediation agreement.
- Should an agreement not be reached, the investigation will continue.
- If both parties agree to resolve their differences through mediation, the educational consultant will give the request to the OEC mediation coordinator who will then assign a mediator to help resolve the issue(s).
- After the educational consultant makes the first contact with both parties, the educational consultant will develop a letter listing the problems (letter of allegations). The letter listing the problems will identify the problems, which the person who filed the complaint listed in their letter, and the information needed from the district to investigate the problem(s). If the parent/guardian has information that would help the investigation, this information can be sent to OEC. The letter listing the problems will be sent to the school district with a copy sent to the parent/guardian.
- Once the information has been sent by the school district to OEC, the educational consultant will look through the information to see if the rules have been broken.
- Once the information is reviewed, the educational consultant will write a letter to the district, which states whether the district is following the rules or is breaking the rules and what the district must do to correct the problem (letter of finding). If a district is found to have broken the rules, the educational consultant will determine what the district must do to correct the problem (corrective action).
- A complaint can be withdrawn at any point during the investigation. OEC will send the district and the parent/guardian a letter informing them that the complaint has been withdrawn.
- If the complaint is withdrawn the complaint can be re-filed as outlined previously under Procedures for Filing a Complaint.
- The educational consultants are responsible for monitoring whether the school district follows what the school has to do to correct the problem.
- The letter telling the district and the parent/guardian what the school district has to do to correct the problem is issued 60 days after OEC receives the complaint.
- The person filing the complaint will receive either a letter of findings or a letter telling them the complaint is resolved.
- The parent/guardian and the school district will get a letter when the complaint has been closed and/or when the school district has corrected the problem(s).
- If an investigation cannot be conducted and a report issued within the 60-day timeline because of exceptional circumstances, a written request for an extension is sent to the Assistant Director of Procedural Safeguards at OEC. This letter should explain why the 60-day timeline should be extended. If the Assistant Director of Procedural Safeguards gives the extension, a letter will be sent to the parent/guardian and the school district. The new date that the report is to be issued will be sent to the school district and the parent/guardian involved in the complaint. Extensions beyond 60 days are granted in compliance with the law.
- A complaint may be received that is also the subject of a due process hearing or may contain single or multiple issues of which one or more may be part of a due process hearing. In these cases, OEC will put the complaint issues on hold until the due process is resolved. If there are issues in the complaint that are not

addressed in the due process hearing, those issues will be investigated.

## NONPUBLIC SCHOOLS

### ***What are your rights if you are considering placing your child with a disability in a nonpublic school without consent or referral by the school district?***

If you are considering placing your child in a nonpublic school without consent or referral by the school district:

- You have the right to have your child evaluated by the school district where the nonpublic school is located.
- If your child is eligible for services, the school district where you live must offer FAPE in their district.
- If your child is eligible for special education and/or related services, and you declined FAPE in the school district where you live, you may contact the nonpublic school you have chosen so that the public school district in which the nonpublic school is located can, in consultation with the nonpublic school, may develop a services plan for your child. The public school makes the final determination of whether your child will receive a service plan and the services to be provided. Services plans developed by the nonpublic school will not be recognized as a services plan under federal and state laws.
- If you choose to enroll your child in a nonpublic school instead of your school district of residence, your district is not required to pay the cost of education, including special education and related services, unless the school district has not made FAPE available to your child.

**NOTE:** You should be aware that your procedural safeguards rights are not the same if you choose to place your child in a nonpublic school. You have no due process rights beyond child find, identification and evaluation and the availability of a program appropriate for

your child, and the question of financial responsibility.

*Please see Guidelines for Providing Services to Children With Disabilities Parentally Placed in Ohio Chartered Nonpublic Schools (September 2005)*

However, you do have the right to complain to the state education agency about:

- Child find (identifying, locating and evaluating)
- Identification and evaluation
- Provision of services the school district has agreed to provide
- The amount of funds the school district must spend
- Location of services
- Transportation
- Separation of classes
- Requirements that funds not benefit a nonpublic school
- Use of public school personnel
- Use of nonpublic school personnel
- Requirements concerning property, equipment and supplies

Also, your child is not *entitled* to any service or to any amount of a service that he/she would receive if enrolled in a public school.

***Under what conditions may the public school district be required to pay all or part of your child's nonpublic education?***

If your child previously received special education and related services from your school district and you enroll your child in a nonpublic school without the consent of or referral by the school district, a court or hearing officer may require the school district to reimburse you for the cost of the nonpublic school placement if

- The school district of residence had not made FAPE available to your child in a timely manner prior to the nonpublic school enrollment; and
- Nonpublic school placement is appropriate.

