

Draft Parent Rights

Oklahoma State Department of Education

PARENTS RIGHTS IN SPECIAL EDUCATION: NOTICE OF PROCEDURAL SAFEGUARDS

As the parent/guardian/surrogate parent of a child or youth who is receiving or may be eligible for special education services, you have certain rights according to State and Federal laws. If you have questions about these rights and procedural safeguards, please contact your local educational agency (LEA)/public agency, or Special Education Services (SES) of the Oklahoma State Department of Education (OSDE). These rights and procedural safeguards are in accordance with Title 34 of the Code of Federal Regulations for implementation of the Individuals with Disabilities Education Act (IDEA) and the IDEA Amendments of 1997 and 2004.

In general, a copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only one time a year, except that a copy also shall be given to the parents: upon initial referral or parental request for evaluation; upon the first occurrence of the filing of a complaint; and upon request by a parent.

Internet Web site--a LEA/public agency may place a current copy of the procedural safeguards notice on its Internet Web site if such Web site exists.

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it is clearly not feasible to do so, and written in an easily understandable manner. If the native language or other mode of communication of the parent is not a written language, the

State or LEA/public agency shall take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice, and that there is written evidence that these requirements have been met.

SURROGATE PARENTS

Each LEA/public agency shall ensure that an individual is assigned to act as a surrogate for the parents of a child whenever the parents of the child are not known; no parent can be identified; for an unaccompanied homeless youth; after reasonable efforts, cannot locate the whereabouts of a parent; or the child is a ward of the State under the laws of the State.

In the case of a child who is a ward of the state, the judge overseeing the child's care may alternatively appoint a surrogate parent, provided that the surrogate meets the requirements of Section 615, Procedural Safeguards.

The agency must have a method for determining whether a child needs a surrogate parent and a method for assigning a surrogate parent to the child.

The LEA/public agency may select a surrogate parent in any way permitted under State law, but must ensure that a person selected as a surrogate is not an employee of the SEA, the LEA, or any other agency which is involved in the education or care of the child, has no interest that conflicts with

the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. (An individual is not disqualified as a LEA/public agency employee from appointment as a surrogate solely because he or she is paid by the LEA/public agency to serve as a surrogate parent.)

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a FAPE to the child.

The State shall make reasonable efforts to ensure the assignment of a surrogate is made not more than 30 days after there is a determination by the LEA/public agency that the child needs a surrogate.

ELECTRONIC MAIL

A parent of a child with a disability may elect to receive notices required under IDEA, Part B, by an electronic mail (e-mail) communication, if the LEA/public agency makes such option available.

PRIOR WRITTEN NOTICE TO PARENTS

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

The notice must include:

- a description of the action proposed or refused by the agency;

- an explanation of why the agency proposes or refuses to take the action;
- a description of any other options that the agency considered and the reasons why those options were rejected;
- a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal;
- a description of any other factors which are relevant to the agency's proposal or refusal;
- a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- sources for parents to contact to obtain assistance in understanding the provisions of this part.

PARENT CONSENT

"Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time prior to carrying out the action.

The LEA/public agency must obtain parental consent before conducting an

initial, preplacement evaluation, or before initial placement of a child with disabilities in a program providing special education and related services. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

Except for preplacement evaluation and initial placement, the Federal regulations provide that consent may not be required as a condition of any benefit to the parent or child. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under IDEA, Part B, but are subject to the prior notice and IEP requirements. Oklahoma procedures also require prior notice to parents and opportunity to participate in development or review of IEPs before conducting reevaluations.

Informed parental consent shall be obtained prior to conducting additional assessments for reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the LEA/public agency has taken reasonable measures to contact and inform the parents in order to obtain such consent and the child's parents have failed to respond.

The LEA/public agency may use the mediation and hearing procedures under the IDEA, to resolve disputes over the parents' refusal to consent for evaluation and to determine if the child may be initially evaluated or reevaluated without parental consent, except where State law is inconsistent with Federal law and requires such consent. Mediation is an option to resolve disputes over parental refusal for initial placement.

