

2005

Notice of Procedural Safeguards for Parents of Students with Disabilities

As a parent, you are entitled to information about your rights under the Individuals with Disabilities Education Act (IDEA). The following information is critical to ensuring that you have the opportunity to be a partner in the educational decisions made regarding your child. This notice of your procedural safeguards will be made available to you, at a minimum, upon initial referral or your request for an evaluation; upon the school district's refusal to conduct an initial evaluation that you have requested; upon each notification of a meeting of the individual educational plan (IEP) team for your child; upon your consent to a reevaluation of your child; upon the school district's receipt of a request for a due process hearing; and any other time you as a parent request to receive a copy.

You may elect to receive a copy of your procedural safeguards and any notices required by electronic mail communication, if the school district makes that option available. A district may also place a current copy of the procedural safeguards notice on its Internet website, if a website exists.

Under the IDEA, you have the following rights.

Prior Written Notice

You have a right to prior written notice from the school district a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to your child. Since graduation from high school with a standard regular diploma is a change in placement, prior written notice of it is required.

Prior written notice must be written in language that is understandable to the general public and in your native language or other mode of communication commonly used by you, unless

This pamphlet helps parents of children in Florida's school districts understand the rights that go along with programs for students with disabilities. It summarizes federal and state laws on how your rights must be protected relating to notice, consent, independent educational evaluation, records, hearings, and appeals. These procedural safeguards apply for children with disabilities.

it is clearly not feasible. If your native language or other mode of communication is not a written language, the school district must ensure that

- the notice is translated orally or by other means to you in your native language or other mode of communication
- you understand the content of the notice
- there is written evidence that the district has met this requirement.

The prior written notice must include the following information:

- a description of and explanation of why the action is proposed or refused by the school district
- a description of any options considered by the IEP team and why those options were not selected
- a description of other factors relevant to the district's proposed or refused action
- a description of each evaluation procedure, assessment, record, or report the district used as a basis for making any decision(s) regarding your child ("Evaluation" means procedures used to determine whether your child has a disability and to determine the nature and extent of the special education and related services that your child needs.)
- a statement that you have protections under these procedural safeguards and how you can obtain a copy of this description of the safeguards
- sources you may contact for assistance in understanding your procedural safeguards under the IDEA.

Informed Consent

The school district must obtain your written consent before it can

- conduct an initial individual evaluation to determine eligibility for special education services
- initially provide special education and related services to your child, or
- reevaluate your child, except where the school district can show that it has taken reasonable steps to obtain your consent for reevaluation and you have failed to respond.

If your child is a ward of the State and is not residing with you, the district must make reasonable efforts to obtain your informed consent for an initial evaluation. However, foster parents are able to provide consent. The school district is not required to obtain your consent for an initial evaluation if your rights as a parent of the child have been terminated under State law or your right to make educational decisions has been removed by a judge under State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

You should be fully informed of all information that is important to the activity for which your consent is sought in your native language or other mode of communication, unless it is clearly not feasible. You should understand and agree in writing to the carrying out of the activity for which the district seeks your consent, and the consent form must describe the activity and list the records, if any, that will be released and to whom.

Your consent to an initial evaluation does not mean that you have given consent for placement in a special education program. Your consent is voluntary, and you may revoke it at any time before the action to which you consented occurs.

If you do not provide consent for an initial evaluation or you fail to respond to a request for consent, the district may, but is not required to, pursue the initial evaluation by using the mediation or due process procedures described below, if appropriate. If you do not provide consent for initial placement in a special education program or you fail to respond to a request

for consent, the school district may not use the mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided. If you refuse consent to initial placement or you fail to respond to a request to provide consent for initial placement, however, the school district will not be in violation of the requirement to make FAPE available to your child for the failure to provide special education and related services for which the district requested consent.

Your consent is not required before

- reviewing existing data as part of an evaluation or a reevaluation
- administering a test or other evaluation that is administered to all children unless before administration of that test or evaluation consent is required of parents of all children, or
- screening of your child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation, which is not an evaluation for eligibility for special education and related services.