***NOTE: A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the State and the school districts.***

Reimbursement costs for nonpublic education may be reduced or denied by the court or the hearing officer if

- At the most recent IEP meeting you attended prior to the removal of your child from the public school, you did not inform the IEP team that you were rejecting the proposed placement by stating your concerns and your intent to enroll your child in a nonpublic school at public expense;
- At least ten (10) business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the school district that you were rejecting the proposed placement to provide FAPE to your child. This written notice should include a statement of your concerns and your intent to enroll your child in a nonpublic school at public expense;
- Prior to your removal of your child from the public school, the school informed you of its intent to evaluate your child and you did not make your child available for the evaluation; OR
- There is a judicial finding of unreasonableness with respect to actions taken by you.

The cost of reimbursement for nonpublic school placement may not be reduced or denied if you failed to provide written notice because

- You cannot read or write in English;
- Providing the written notice would likely result in physical or serious emotional harm to your child;
- The school prevented you from providing such notice; or
- You did not receive your procedural safeguards rights, i.e., *Whose IDEA Is*

*This?*, and were not informed you had to provide written notice.

***What kind of nonpublic schools are there and does it make a difference to me or my child?***

There are two kinds of nonpublic schools: (1) chartered and (2) nonchartered. See the definition of nonpublic schools on page 37 for a description of both types of schools. Students with disabilities who attend chartered nonpublic schools may receive services from the public school district, students attending non-chartered nonpublic schools do not.

***May my child receive services in the nonpublic school building?***

At the discretion of the public school district, your child may receive services in the nonpublic school building.

***Is transportation provided for my child?***

Your child is entitled to transportation to the same degree as any child without disabilities who is attending a chartered nonpublic school.

If your child's services plan requires services that are provided at another location, then transportation to and from that location must be provided. Transportation must be provided to and from your child's nonpublic school or home to the location of the services, depending upon the time of services.

**DISCIPLINE**

The terms **discipline** and **punishment** are often used interchangeably referring to the practice of improving behavior. Contrary to popular use, however, the two do not have the same meaning. In fact, they oppose each other both in method and result. Understanding the difference is important for successful classroom management and effective parenting. This understanding will help educators and parents promote more

cooperative, responsible, safe and healthy behavior for all students.

**Punishment**, very simply, is a "quick fix." Punishment often does not solve a problem and used in isolation, only stops the immediate behavior. Punishment requires little change in beliefs on the child's part and generally has no instructional value. Punishment will not change behavior long term because the basic need causing the behavior has not been met. Punishment focuses on the action, not the cause. It generally results in a child's anger, disrespect, revenge or defeat.

**Discipline**, however, is an approach to changing behavior through planning, teaching and evaluating. Effective discipline provides appropriate, logical consequences for behavior and results in long term and positive behavioral changes. True discipline does not focus on isolated behaviors, but is a learning process that provides the child with a variety of skills to be an effective learner. Discipline addresses the cause of the behavior and helps to create a safe, positive learning environment for all.

Discipline is firm, fair and appropriate to the behavior. It takes commitment, planning and ongoing problem solving.\*

\* Excerpts from: *Strategies for Developing a Comprehensive Classroom Management System*

**When would removal of a child with a disability count as suspension?**

A suspension is any time that your child is not being provided FAPE due to a disciplinary action. Examples may include:

- A formal suspension;
- An emergency removal;
- Asking you to pick up your child prior to the end of the regular school day;
- A bus suspension if transportation is a related service on the IEP and there is no alternative transportation provided. (Note: If your child attends school during a bus suspension, then those days do not count as days of suspension from school.) If transportation is not a related service, it is your responsibility to get your child to school;
- An in-school suspension when special education services are not being provided. If your child's IEP is being followed, the in-school suspension does not count toward the 10 days; or
- Removal of your child from his/her normal setting at school to another location where your child's IEP is not being implemented (i.e., the office) for long periods of time or for repeated times.

**If my child is suspended, when would it be considered a change of placement?**

It would be considered a change of placement when

- The suspension is more than 10 consecutive school days; or
- Your child is subjected to a series of removals that constitute a pattern because they add up to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time your child is removed, and the proximity of the removals to one another.

**Who determines that a suspension is a change of placement?**

School personnel make the determination that a pattern of removals constitutes a change of placement on a case-by-case basis. You have the right to challenge the school's decision by asking for an expedited due process hearing (see page 45).