If the hearing officer upholds the LEA/agency, the LEA/agency may evaluate

the child without the parent's consent, subject to the parent's rights under provisions for administrative appeals, impartial reviews, civil actions, due process time lines, and status of the child during the proceedings under IDEA. The LEA/agency must notify the parent of its actions, and the parent has appeal rights, as well as safeguards and rights at the hearing itself.

If the child is a ward of the state and is not residing with the child's parent, the LEA/agency shall 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. However, the LEA/agency 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:

- despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
- the rights of the parents of the child have been terminated in accordance with state law; or
- 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.

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

If the parent of a child with a disability refuses to consent to initial provision of

special education and related services, the LEA/agency shall not provide special education and related services to the child by utilizing the procedures in Section 615, Procedural Safeguards.

If the parent of such child refuses to consent to the provision of special education and related services, or if the parent fails to respond to a request to provide such consent:

- the LEA/agency shall not be considered to be in violation of the requirement to make available a FAPE to the child for the failure to provide such child with the special education and related services for which the LEA/agency requests such consent; and
- the LEA/public agency shall not be required to convene an individualized education program (IEP) meeting or develop an IEP under this section for the child for the special education and related services for which the LEA/public agency requests such consent.

EVALUATION

"Evaluation" means a variety of assessment tools, strategies, technically sound instruments, and procedures used in accordance with IDEA to determine whether a child qualifies as a child with a disability as defined by IDEA and the educational needs of the child. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class. Upon completion of the determination of tests and other evaluation procedures, including information provided by the

parent, the determination of whether the child is eligible as a child with a disability shall be made by a team of qualified professionals and the parent. A copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

An initial evaluation must be conducted in a 60-day timeframe from receipt of parental consent for the initial evaluation until the initial eligibility determination is completed.

INDEPENDENT EDUCATIONAL EVALUATION

"Independent educational evaluation (IEE)" means an evaluation conducted by a qualified examiner who is not employed by the LEA/agency responsible for the education of the child in question.

"Independent educational evaluation at public expense" means that the LEA/agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent.

A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the LEA/agency. However, the LEA/agency may initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an IEE, but not at public expense.

If the parents obtain an IEE at private expense, the results of the evaluation must be considered by the LEA/agency in any decision made with respect to the provision of a FAPE to the child, and may be presented as evidence at a due process hearing regarding the child.

If a hearing officer requests an IEE as part of a hearing decision, the cost of the evaluation must be at public expense.

Each LEA/public agency shall provide to parents, on request, information about where an IEE may be obtained.

Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria, which the LEA/agency uses when it initiates an evaluation.

The LEA/agency may require prior notice by the parents prior to obtaining an IEE at public expense. However, the LEA/agency may not fail to pay for an IEE if a parent does not notify the public agency that an IEE is being sought.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

An IEP must be written in a team meeting before a child is placed in a program for special education and related services. Parents have the right for the LEA/agency to provide prior notice and give them the opportunity to participate in IEP development and all IEP reviews for the child. If a purpose of the IEP meeting will be consideration of the student's transition service needs and/or needed transition services, the LEA/agency must invite the student to attend the meeting. The LEA/agency shall give the parents/student a copy of the IEP.

LEAST RESTRICTIVE ENVIRONMENT (LRE)

Placements: Educational placement for each child with a disability shall be:

- determined at least annually;
- based on the child's IEP;
- as close as possible to the child's home, unless the parent agrees otherwise;
- with nondisabled children to the maximum extent appropriate; and
- in the general education environment unless the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved.

Each LEA/agency shall ensure that a continuum of alternative placements is available to meet the needs of children and with disabilities for special education and related services.