Participation in Meetings

You must be afforded the opportunity to participate in meetings regarding the identification, evaluation, eligibility, reevaluation, and educational placement of your child. In order to ensure your participation, the school district must provide you with notice of meetings early enough for you to make arrangements to attend. The notice must inform you of the purpose and a mutually agreeable place and time for the meeting and who, by title or position, will be in attendance. The notice for the IEP meeting must also include a statement that you have the right to invite individuals with special knowledge or expertise about your child to attend the IEP meeting with you.

For a child beginning at age fourteen (14) or younger if determined appropriate by the IEP team, the notice must indicate that a purpose of the meeting will be the development of a statement of the transition service needs of your child and that the school district will invite your child to the meeting. For a child beginning at age sixteen (16) or younger if determined appropriate by the IEP team, the notice must indicate that a purpose of the meeting is the

consideration of needed transition services for your child, indicate that the school district will invite your child to the meeting, and indicate any other agency that will be invited to send a representative to the meeting.

A meeting does not include informal or un-scheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in your child's IEP. A meeting also does not include preparatory activities in which school personnel may engage to develop a proposal or response to a proposal you have made that will be discussed at a later meeting with you.

As a parent, you are an important member of your child's IEP team and are encouraged to be involved in meetings where decisions are made regarding the educational placement of your child. If you cannot attend the meeting, however, the school district must use other methods to ensure your participation, including individual or conference telephone calls. Decisions about your child's placement can be made by the IEP team even if you do not attend the meeting, but the district must maintain a record of its attempts to arrange a mutually agreed upon time and place for the meeting that includes things such as detailed telephone calls made or attempted and the results of those calls, copies of correspondence sent to you and any responses received, or detailed records of visits made to your home or workplace and the results of those visits.

The district must take whatever action is necessary to ensure that you and your child understand the proceedings at a meeting, which may include arranging for an interpreter if you or your child is deaf or your native language is not English.

Records

You may inspect and review any of your child's educational records that are collected, maintained or used by the school district in the education of your child. Without unnecessary delay but no later than thirty (30) days after your request, the district must afford you access to inspect and review your child's records.

If you request access to the records before an IEP meeting or a due process hearing, the district must provide you with access prior to the meeting or hearing. The school district may presume that you have authority to inspect and review your child's records unless it has been informed that you do not have this right (for example, because of legal action, such as a court order). When you access your child's records, you will only be permitted to see the information which relates to your child when records contain information on more than one child.

Upon your request, you have a right to information about the types of educational records kept on your child, where they are maintained, and how you can gain access to them. You have a right for a representative to inspect and review the record and have someone from the school district explain or interpret any item in the records to you on your reasonable request.

If you are unable to review the records at the school or district office, you must be given copies of the records. The school district may charge a fee for the copies if such a charge does not prevent you from inspecting and reviewing the records. The district may not charge a fee for the time needed to search for or collect the information. In any event, you have a right to receive a free copy of your child's IEP, evaluation report, and any other documentation used to determine your child's eligibility for a special education program.

The school district is responsible for protecting the confidentiality of your child's educational records. The district may only release information with your consent unless otherwise allowed by state or federal law. The district must keep a record, including the names, dates of access, and reasons for seeking access of all people (except parents and authorized school officials) who have obtained access to educational records.

If you believe that any statements in your child's records are wrong, misleading, or violate the privacy or other rights of your child, you have the right to request a hearing to challenge this information. The school district must provide you with information on its records hearing process.

The school district is required to inform you when personally identifiable information collected, maintained, or used in educational records is no longer needed to provide educational services to your child. At your request, this information must be destroyed by the district, but the district may keep a permanent record of your child's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed.

Independent Educational Evaluation

If you do not agree with an evaluation obtained by the school district, you have the right to ask the school district to obtain an independent educational evaluation (IEE) at no cost to you. An "independent educational evaluation" means that your child will be evaluated by a qualified person who is not an employee of the school district. If you ask for an IEE, the school district must ensure that the IEE is conducted without unnecessary delay, or it must initiate a due process hearing to show that its evaluation is appropriate or that the evaluation obtained by you did not meet the school district's criteria. If the school district initiates a due process hearing and the final decision is that the district's evaluation is appropriate, you still have the right to an independent evaluation, but at your expense. If you request an IEE, the school district may ask you for a reason you object to the district's evaluation. However, you are not required to give a reason, and the district may not unreasonably delay its response to your request.