**How is a manifestation determination review conducted?**

When a suspension is considered a change in placement, immediately, if possible, but in no case later than 10 school days after the day the decision was made to suspend, school district personnel, the parent and relevant members of the IEP team (as determined by the parent and the school district) must conduct the review to decide if your child's behavior is a result of his/her disability. This review could take place at the same IEP meeting held to conduct a functional behavioral assessment. The team shall review all relevant information in the student's file including

- Testing (evaluation and diagnostic results);
- Relevant information supplied by you;
- Observations of your child by a teacher; and
- The current IEP and placement.

When considering the behavior subject to disciplinary action, the school district personnel, the parent and relevant members of the IEP team (as determined by the parent and school district personnel) must then 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 IEP.

If either of the above statements is true, then the behavior is a manifestation of your child's disability. The district is required to give your child's special education and disciplinary records to the person(s) in the district who will make the final decision on what disciplinary action takes place.

If the behavior is not a manifestation of your child's disability, your child can be suspended for the same length of time as any other child. Your child will continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. The IEP team determines the IAES and what services will be provided. The child will remain in the IAES for up to 45 school days, but no longer than the amount of time that a child without disabilities would be subject. On the 46<sup>th</sup> school day, a free appropriate public education (FAPE) is provided as determined by the IEP team.

If the behavior **is** a manifestation of your child's disability, the IEP team shall immediately make changes that are necessary to correct the IEP, your child's placement, or how the IEP/placement are carried out.

**NOTE:** School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child

with a disability who violates a code of student conduct.

### ***What happens if I disagree with the manifestation determination?***

You may request an expedited due process hearing to challenge the decision (see page 46). The hearing officer shall decide if the school district has shown that your child's behavior was not a manifestation of his/her disability **as outlined on page 43**, and consistent with requirements above.

### ***What if my child with a disability is suspended for breaking the school rules (Code of Conduct) for more than 10 days for the school year or for a series of removals that is a change of placement?***

Not later than the day the decision is made to suspend your child as specified above, the school must:

- Notify you of the decision to remove your child;
- Provide you with a copy of *Whose IDEA Is This?* and
- Follow standard suspension/expulsion procedures.

School district personnel, the parent and relevant members of the IEP team (as determined by you and the school district) shall:

- Conduct a manifestation determination review within 10 school days of the decision to suspend (See manifestation determination questions above);
- Develop and implement a behavior assessment plan within 10 business days if a functional behavioral assessment has not

been completed and develop a behavioral intervention plan as soon as possible if one has not been implemented; OR

- If a behavioral intervention plan has already been developed, review the behavior plan and make changes as necessary to address the behavior; and
- Decide what educational services are necessary to enable your child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the IEP.

**What if the manifestation determination review determines that my child's behavior is a result of his/her disability when my child with a disability is suspended for breaking the school rules (Code of Conduct) for more than 10 days for the school year or for a series of removals that is a change of placement?**

If the behavior is a result of your child's disability, your child will return to the placement from which your child was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

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

**What if the manifestation determination review determines that my child's behavior is NOT a result of his/her disability when my child with a disability is suspended for breaking**

**the school rules (Code of Conduct) for more than 10 days for the school year or for a series of removals that is a change of placement?**

If the behavior is NOT a result of your child's disability, your child:

- May be removed to another setting or an interim alternative educational setting (IAES), as determined by the IEP team, in the same manner and for the same duration as would be applied to a child without disabilities;
- Will continue to receive educational services so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP.

***If my child with a disability already has been suspended for breaking the school rules (Code of Conduct) for more than 10 days for the school year, what happens when there are additional suspensions that are not a change of placement?***

After 10 days of suspension for a school year

- If a functional behavior assessment has not been completed and no plan implemented, your child's IEP team must meet within 10 business days to develop an assessment plan. As soon as feasible after developing the plan and completing the assessments, the IEP team shall meet to develop and implement interventions, as appropriate.

- If a functional behavior assessment has previously been completed and behavior interventions developed, each IEP team member must review the behavior intervention plan and implementation to determine if modifications are necessary. There is no requirement to have an IEP meeting but any member, including you, can call for an IEP meeting to discuss possible changes to the behavior intervention plan and its implementation.
- There is no requirement for the IEP team to make a manifestation determination.
- School personnel, in consultation with your child's special education teacher, determine what services your child will receive and where those services will be provided. The services must enable your child to appropriately progress in the general curriculum and appropriately advance toward achieving the IEP goals. You can challenge this decision by asking for an expedited hearing (see page 46).

***What happens when my child with a disability is suspended for 10 school days or less for the school year?***

Your child is subject to the same board of education policies that have been established for any student who is suspended from school.

There are no requirements for

- A behavior assessment plan or the development of interventions;
- A manifestation determination (see page 43); or

- Services for a suspension for a total of 10 school days or less during a school year.