In selecting the LRE, consideration should be given to any potential harmful effect on the child or on the quality of services, which he or she needs. Children with disabilities shall have the opportunity to participate in nonacademic and extracurricular services and activities with children who do not have disabilities to the maximum extent appropriate to the needs of the child.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each LEA/agency shall ensure that a child with a disability is not removed from education in age-appropriate settings or general classrooms solely because of needed modifications in the general curriculum.

PERSONALLY IDENTIFIABLE INFORMATION

Personally identifiable information includes: the name of the child, the child's parent, or other family members; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

ACCESS TO EDUCATION RECORDS

Each LEA/agency shall permit parents to inspect and review all educational records relating to their child with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the child, which are collected, maintained, or used by the LEA/agency under this part. The LEA/agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or due process hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

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

- the right to a response from the participating LEA/agency to reasonable requests for explanations and interpretations of the records;
- the right to have a representative of the parent inspect and review the records; and
- the right to request that the LEA/agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from

exercising the right to inspect and review the records.

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

If any educational record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

Each LEA/agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the LEA/agency.

FEEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

A LEA/agency may not charge a fee to search for or to retrieve information under the IDEA, Part B. An LEA/agency may charge a fee for copies of records, which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

RECORD OF ACCESS

Each LEA/public agency shall keep a record of unauthorized parties obtaining access to education records collected, maintained, or used under this part, (except access by parents and authorized employees of the participating LEA/agency), including the name of the party, the date access was given,

and the purpose for which the party is authorized to use the records.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the LEA/agency, which maintains the information to amend the information.

The LEA/agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of this request. If the LEA/agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing as set forth under IDEA and the Family Education Rights and Privacy Act (FERPA).

The LEA/agency shall, on request, provide an opportunity for a hearing to challenge information in educational records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the LEA/agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the

information or stating any reasons for disagreeing with the decision of the LEA/agency. Any explanation placed in the records of the child under this section must be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; if the records of the child or the contested portion is disclosed by the LEA/agency to any party, the explanation must also be disclosed to the party.

MEDIATION

The SEA or LEA/agency shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a due process hearing request pursuant to Section 615, Procedural Safeguards, to resolve such disputes through a mediation process.

Trained, qualified, and impartial mediators are available, and may be requested from the Early Settlement Centers of the Alternative Dispute Resolution System, under the direction of the Administrative Office of the Courts. Information and referral may also be obtained at no cost through the OSDE, SES, the Oklahoma Area wide Service Information System (OASIS), Oklahoma Parent Center, or the Oklahoma Disability Law Center (ODLC).

OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY

The SEA or LEA/agency may establish procedures to offer to parents and schools that choose not to use the mediation process an opportunity to meet with a disinterested party who is under contract with:

- a parent training and information center (Oklahoma Parent Center) or a community parent resource center (OASIS) in the state; or
- an appropriate alternative dispute resolution entity (Early Settlement Centers of the Alternative Dispute Resolution System, under the direction of the Administrative Office of the Courts), to encourage the use, and explain the benefits, of the mediation process to the parents.

OPPORTUNITY TO PRESENT COMPLAINTS FOR A DUE PROCESS HEARING

Either the parent or the LEA/agency may request a due process hearing with respect to any matter relating to identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child.

TIMELINE FOR REQUESTING HEARING

A parent or LEA/agency shall request an impartial due process hearing within two years of the date the parent or LEA/agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the state has an explicit time limitation for requesting such a hearing under this part, in such time as the state law allows.

Exceptions to the timeline--the timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to:

- specific misrepresentations by the LEA/agency that it had resolved the

problem forming the basis of the complaint; or

- the LEA/agency's withholding of information from the parent that was required under this part to be provided to the parent.

Either party, or the attorney representing a party, is required to provide a request for a due process hearing to the other party, and forward a copy of such notice to the SEA.