If the school district agrees to fund the IEE, the criteria under which the evaluation is conducted, including the location of the evaluation and the qualifications of the examiner, must be the same as those the school district uses when it initiates an evaluation. The school district may not impose any conditions or timelines for obtaining an IEE other than those related to the location of the evaluation and the qualifications of the examiner.

If you have an IEE conducted at your own expense and the evaluation meets the school district's criteria for similar evaluations initiated by the district, the results of your evalua-

tion must be considered by the district in any decision regarding your child and may be presented as evidence in a due process hearing.

If an IEE is requested by an administrative law judge (ALJ) as part of a due process hearing, the evaluation must be at public expense.

Mediation

Parents and school districts have the opportunity to participate in mediation as an informal and non-litigious way to resolve disagreements over any matter related to a proposal or refusal to initiate or change the identification of, evaluation of, educational placement of, or provision of FAPE to your child. The Florida Department of Education (FDOE) makes mediation available at no cost to you or the school district.

Mediation

- is available to resolve disputes over matters that arise even prior to the filing of a request for due process hearing
- is voluntary for both parties
- is conducted by a qualified and impartial mediator who has been trained in effective mediation techniques
- shall be scheduled in a timely manner and shall be held in a location that is convenient to both parties
- is confidential so that discussions which occur during the mediation process may not be used as evidence in due process hearings or civil proceedings
- shall not be used to deny or delay your right to a due process hearing or to deny any other rights afforded to you.

When agreement is reached through mediation, the parties are required to execute a legally binding agreement that sets forth the resolution, states that all discussions during the mediation are confidential, is signed by you and a representative of the district who has authority to bind the district, and is enforceable in any appropriate state or federal court.

A list of qualified and impartial mediators is maintained by the FDOE, and mediators are selected from that list on a rotating basis.

Mediators may not be employees of school districts or other agencies which provide educational services to students with disabilities. However, a mediator is not considered an employee of a school district or other agency just because he or she is paid by the agency to serve as a mediator. To request a mediation you may contact your school district exceptional student education office or DOE at 850-245-0476

State Complaint Procedures

In addition to mediation, the FDOE maintains a state complaint procedure whereby parents and other interested parties may file a state complaint alleging that a school district has violated state or federal requirements regarding the education of students with disabilities. The state complaint procedures are disseminated to parents and other interested individuals, including parent training and information centers.

State complaints may be filed by sending a signed, written complaint to Chief, Bureau of Exceptional Education and Student Services, Florida Department of Education, Turlington Building, Room 614, 325 West Gaines Street, Tallahassee, Florida 32399-0400.

The signed, written complaint must

- include a statement which describes how a requirement of the IDEA has not been met
- include an explanation of the facts on which the statement is based
- allege a violation that occurred within one year of the date when the complaint is filed, unless the violation is continuing or you are requesting compensatory services for a violation which occurred within three years of the date the complaint is filed.

On receipt of a formal complaint filed by you, the FDOE will advise you of your right to alternate resolution activities, including mediation, and within sixty (60) calendar days after a complaint is date-stamped in the bureau chief's office, the FDOE must

- conduct an independent on-site investigation, if the FDOE determines that is necessary
- provide you with the opportunity to submit additional information either orally or in

writing about the allegations in the complaint

- review all relevant information and make an independent determination as to whether the school district is violating a state or federal requirement regarding the education of students with disabilities
- issue a written decision to you that addresses each issue presented in the complaint, including findings of fact, conclusions, and the reasons for the FDOE's final decision
- extend the 60-day time limit if exceptional circumstances exist.

Decisions by the Florida Department of Education are final. If any of the issues contained in a complaint are also the subject of a due process hearing, the FDOE will set those issues aside until the conclusion of the hearing. Other issues will be resolved using the procedures described above. If an issue is raised in a state complaint that has already been decided through a due process hearing, the administrative law judge's decision in a hearing is final and will not be reconsidered through the state complaint procedure.