However, the ten days could be used by the IEP team to determine

- If your child's IEP is appropriate;
- If your child's IEP is being followed;
- The need for an assessment plan to look at the function of your child's behavior; and
- The need for positive behavioral interventions, strategies and supports to address the behavior.

***What if my child carries or possesses a weapon or 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 or has inflicted serious bodily injury upon another person while at school, on school premises or at a school function?***

School personnel may remove your child to an interim alternative educational setting (see page 43) for not more than 45 school days regardless of whether the behavior was related to your child's disability.

Not later than the day the decision is made to remove your child, the school district must

- Notify you of the decision;
- Provide you with your procedural safeguards rights (*Whose IDEA Is This?*); and
- Follow standard suspension/expulsion procedures.
- Ensure that your child continues to receive educational services so as to enable your child 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.

School district personnel, the parent and relevant members of the IEP Team (as determined by the parent and school district personnel) must meet to

- Conduct a manifestation determination review within 10 school days of the decision to suspend (See manifestation review questions above);
- Develop and implement a behavior assessment plan within 10 business days if a functional behavioral assessment has not been completed and develop a behavioral intervention plan if one has not been implemented; OR
- If a behavioral intervention plan has already been developed, review the behavior plan and make changes as necessary to address the behavior;
- Decide what educational services are necessary to enable your 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 IEP.

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

**What can the school district do if it believes that maintaining the current placement of my child is substantially likely to result in injury to others?**

If the school district believes that the current placement of your child is substantially likely to result in injury to others, the school district may:

- Convene an IEP meeting to review the IEP and address the concern that the student is likely to cause injury to self or others. If you and the school district are in disagreement, the district may ask for an expedited due process hearing; OR
- Immediately ask for an expedited due process hearing without holding an IEP meeting; OR
- Pursue an injunction from a court or other relief as permitted by law.

When an expedited due process hearing is requested by the school district, the school district shall:

- Notify you by phone or fax of the request no later than the date on which the decision to take that action is made;
- Immediately send you a written copy of the request and all procedural safeguards (*Whose IDEA Is This?*);
- Convene an IEP meeting to
  - Conduct a manifestation determination review within 10 school days of the decision to suspend (See manifestation determination questions above);
  - Develop and implement a behavior assessment plan within 10 business days if a functional behavioral assessment has not been completed and develop a behavioral intervention plan if one has not been implemented; OR

-If a behavioral intervention plan has already been developed, review the behavior plan, the results, and make changes as necessary to address the behavior; and

- Provide educational services so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP in an interim alternative educational setting (IAES) or in another appropriate placement ordered by the hearing officer.

### ***What if I disagree with the hearing officer's decision?***

You may appeal the decision of the hearing officer in writing to the State Board of Education c/o Office for Exceptional Children within 10 calendar days of receiving the written decision. Your child remains in the IAES for not more than 45 school days if ordered by the hearing officer. If at the end of 45 school days, school personnel still believe your child is a danger to himself or others, they can request another expedited hearing.

### ***Who decides what the interim alternative educational setting will be and what services must be provided?***

The IEP team will determine the IAES when your child is removed from his/her current educational placement under special circumstances or for more than 10 school days and the behavior that gave rise to the violation of the school code is

determined not to be a manifestation of the child's disability.

Special Circumstances is defined as cases where a child:

- Carries or possesses a weapon to or at school, on school premises, or to or at a school function;
- 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;
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

An IAES must:

- Allow your child to continue to progress in the general education curriculum although in another setting;
- Allow your child to continue to receive services and modifications as written on the IEP that will enable your child to achieve the goals on the IEP; and
- Provide your child with services and modifications designed to address the behavior so that it does not recur.

### ***How long can my child be in an IAES?***

Your child can be in an IAES for the same amount of time that a child without a disability would be subject to discipline, but not more than 45 school days for a drug or weapon offense or for inflicting serious bodily injury on another person.

***What if I disagree with the placement decision resulting from the disciplinary action?***

You may request an expedited due process hearing to challenge a placement decision for a disciplinary action.

***What is the procedure for requesting an expedited due process hearing?***

An expedited due process hearing can be requested:

- By the school district; or
- By you to challenge the manifestation determination and/or any decision regarding placement in a disciplinary action.

When you request an expedited due process hearing

- Submit the request in writing to your superintendent and send a copy to the Office for Exceptional Children. (See page 46)
- The school district must contact the person in charge of impartial due process hearings at the Office for Exceptional Children before the end of the following business day.
- An impartial due process hearing officer will be appointed by the Office for Exceptional Children on a rotation basis before the end of the following business day the district informs the Office. (See page 28)
- The impartial due process hearing officer will contact you within 24 hours of the appointment to set up the hearing.
- An expedited hearing shall occur within 20 school days of the date the hearing was requested and shall result in a determination

within 10 school days after the hearing.