A request for a due process hearing must be in writing, signed, and include:

- the name of the child;
- date of birth;
- the address of the residence of the child and of the parents;
- the name of the school the child is attending;
- in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
- current grade or class placement;
- established or purported disability;
- a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem;
- a proposed resolution of the problem to the extent known and available to the party at the time; and
- the reason for challenging the identification, evaluation, educational placement of the child, or the provision of a FAPE to the child.

A form for this purpose is available from the OSDE-SES to assist parents in filing a complaint for a due process hearing.

A copy of this request must be mailed by the parent of the child with a disability, or the attorney representing the child on behalf of the parents, to the administrator of the LEA/agency, and to the OSDE-SES, Attention: Due Process Hearings, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements.

The due process notice shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party, in writing, that the receiving party believes the notice has not met the requirements.

If the LEA/agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process request, the LEA/agency shall, within ten days of receiving the request for a due process hearing, send to the parent 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 is relevant to the agency's proposal or refusal.

A response filed by a LEA/agency shall not be construed to preclude such LEA/agency

from asserting that the parent's due process request was insufficient where appropriate.

The non-complaining party shall, within ten days of receiving the notice of request for a due process hearing, send to the other party a response that specifically addresses the issues raised in the request.

The party providing a hearing officer notification shall provide the notification within 15 days of receiving the request for a due process hearing.

Within five days of receipt of the notification provided, the hearing officer shall make a determination on the face of the notice of whether it meets the requirements, and shall immediately notify the parties in writing of such determination.

A party may amend its request for a due process hearing notice only if:

- the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting; or
- the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than five days before a due process hearing occurs.

The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under Section 615(f)(1)(B).

Nothing in this section shall be construed to preclude a parent from filing a separate request for a due process hearing on an issue request for a due process hearing on an issue separate from a request already filed.

MEDIATION

The OSDE supports resolution of disputes, involving any matter subject to the due process hearings, through mediation or other informal means between parents and educators concerning the education of a child with a disability or purported to have disabilities. The State shall bear the costs of the mediation process.

When a due process hearing is initiated under IDEA, the LEA/agency shall inform the parents of the availability of mediation as an alternative to resolving disputes.

Participation in the mediation process is voluntary on the part of the parties. Mediation may be requested by either party but must be attended and agreed upon by both parties. The parties involved may or may not have representatives at the mediation; however, those persons attending should be in a position of authority to make decisions. Either party may refuse to participate in a conference without prejudice to any procedural safeguard afforded under any applicable State or Federal law.

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute. Mediation is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under these requirements. Also, the mediation meeting does not alter the required time lines for due process hearings.

In the case that a resolution is reached to resolve the issues in the due process hearing request through the mediation process, the parties shall execute a legally binding 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 proceedings;
- is signed by both the parent and a representative of the LEA/public 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.
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Trained, qualified, and impartial mediators are available, and may be requested from the Early Settlement Centers of the Alternative Dispute Resolution System, under the direction of the Administrative Office of the Courts. Information and referral may also be obtained at no cost through the OSDE-SES, OASIS, Oklahoma Parent Center, or the ODLC.

RESOLUTION SESSIONS

Preliminary meeting--prior to the opportunity for an impartial due process hearing, the LEA/agency shall convene a meeting with the parents and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the due process hearing request:

- within 15 days of receiving notice of the parents' complaint;
- which shall include a representative of the agency who has decision-making authority on behalf of such agency;
- which may not include an attorney of the LEA/agency unless the parent is accompanied by an attorney; and
- where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and

the LEA/agency is provided the opportunity to resolve the complaint, unless the parents and the LEA/agency agree in writing to waive such meeting, or agree to use the mediation process.

If the LEA/agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

Written settlement agreement--in the case that a resolution is reached to resolve the complaint at a meeting the parties shall execute a legally binding agreement that is:

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

Review period--if the parties execute a written settlement agreement, a party may void such agreement within three business days of the agreement's execution.

DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS

In general--not less than five business days prior to a hearing being conducted, each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

Failure to disclose--a hearing officer may bar any party that fails to comply with the

disclosure of evaluations and recommendations from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

LIMITATIONS ON HEARING

Person conducting hearing--a hearing officer conducting a hearing shall, at a minimum:

- not be an employee of the SEA or the LEA/agency involved in the education or care of the child, or a person having a personal or professional interest that conflicts with his or her objectivity in the hearing;
- possess knowledge of, and the ability to understand, the provisions of this title, federal and state regulations pertaining to this title, and legal interpretations of this title by federal and state courts;
- possess the knowledge and ability to conduct hearings in accordance with appropriate standard legal practice; and
- possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

The SEA maintains a list of qualified hearing officers. When a due process is assigned, the SEA shall provide the name of the hearing officer assigned and their qualifications to all parties involved.

The LEA/agency shall inform the parent of any free or low-cost legal and other relevant services available in the State or the area, if the parent requests the information or the parent or the LEA/agency initiates a due process hearing.

The SEA shall ensure that a final hearing decision is reached and mailed to the parties within 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

DECISION OF HEARING OFFICER

The decision made in a due process hearing is final, unless a party to the hearing appeals the decision under the procedures for impartial administrative appeal.

A decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a FAPE.

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

- impeded the child's right to a FAPE;
- significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
- caused a deprivation of education benefits.

The record of the hearing and the findings of fact and decisions must be provided at no cost to parents.

The SEA, after deleting any personally identifiable information, shall transmit the findings and decisions to the State advisory panel and make them available to the public.

DUE PROCESS HEARING RIGHTS

Safeguards--any party to a hearing or an appeal shall be accorded the right to:

- be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- present evidence and confront, cross-examine, and compel the attendance of witnesses;
- a written, or, at the option of the parents, electronic verbatim record of the hearing; and
- a written, or, at the option of the parents, electronic findings of fact and decisions, which shall be made available to the public and transmitted to the State advisory panel.

Parents involved in hearings must be given the right to have the child who is the subject of the hearing present and to open the hearing to the public.

A parent must be given the right to file a separate request for a due process hearing on an issue separate from a request already filed.

APPEAL

In general--if the hearing is conducted by a LEA/agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the SEA.

IMPARTIAL REVIEW AND INDEPENDENT DECISION

The SEA shall conduct an impartial review of the findings and decision appealed. The official appeal officer conducting the review shall:

- examine the entire hearing record;

- insure that the procedures at the hearing were consistent with the requirements of due process;
- seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above apply;
- afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- make an independent decision on completion of the review; and
- give a copy of written findings and the decision to the parties.

Each review involving oral arguments must be conducted at a time and place, which is reasonably convenient to the parents and child involved.

The SEA shall ensure that a final decision is reached in an administrative, State level appeal review and mailed to the parties within 30 days after the receipt of a request for a review, unless the reviewing official grants a specific extension at the request of either party. The decision made by the reviewing official is final, unless a party brings a civil action under the procedures described below.

The SEA, after deleting any personally identifiable information, shall transmit the findings and decisions to the State advisory panel.

RIGHT TO BRING A CIVIL ACTION

In general--any party aggrieved by the findings and decision made in an impartial due process hearing or a placement in an alternative education setting who do not have the right to an appeal, and any party aggrieved by the findings and decision made in an impartial review and independent

decision, has the right to bring a civil action with respect to the complaint presented, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

Limitation--the party bringing the civil action shall have 90 days from the date of the decision of the hearing officer to bring such an action or, if the State has an explicit time limitation for bringing such action under IDEA, Part B, in such time as the State law allows.

Additional requirements--in any civil action, the court:

- shall receive the records of the administrative proceedings;
- shall hear additional evidence at the request of a party; and
- basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

AWARD OF ATTORNEYS' FEES

In general--in any action or proceeding brought under this section of the IDEA, Part B, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

- to a prevailing party who is the parent of a child with a disability;
- to a prevailing party who is an SEA or an LEA/agency against the attorney of a parent who files a request for a due process hearing 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 SEA or LEA/agency 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.