Local Education Agency Complaint

If you choose to file a complaint with the superintendent in your local school district, you must provide the superintendent with a signed, written complaint which meets the requirements listed above. Within five days from the time the superintendent receives your complaint, the district will notify the Florida Department of Education that it has received your complaint. The district may offer you mediation to resolve the concerns raised in your complaint. Within 25 days of the receipt of your complaint, the superintendent will provide you with a written response detailing the results of the district's inquiry. If you disagree with the results, you may appeal the district's response by writing to the Florida Department of Education.

Due Process Hearings

While use of mediation and the state complaint procedures are preferable and less litigious, parents and school districts have the right to request an impartial due process hearing. A request for a due process hearing may be made regarding any proposal or refusal of the school district to initiate or change the identification of, evaluation of,

educational placement of, or provision of FAPE to your child. Should a due process hearing be required, the hearing will be conducted by the FDOE through an impartial administrative law judge (ALJ) with Florida's Division of Administrative Hearings (DOAH) in accordance with applicable Florida Statutes and State Board of Education Rules.

Process for Requesting a Due Process Hearing

A request for a due process hearing must allege a violation that occurred not more than two years before the complaining party knew or should have known about the alleged action that forms the basis of the complaint. The school district must have a procedure in place that requires a party requesting a due process hearing to complete and provide to the other party a request for due process hearing (which must remain confidential). The school district will provide a request for due process hearing form to you for completion, and you should file it with the district as instructed. When you file your request, you must also forward a copy of the request to the Bureau for Exceptional Education and Student Services at the address indicated on the complaint form.

If you use and thoroughly complete the form that the school district provides to you, your complaint should be sufficient. At a minimum, your request for due process hearing must include

- the name of your child
- the address of the residence of your child
- the name of the school your child is attending
- in the case of a homeless child or youth, available contact information for your child and the name of the school your child is attending
- a description of the nature of the problem about which you are complaining that relates to the proposed or refused initiation or change, including facts relating to the problem
- a proposed resolution of the problem to the extent known and available to you at the time.

A party requesting a hearing will not receive the hearing or engage in a resolution session as described below until the party or an attorney representing the party files a request for

due process hearing that meets the above requirements.

Your request for due process hearing will be sufficient, unless the school district notifies you and the ALJ within 15 days of receipt of the request for due process hearing that it does not meet the content requirements listed above. Within five (5) days of DOAH's receipt of such notice, the assigned ALJ must make a determination on the face of the request for due process hearing as to whether it meets the content requirements and must immediately notify the parties in writing of that determination.

A party may amend its request for due process hearing only if the other party consents in writing to the amendment and is given the opportunity to resolve the request through a resolution meeting as described below; or the ALJ gives permission to do so no later than five (5) days before the due process hearing begins. If a party files an amended request for due process hearing, the timelines for the resolution meeting and the time period to resolve begin again with the filing of the amended request.

If you file a request for due process hearing and the school district has not sent a prior written notice to you regarding the subject matter contained in your request, the school district must within ten (10) days of receiving the request send to you a response that includes

- an explanation of why the district proposed or refused to take the action raised in the request for due process hearing
- a description of other options that the IEP team considered and the reasons those options were rejected
- a description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action
- a description of the other factors that are relevant to the district's proposed or refused action.

The provision of this prior written notice will not preclude the school district from asserting that your request for due process hearing is insufficient, where appropriate.

Except as provided above, the party receiving the request for due process hearing must send to the other party a response that specifically addresses the issues raised in the request within ten (10) days of receiving the request.

Resolution Meeting

Within fifteen (15) days of receiving your request for due process hearing and prior to the initiation of a due process hearing, the school district must convene a meeting with you and the relevant member or members of the IEP team who have specific knowledge of the facts identified in your request that

- includes a representative of the school district who has decision-making authority
- may not include an attorney of the district unless you are accompanied by an attorney.

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

The resolution meeting need not be held if

- you and the school district agree in writing to waive the meeting, or
- you and the school district agree to use the mediation process as described previously.

If the school district has not resolved the request for due process hearing to your satisfaction within thirty (30) days of the receipt of the request, the due process hearing must occur. The forty-five (45)-day timeline for the ALJ to issue a final decision will begin to run at the expiration of this thirty (30)-day period.

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

If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is

- signed by you and a representative of the district who has the authority to bind the district

- enforceable in any appropriate state or federal court.

If the parties execute an agreement, either party may void the agreement within three (3) business days of signing it.