***Where is my child educated during an expedited due process hearing?***

Your child shall remain in the IAES pending the decision of the hearing officer or until the expiration of the suspension/expulsion, whichever occurs first.

***How do I request an appeal of the decision made in an expedited hearing?***

Your written request must be made to the State Board of Education c/o the Office for Exceptional Children within 10 calendar days after the notification of the hearing officer's written decision. The review shall be completed and a written decision issued by the state level review officer within 30 calendar days with no extension. An appeal of the state level review officer's decision may be made to the appropriate Common Pleas Court or the Federal District Court.

***What rights does my child have if I suspect my child has a disability and he/she has been suspended or expelled for violating the school's code of conduct or for drugs, weapons, dangerous behavior or inflicting serious bodily injury on another person?***

You may ask for an evaluation that must be conducted in an expedited manner. When the evaluation has been completed, the IEP team must

- Determine eligibility.

School district personnel, the parent and relevant members of the IEP team (as

determined by the parent and school district personnel) must

- Conduct a manifestation determination if your child is eligible; and
- Provide services if your child is eligible.

You may use any of the due process protections if the school had knowledge that your child is a child with a disability before the behavior occurred.

***What protections does my child have if he/she is not yet eligible?***

If the school district has knowledge that your child is a child with a disability before the behavior that required the disciplinary action occurred, then your child has the same protections as any other child with a disability.

The school district would be considered to have knowledge that your child is a child with a disability if

- You have expressed your concern that your child is in need of special education services in writing (or orally if you do not know how to write or have a disability that prevents a written statement) to supervisory or administrative personnel of your school district or a teacher of your child;
- Your child's behavior or performance has demonstrated a need for special education services as a child with a disability;
- You have requested an evaluation for your child; or
- Your child's teacher or other school district personnel have expressed specific concerns about your child's pattern of behavior or

performance to the director of special education or other supervising school district personnel as specified in the district's referral process.

Your school district would be considered not to have knowledge that your child is a child with a disability if the school district

- Conducted an evaluation and determined that your child did not have a disability;
- Determined that an evaluation was not necessary and provided you with prior written notice (see page 15);
- If you did not allow the school district to do an evaluation of your child;
- If you have refused special education or related services for your child.

If the school district does not have knowledge that your child is a child with a disability before taking disciplinary action, then your child may receive the same disciplinary action as children without disabilities.

***What if there is a request for an evaluation of a nondisabled child during a disciplinary action?***

The school district must conduct an evaluation in an expedited manner. Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to be a child with a disability, taking into consideration information from the school district's evaluation and information you provided,

an IEP will be developed and special education services will be provided.

***Can the school district refer my child to the police?***

A school district can report your child to the police if the school district believes that your child has committed a crime.

If a school district reports a crime committed by your child, the school district shall ensure that copies of the special education and disciplinary records of your child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

## COMMONLY USED TERMS

### ***Administrative Review***

A meeting where you may present complaints to the superintendent of your school district regarding your child's evaluation, educational placement, or the provision of special education.

### ***Age of Majority***

Age at which special education rights transfer from you to your child (18 years in Ohio). An explanation of these rights (*Whose IDEA Is This?*) must be given to your child at least one year prior to his/her 18th birthday.

### ***Annual Goals***

Statements on your child's IEP that describe what he/she can be expected to accomplish in one year in the area of need.

### ***Assessment***

Methods or tools used for measuring

- Present levels of performance and educational needs;
- Eligibility for service;
- Progress toward achieving goals; and
- Category of disability.

### ***Assistive Technology Device***

Any item, or collection of materials, used to increase, maintain or improve daily living, communication and/or classroom skills of your child with a disability.

### ***Assistive Technology Service***

Any service that directly assists your child with a disability in the selection, acquisition or use of an assistive technology device including:

- Evaluation of your child's needs;

- Selecting, designing, fitting, adapting, applying, maintaining, repairing or replacing assistive technology devices;
- Coordinating and using other services with assistive technology devices; and
- Training or technical assistance for anyone substantially involved in the major life functions of your child.

The term does not include a medical device that is surgically implanted, or the replacement of such service.

### ***Case Conference***

An informal meeting that allows you and/or your school district to review and interpret information regarding your child and his/her IEP in order to resolve problems.

### ***Cognition***

The process of thinking and acquiring knowledge.

### ***Continuum of Services***

The continuum of services includes instruction in regular classes, special classes, special schools, home instruction, instruction in hospitals and institutions, and provisions for supplementary services (such as resource room and itinerant instruction) to be provided in conjunction with regular class placement.