Funds under IDEA, Part B, may not be used to pay attorney's fees or costs of a party related to an action or proceeding.

Determination of amount of attorneys' fees--fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating fees awarded.

Prohibition of attorneys' fees and related costs for certain services--attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent, if:

- the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;
- the offer is not accepted within ten days; and
- the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for mediation.

Opportunity to resolve complaints--a meeting conducted pursuant to a due process hearing, resolution session, preliminary meeting, shall not be considered:

- a meeting convened as a result of an administrative hearing or judicial action; or
- an administrative hearing or judicial action for this purpose.

Exception to prohibition on attorneys' fees and related costs--an award of attorneys' fees and related costs may be made to a parent who is a prevailing party and who was substantially justified in rejecting the settlement offer.

Reduction in amount of attorneys' fees--the court shall reduce, accordingly, the amount of the attorneys' fees awarded, whenever the court finds that:

- the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- the time spent and legal services furnished were excessive considering

the nature of the action or proceeding; or

- the attorney representing the parent did not provide to the LEA/agency the appropriate information in the due process complaint in accordance with IDEA, Part B.

Exception to reduction in amount of attorneys' fees--the provisions for reduction of attorneys' fees shall not apply in any action or proceeding if the court finds that the SEA or LEA/agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section of IDEA, Part B.

MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT

During the pendency of any administrative or judicial proceeding regarding a due process hearing complaint, unless the SEA or LEA/agency and the parents otherwise agree, the child involved in the complaint shall remain in the then current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the SEA or LEA/agency and the parents for purposes of this section.

LOCAL OR STATE LEVEL COMPLAINTS

A signed written complaint regarding alleged violations of IDEA, Part B may be filed with the local school district administrator or the State (34 CFR §§ 300.660-300.662).

If the complaint is filed with the local school district, the complainant may request that the State review the findings.

A written complaint must include a statement that the school district has violated a requirement under IDEA, Part B and the facts on which the statement is based. The complaint must allege the violation occurred not more than one year prior to the date the complaint is filed. Relevant information may be submitted orally and in writing regarding the alleged issue for consideration in determining if there is a violation of IDEA, Part B.

A form for this purpose is available from the OSDE, SES to assist parents in filing a formal written complaint.

A written letter of findings will be issued within 60 days after receipt of a complaint, unless exceptional circumstances exist which require lengthier involvement.

Mediation is also encouraged as an option to facilitate early resolution of complaint issues. Information to assist in requesting mediation or filing a complaint may be obtained by contacting the special education director or administrator of the local school district or OSDE, SES.

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

The IDEA does not require a LEA/agency to pay for the cost of education, including

special education and related services, of a child with a disability at a private school or facility if that agency made a FAPE available to the child and the parents elected to place the child in such private school or facility.

If the parents of a child with a disability, who previously received special education and related services under the authority of a LEA/public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. 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 SEA and LEA/public agencies.

The cost of reimbursement may be reduced or denied if:

- at the most recent IEP meeting attended by the parents prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the

public agency of the information described above; or

- if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements of the IDEA, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
- upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Notwithstanding the notice requirements above, the cost of reimbursement may not be reduced or denied for failure to provide such notice if:

- the parent is illiterate and cannot write in English;
- compliance with the notice requirement would likely result in physical or serious emotional harm to the child;
- the school prevented the parent from providing the notice; or
- the parents had not received notice of the notice requirement.

PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING

AUTHORITY OF SCHOOL PERSONNEL

Case-by-case determination--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.

Authority--school personnel may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

Additional authority--if school personnel seek to order a change in placement that would exceed 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, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except a FAPE is available, although it may be provided in an interim alternative educational setting.