Administrative Law Judges

If a hearing is necessary, an impartial administrative law judge (ALJ) will be assigned to preside over the hearing and arrive at a decision. The ALJ may not be an employee of the school agency involved in the education or care of your child or be anyone who has a personal or professional interest which would conflict with impartiality in the hearing. ALJs assigned to due process hearings must possess knowledge of and the ability to understand the provisions of the IDEA, its regulations, Florida rules, and state and federal court interpretations of the IDEA. In addition, ALJs are required to possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice. In Florida, ALJs must conduct hearings in accordance with Uniform Rules for Administrative Proceedings, Chapter 28-106, FAC and Rule 6A-6.03311(11), FAC. Should a hearing be necessary, the ALJ will inform you or your representative/attorney of the specific prehearing conferences, procedures, and timelines that apply, including procedures for conducting discovery.

Due Process Hearing Rights

During a due process hearing, both you and the school district, at a minimum, have the right to

- be represented by counsel or to be represented by a qualified representative under applicable Florida standards or to be accompanied and advised by individuals with special knowledge or training regarding the problems of exceptional students, or any combination of the above
- present evidence
- cross-examine and compel the attendance of witnesses
- prohibit the introduction of any evidence at the hearing that has not been disclosed to you at least five (5) business days before the hearing
- obtain written or at your option an electronic verbatim record of the hearing at no cost

- obtain written or at your option electronic findings of fact and decisions at no cost.

If either you or the district has evidence such as evaluations or recommendations based on evaluations and intend to use it at the hearing, copies must be provided to the other party at least five (5) business days before the hearing. The ALJ may bar any party that fails to exchange this evidence from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

As a parent, you also have the following rights:

- to be told by the school district of free or low cost legal help and other relevant services which may be available in the area
- to be told about the availability of mediation (However, since mediation is voluntary for both parties, the district has the right to choose not to participate in mediation.)
- to have your child attend the hearing, if you wish
- to open the hearing to the public, if you wish
- to have the hearing conducted at a time and place reasonably convenient to you
- to receive a copy of the record of the hearing and the final order issued by the ALJ.

After the thirty (30) days for informal resolution have expired, the 45-day timeline for the ALJ to reach a final decision will begin and the hearing will be held. The ALJ may grant specific extensions to this time period at the request of either party and must mail a copy of the decision to all parties. The decision of the ALJ is final unless either you or the school district chooses to seek court review of the decision as described below.

After deleting any personally identifiable information, the FDOE must transmit the ALJ's final order to the State Advisory Committee for the Education of Exceptional Students and make it available to the public.

Court Review of ALJ Decision

Following a due process hearing, a party dissatisfied with the ALJ's final order has the right within thirty (30) days to bring a civil

action in federal, district, or state circuit court without regard to the amount in controversy. In such an action, the court must receive the records of the administrative proceedings; hear additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, grant relief it determines appropriate. In the alternative, a dissatisfied party may request an impartial review by the appropriate state district court of appeal as provided under applicable Florida law. Nothing under this provision limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities. However, before a party may file a civil action under these laws seeking relief that is also available under the IDEA, the procedures for a due process hearing must first be exhausted as set forth here and under the IDEA.

Attorney's Fees

If you prevail in a due process hearing or in a further proceeding, you may bring an action in federal, district, or state circuit court to recover reasonable attorneys' fees and costs within the time determined by law. Only a district court of the United States or a state circuit court may award reasonable attorneys' fees, and awards will be based on rates prevailing in your community for the kind and quality of services provided to you.

The court may deny a request for attorneys' fees for services performed after the district has made a written offer of settlement more than ten (10) days before the hearing begins. If you did not accept the offer within ten (10) days and the court or ALJ finds that the relief obtained by you is not more favorable to you than the district's offer of settlement, fees may not be awarded to you. However, fees may be awarded if you were "substantially justified" in rejecting the district's settlement offer.

Attorneys' fees may not be awarded relating to any IEP team meetings (unless the IEP meeting is convened as a result of a due process hearing or other judicial action), resolution meetings, or mediation sessions that are held prior to the filing of a request for a due process hearing.