### **Core Academic Subject**

Has the meaning given the term in section 9102 of the Elementary and Secondary Education Act of 1965.

### ***Developmentally Appropriate Curriculum***

An educational program that is designed to be appropriate for your child's age and ability.

### ***Developmental Domains***

Refers to the following areas of development:

- (1) ***Adaptive Domain*** - The area of the curriculum that addresses self-help, independent functioning, and personal and social responsibility.
- (2) ***Aesthetic Domain*** - The area of the curriculum that addresses opportunities for creativity through such activities as art, music and movement.
- (3) ***Cognitive Domain*** - The area of the curriculum that addresses the understanding of time, area, volume, number and classes.
- (4) ***Communication Domain*** - The area of the curriculum that addresses the form, content and use of language.
- (5) ***Sensorimotor Domain*** - The area of the curriculum that addresses sensory awareness, exploration and differentiation based on sensory input, and small- and large-muscle development.
- (6) ***Social-Emotional Domain*** - The area of the curriculum that addresses management of self, as well as relationships with peers and adults.

### ***Differentiated Referral Procedures***

The planning, implementation and evaluation of interventions conducted prior to referral for a multifactored evaluation.

### ***District of Residence***

The school district where the parents of a child with a disability live.

### ***Documented Deficit***

An area of development that has been determined to be deficient based on information obtained through interview, observation and/or assessments.

### ***Due Process***

A series of steps safeguarded by law (IDEA) that protect the rights of parents and their children with disabilities.

### ***Early Intervention Services***

Services provided to children with developmental delays from birth through age two.

### ***Evaluation***

Procedures used to determine whether your child has a disability and the nature and extent of special education and related services needed.

### ***Free Appropriate Public Education (FAPE)***

Special education and related services provided at public expense, under public supervision, and at no cost to parents. These services must meet the standards of the Ohio Department of Education and be provided through your child's IEP.

### **Functional Behavior Assessment**

A process that may include interviews, direct observations, and other evaluations of the student's behaviors. Some of the questions asked as part of a functional behavioral assessment may include: What happened before the behavior? What happened during the behavior? What was the result of the behavior? In what environment did the behavior occur? Has the child's medication been changed? and Did the child receive medication at the right time?

### **Functional Evaluation (Vocational)**

Process used to identify the student's work characteristics, and training and support needs in relation to actual job requirements. Functional assessment information is gathered so that the best job match can be determined for a student. The information must be interpreted in relation to the actual requirements of the job.

### **General Curriculum**

The instruction, services and activities provided for all students (disabled and non-disabled).

### **Group Entitlement**

Provision of special education and/or related services for all children with disabilities who attend a specific private school are considered on a group basis rather than on an individual basis, as is the case in public school.

### **Homeless Children**

Has the meaning given the term "homeless children and youths" in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

### **Independent Education Evaluation (IEE)**

An evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.

### **Individualized Education Program (IEP)**

A written plan of measurable, annual goals including short-term objectives developed to meet your child's needs according to federal and state regulations.

### **Integrated Employment**

Employment in which people who have disabilities participate in regular work at typical settings alongside people without disabilities.

### **Intervention Assistance Team (IAT)**

A team of educators from your child's school that meet to design interventions for children who are experiencing difficulty. You *may* be invited to participate in an IAT meeting about your child.

### **Least Restrictive Environment (LRE)**

To the maximum extent appropriate, children with disabilities (including children

in public or nonpublic institutions or other care facilities) are educated with children who are nondisabled. Removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

### **Limited English Proficient**

Has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

### **Mediation**

A meeting that may be held if efforts to resolve an issue have failed at the school district level or after a due process hearing has been requested. A representative of the Ohio Department of Education may be asked to mediate the dispute.

### **Modification**

Any change that is made in your child's school, work and/or environment to meet their individual special education needs.

### **Nonpublic School**

A nonpublic school is an institution of learning organized and maintained by private individuals or by a private corporation or organization. Chartered nonpublic schools are considered "private schools" that meet the Ohio Minimum Standards for Ohio Schools. Non-chartered, non-tax supported schools are not seeking to be chartered by the State Board of Education because of truly held religious beliefs.