A court may reduce attorneys' fees if the court finds that you unreasonably prolonged the time it took to resolve the dispute or your attorneys' hourly rate or time spent in the proceedings was excessive. However, this does not apply if the court finds that the school district unreasonably delayed the final resolution of the action or proceeding or that there was a violation of the IDEA.

Fees may also be awarded to the FDOE or the school district that is a prevailing party at a due process hearing against your attorney if your attorney files a request for due process or subsequent court action that is frivolous, unreasonable, or without foundation. Fees can be recovered against you if you continued to litigate after litigation clearly became frivolous, unreasonable, or without foundation. In addition, a prevailing school agency may recover reasonable attorney's fees against you or your attorney if your request for a due process hearing or subsequent court action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to increase the cost of litigation needlessly.

Placement during Due Process Hearings and Appeals

During the time that any administrative or judicial proceeding is taking place, your child is to remain in his or her present educational placement unless you and the school district agree otherwise. If the dispute concerns the initial admission of your child to public school, then your child, with your consent, will be placed in a public school program until the completion of the proceedings. If an ALJ agrees with you that a change of placement is appropriate, the new placement must be provided during any appeal process.

Discipline

If your child's behavior impedes learning or the learning of others, strategies including positive behavioral interventions and supports must be considered in the development of your child's IEPs.

Short Term Removals

To the extent that children without disabilities would be disciplined, school district personnel may remove your child from the current placement for a total of ten (10) days or less in a

school year, and this removal does not constitute a change in placement of your child. The school district is not required to provide educational services during these removals if services would not be provided to students without disabilities under the same circumstances.

Long Term Removals

Removals for a total of ten (10) days or more in a school year may or may not constitute a change in placement, depending on the pattern of those removals and based on factors such as the length of each removal, the total amount of time your child is removed in the school year, and the length of time between each removal. If your child is removed for more than ten (10) days in a school year, the school district must provide your child with services to the extent necessary to allow for appropriate progression in the general curriculum and appropriate advancement toward achieving IEP goals.

If your child has been removed for more than ten (10) school days either consecutively or cumulatively during the school year and the removals constitute a pattern that is a change in placement, the school district must notify you of the decision to remove and provide you with a copy of the procedural safeguards on the same day that the decision to remove is made. In addition, an IEP meeting must be held as soon as possible but no later than ten (10) school days after the removal decision in order to conduct a manifestation determination.

In making a manifestation determination, the IEP team shall consider all relevant information supplied by you, observations of your child, your child's IEP and placement and any other relevant information; and determine that in relationship to the behavior subject to disciplinary action

- your child's IEP and placement were appropriate and implemented
- your child's disability impaired the ability to understand the impact and consequences of the subject behavior
- your child's disability impaired the ability to control the behavior subject to disciplinary action.

If the IEP team determines that your child's behavior was not related to the disability, then further removal of your child is appropriate, and your child will be offered services in a different setting. The IEP team must decide what services are necessary to allow for appropriate progression in the general curriculum and appropriate advancement toward achieving IEP goals.

If the IEP team determines that your child's behavior was caused by the disability, then your child's placement cannot be changed as a disciplinary intervention, but the team could determine that a change of placement is necessary to provide FAPE in the least restrictive environment. If you disagree with disciplinary decisions made, you have the right to request an expedited due process hearing.

Whether the behavior was caused by the disability or not, within ten (10) business days of a removal that constitutes a change in placement or after removal of your child for more than ten (10) school days in the school year, the IEP team will plan for a functional behavioral assessment and develop a positive behavioral intervention plan (PBIP) for your child to address the behavior which resulted in removal or will review and modify, as necessary, a PBIP that already exists. Beginning on the eleventh cumulative school day of removal in a school year, the district must provide services to the extent necessary to enable your child to appropriately progress in the general curriculum and advance toward achieving IEP goals.

Interim Alternative Educational Settings

If your child carries a weapon to school or to a school function, possesses a weapon at school or at a school function, knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or a school function, the school district may place your child in an interim alternative educational setting (IAES) for up to 45 calendar days without your written consent. When the decision to place your child in an IAES has been made, the school district must notify you of this on the day the decision was made and provide you with a copy of the notice of proce-

dural safeguards. The school district must also follow all of the procedures described above under "Long Term Removals." For infractions other than weapons and drugs violations, a school district can request through an expedited hearing that an ALJ place your child in an IAES for up to 45 calendar days if the school district believes that the child is dangerous to self or others.