### **Parent (Legal Guardian)**

"Parent" means

- (A) a natural, adoptive, or foster parent of a child (unless a foster parent is

prohibited by Ohio law from serving as a parent) because legal custody of the foster child is held by a children services agency, and not by the foster parents. *Note: A foster parent is prohibited by Ohio law from serving as a parent because legal custody of the foster child is held by a children services agency, and not by the foster parent. foster parent may be appointed as a surrogate parent if the foster parent meets applicable requirements.*

- (B) The parent with legal custody of the child if the parents are separated or divorced;  
(C) a guardian or custodian but not the State if the child is a ward of the State;  
(D) 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  
(E) except as used in sections 615(b)(2) and 639(a)(5) of IDEIA, an individual assigned under either of those sections to be a surrogate parent;  
(F) the child at age 18 may act in his or her own behalf.

### **Preschool Special Education**

Specifically designed instruction that meets the needs of a child with a disability between three and five years of age.

### **Present Levels of Performance**

Statements developed from relevant information about your child. This information includes progress on the current IEP, the evaluation team report, input from you and your child, interventions, assessments, observations, and special factors This information provides a "picture" of your child including his/her strengths and needs.

### ***Procedural Safeguards***

Procedures, which protect the rights of children with disabilities and their parents with respect to FAPE, established and maintained by the state education agency (SEA).

### ***Public Expense***

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

### ***Related Services***

Support services needed to help your child with a disability benefit from his/her special education.

### ***Short-Term Objectives***

Intermediate steps leading to each annual IEP goal. Objectives must be measurable and understandable to all IEP team members.

### ***Special Education***

Specially designed instruction to meet the unique needs of a child with a disability.

### ***Standardized Testing***

Tests that are given in the same way each time and are broken down into subsets to assess different areas of ability. IQ tests, achievement or language, developmental, adaptive behavior, behavior assessment and fine motor, gross motor and visual perceptual tests are some examples.

### ***State-Level Review***

A review of an appeal of an impartial due process hearing conducted by a state-level review officer appointed by the Office for Exceptional Children.

### ***Stay-Put***

Your child's educational status during a due process hearing. Your child must remain in his/her present educational placement unless the impartial due process hearing officer rules otherwise.

### ***Supplemental Aids and Services***

Materials, modifications, supports or personnel that are provided in regular education classes to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

### ***Surrogate Parent***

Someone who is appointed by the school district to act in the place of a child's parent, representing the child in all areas of educational matters, if the child's parent cannot be located.

### ***Suspension***

A suspension is any time that your child is not being provided FAPE due to a disciplinary action.

### ***Transition Services***

A coordinated set of activities for your child at age 16, or earlier, that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post secondary education, vocational training, integrated employment, continuing and adult education, adult services, and independent living or community participation and for age 14 or younger, if deemed appropriate by the IEP team, a statement of transition services that focuses on the student's courses of study.

### **Universal Design**

Has the meaning given the term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

### **Ward of the State**

IN GENERAL: The term "ward of the State" means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

EXCEPTION: The term does not include a foster child who has a foster parent who meets the definition of a parent.

## DISABILITY CONDITIONS DEFINED

**“Autism”** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child’s educational performance is adversely affected primarily because the child has a serious emotional disturbance.

**“Cognitive Disability”** (mental retardation) means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child’s educational performance.

**“Deaf-blindness”** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

**“Deafness”** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child’s educational performance.

**“Emotional Disturbance”** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory intrapersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of unhappiness or depression; or
- A tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.

**“Hearing Impairment”** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance, but that is not included under the definition of deafness.

**“Multiple Disabilities”** means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

**“Orthopedic Impairment”** means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member); impairments caused by disease (e.g., poliomyelitis, bone tuberculosis); and impairments from other causes (e.g., cerebral palsy, amputation, and fractures or burns that cause contractures).

**“Other Health Impairment”** means having limited strength, vitality, or alertness, due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever or sickle cell anemia that adversely affects a child’s educational performance.

**“Preschool Children with a Disability”** means a child who

- Is at least three years of age and not age six; and
- Has a disability, demonstrated by a documented deficit in one or more areas of development, which has an adverse effect upon normal development and functioning.

**“Specific Learning Disability”** means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing or motor abilities, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage.

**“Speech or Language Impairment”** means a communication disorder, such as stuttering, impaired articulation, language impairment or a voice impairment that adversely affects a child’s educational performance.

**“Traumatic Brain Injury”** means an acquired injury to the brain caused by external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. The term

applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

**“Visual Impairment Including Blindness”** means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness. Visual impairment for any child means:

- A visual impairment, not primarily perceptual in nature, resulting in a measured visual acuity of 20/70 or poorer in the better eye with correction; or
- A physical eye condition that affects visual functioning to the extent that special education placement, materials, and/or services are required in an educational setting.

## Instructions for DUE PROCESS COMPLAINT NOTICE AND REQUEST FOR DUE PROCESS HEARING

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1. Please fill out information requested in all of the fields.
2. Under *disability category* provide a list of all disabilities that currently apply to child. If the child has not been identified as a child with a disability, state **“Child has not been identified”** in space provided.
3. *Name of parent and address if address is different from child’s or in the case of a homeless child or youth, available contact information for the child:* “Homeless” means homeless within the meaning of section 725 (2) of the McKinney-Vento Homeless Assistance Act, 43 U.S.C. 1143 (a)(2).
4. Under *Description of the Problem*, provide a detailed account of the nature of the reason(s) for the request for a due process hearing. For example, if the issue is failure to provide a Free and Appropriate Public Education (FAPE), explain specifically what is alleged to be the violation (e.g., not providing speech services as specified in the IEP).
5. Under *Description of the Proposed Resolution* section, please specifically state the result you are seeking. Result being what exactly needs to happen for the issues to be resolved by a hearing officer. The hearing officer should be able to have a sketch of the issues and how the party would like to see them resolved.
6. *Expedited Hearing-* A parent may request an expedited hearing if the parent disagrees with a decision regarding placement for disciplinary removals or with the manifestation determination. A local educational agency may request an expedited hearing if the LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. *An expedited hearing may not be requested for any other reason.*
7. *Mediation-* Mediation is a free service provided by the State to resolve disputes. Mediation is completely voluntary and must be agreed to by both parties. A mediator will arrange dates between the parties to discuss remedies to resolve the dispute. Mediation is concurrent with due process, but the mediation meeting will be scheduled before the due process hearing takes place. If interested in mediation, please check box.
8. *Attorney-* If represented by an attorney, please provide the attorney’s name and address. All due process correspondence and information will be sent directly to the specified attorney.
9. *Signature-* Sign and date the complaint notice/due process hearing request.
10. *Submission of Form-* Send the completed form to the other party and a copy to the Office for Exceptional Children: Attention Procedural Safeguards at the address above.

# Due Process Complaint Notice and Request for a Due Process Hearing

NAME OF CHILD ON WHOSE BEHALF THE HEARING IS REQUESTED	CHILD'S BIRTHDATE <i>(Month/Day/Year)</i>	GRADE
ADDRESS OF THE RESIDENCE OF THE CHILD OR AVAILABLE CONTACT INFORMATION IN THE CASE OF A HOMELESS CHILD		
NAME AND ADDRESS OF THE SCHOOL THE CHILD ATTENDS		
NAME OF PARENT AND ADDRESS IF ADDRESS IS DIFFERENT FROM CHILD'S. IN THE CASE OF A HOMELESS CHILD OR YOUTH, AVAILABLE CONTACT INFORMATION FOR THE CHILD	PHONE NUMBER (      )	
	DAYTIME PHONE (      )	
A BILINGUAL OR SIGN LANGUAGE INTERPRETER IS REQUESTED		
<input type="checkbox"/> YES <input type="checkbox"/> NO   IF YES, specify language/mode of communication _____		
NAME OF SUPERINTENDENT AND SCHOOL DISTRICT OF RESIDENCE		
DISABILITY CATEGORY		
A DESCRIPTION OF THE PROBLEM <i>(Describe the nature of the problem of the child relating to a proposed initiation or change of placement or provision of a free appropriate public education, including facts relating to such problem .)</i> <b>(Attach additional pages if necessary)</b>		
A DESCRIPTION OF THE PROPOSED RESOLUTION YOU ARE SEEKING <i>(Provide the proposed resolution of the problem to the extent known and available to the party at the time.)</i> <b>(Attach additional pages if necessary)</b>		
<p>I am requesting an expedited hearing for one of the following qualifying reasons <b>(Check one)</b>: As the parent/guardian or student, I am requesting an expedited hearing because: ___ I disagree with a decision regarding placement for disciplinary removals. ___ I disagree with the manifestation determination; OR as the local educational agency, ___ I believe that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. <i>An expedited hearing may not be requested for any other reason.</i></p> <p>I am interested in mediation.</p>		
NAME AND ADDRESS OF THE ATTORNEY OR REPRESENTATIVE FOR THE PARENT/GUARDIAN OR DISTRICT. <i>If this section is completed, all information and correspondence regarding the due process will be sent directly to the attorney or representative.</i>	PHONE NUMBER (      )	
	FAX (      )	
The Party Requesting the Hearing is (Check one): ___ Parent/Guardian of the child on whose behalf the hearing is being brought ___ School District of Residence (Superintendent)	___ Other Educational Agency (Name) ___ Student with Disabilities who is at least 18 years of age but not more than 21 years of age	
Name (printed) of Party Requesting Hearing	Date of Signature	
Signature of Party Requesting Hearing		