An IAES is a different location where educational services are provided for a specific time period for disciplinary reasons. The IAES will be determined by the IEP team and must be selected so as to enable your child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications including those described in the current IEP that will enable him or her to meet IEP goals. The IAES must also include services and accommodations to address the behavior which resulted in the removal and that are designed to prevent the misconduct from recurring.

If you disagree with the decision and request an expedited due process hearing to challenge the decision, your child will remain in the IAES placement during the pendency of the hearing unless you and the school district agree otherwise or until the 45-day time period expires. A school may seek subsequent expedited hearings and alternative placements if after the first 45-day term has expired the school district believes your child is still dangerous. If you disagree with the ALJ's decision from the expedited due process hearing, you may appeal the decision by filing a civil action in a federal, district, or state circuit court.

If your child has not been found eligible for special education but the district has knowledge that your child is disabled before the behavior occurred for which disciplinary action is being taken, you may assert the same protections in discipline afforded to a student with a disability. The district is considered to have knowledge of a disability if you have expressed concerns in writing (or orally if you can not read or write) that your child needs special education and related services, if your child's behavior or school performance shows

the need for special education, if you have requested an evaluation to determine if your child needs special education, or if one of your child's teachers or other district staff has made a referral for special education services to the special education director or other appropriate district personnel. The district is not considered to have knowledge of a disability if it has conducted an evaluation and found your child does not have a disability or if it determined that an evaluation was not needed and informed you in writing of the determination that your child does not have a disability.

action on your part. However, your request for reimbursement can not be reduced or denied if the school prevented you from providing the written notice, you had not received a copy of the procedural safeguards, or requiring you to provide the notice would have likely resulted in physical harm to your child. In addition and at the discretion of an ALJ or court, your request for reimbursement may not be denied if you cannot read and write in English or compliance with the notice would have likely resulted in physical harm to your child.

Private School Placements

If the district has made FAPE available to your child but you elect to place your child in a private school or facility without the consent or referral of the school district, the school district is not required to pay for the cost of the education, including special education and related services. However, if your child previously received special education from a school district, an ALJ may order the school district to reimburse you for the costs of a private school if the ALJ finds that the school district had not made FAPE available to your child in a timely manner and that the private placement is appropriate.

The ALJ or court may reduce or deny your request for reimbursement if at the most recent IEP meeting that you attended prior to removing your child from public school, you did not inform the IEP team that you were rejecting its proposed placement, including stating your concerns and intent to enroll your child in a private school at public expense; at least ten (10) business days prior to removal of your child from public school, you did not give written notice to the district that you were rejecting the placement and enrolling your child in a private school; prior to removal of your child from public school, the district informed you in writing of its intent to evaluate your child, but you did not make your child available; or upon a court finding of unreasonable

Transfer of Parental Rights

On your child's eighteenth birthday, your rights under the IDEA will transfer to your child unless your child has been determined incompetent under Florida law or a guardian advocate has been appointed to make decisions affecting educational services as provided under Florida law. Although the rights have transferred, the district will continue to provide written notices to both you and your child and the school district will notify you and your child of the transfer of rights when your child turns eighteen (18).

For children who have attained age eighteen (18) and are incarcerated in a juvenile justice facility or local correctional facility, all rights accorded to parents transfer to the student, including the right to notices.

If your child has reached eighteen (18) and does not have the ability to provide informed consent with respect to educational programming, you may have your child declared incompetent and the appropriate guardianship established under Florida law, be appointed to represent the educational interests of your child throughout eligibility for special education and related services, or have another appropriate individual appointed to represent the educational interests of your child throughout eligibility for special education and related services if you are not available.

For more information about procedural safeguards in exceptional student education, please contact

- the exceptional student education administrator in your school district
- the Florida Diagnostic and Learning Resource System center serving your area
- the Bureau of Exceptional Education and Student Services at the Florida Department of Education (850-245-0475)

The sample notice was developed and disseminated by the Florida Department of Education, K-12 Public Schools, Bureau of Exceptional Education and Student Services.



Florida Department of Education
John L. Winn, Commissioner
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