Services--a child with a disability who is removed from the child's current placement irrespective of whether the behavior is determined to be a manifestation of the child's disability shall:

- continue to receive educational services, a FAPE, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

MANIFESTATION DETERMINATION

In general--within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA/agency, the parent, and relevant members of the IEP team (as determined by the parent and the LEA/agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if:

- the conduct in question was caused by, or was in direct and substantial relationship to, the child's disability; or
- the conduct in question was the direct result of the LEAs/agencies failure to implement the IEP.

Manifestation--if the LEA/agency, the parent, and relevant members of the IEP team determine that either is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION

If the LEA/agency, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team shall:

- conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP) for such child, provided that the LEA/agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;

- in the situation where a BIP has been developed, the IEP team shall meet to review the plan, and modify it, as necessary, to address the behavior; and
- except as provided under special circumstances, return the child to the placement from which the child was removed, unless the parent and the LEA/agency agree to a change of placement as part of the modification of the BIP.

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

- carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or LEA;
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a SEA or LEA/agency; or
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or LEA/agency.

“Serious Bodily Injury” is defined to mean a bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or faculty.

NOTIFICATION

Not later than the date on which the decision to take disciplinary action is made, the LEA/agency shall notify the parents of that decision, and of all procedural safeguards accorded under IDEA, Part B.

DETERMINATION OF SETTING

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

APPEAL

In general--the parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or a LEA/agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

AUTHORITY OF HEARING OFFICER

In general--a hearing officer may hear, and make a determination regarding, an appeal.

Change of placement order--in making the determination, the hearing officer may order a change in the placement of a child with a disability:

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

DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY

In general--if the result of the review is a determination that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except that a FAPE must be provided to any child with a disability during the term of suspension.

Additional requirement--if the LEA/agency initiates disciplinary procedures applicable to all children, the LEA/agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination about the disciplinary action.

PARENT APPEAL

In general--if the child's parents disagree with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

The SEA or LEA/agency shall arrange for an expedited hearing when requested by a parent.

Review of decision--in reviewing a decision with respect to the manifestation determination, the hearing officer shall:

- determine whether the LEA/agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with

the requirements described for such determinations.

- apply the standards described for these purposes.

PLACEMENT DURING APPEALS

If a parent or the LEA/agency requests a hearing regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination:

- the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for these circumstances, whichever occurs first, unless the parent and the SEA or LEA/agency agree otherwise; and
- the State or LEA/agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

In general--a child who has not been determined to be eligible for special education and related services under IDEA, Part B, and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for under IDEA, Part B, if the LEA/agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

Basis of knowledge--a LEA/agency shall be deemed to have knowledge that a child is a

child with a disability if, before the behavior that precipitated the disciplinary action occurred:

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

Exception--a LEA/agency shall not be deemed to have knowledge that the child is a child with a disability:

- if the parent of the child has not allowed an evaluation of the child;
- if the parent of the child has refused services; or
- the child has been evaluated and it was determined that the child was not a child with a disability under IDEA, Part B.

CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE

In general--if a LEA/agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children

without disabilities who engaged in comparable behaviors.

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

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

Rule of construction--nothing in the IDEA, Part B, shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

Transmittal of records--an LEA/agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to which the agency reports the crime.

TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

In general--a State may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law):

- the LEA/agency shall provide any notice required by the law to both the individual and the parents;
- all other rights accorded to parents under the IDEA, Part B, transfer to the child;
- the LEA/agency shall notify the individual and the parents of transfer of rights; and
- all rights accorded to parents under this law transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

Special rule--if, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

RESOURCES FOR PARENTS AND SCHOOLS

Oklahoma State Department of Education
Special Education Services
2500 North Lincoln Blvd.
Oklahoma City, OK 73105-4599
(405) 521-4863 or (405) 521-4875 TTY

OASIS
Oklahoma Area wide Service Information
System
1-800-426-2747 or in the Oklahoma City
area (405) 271-6302

Oklahoma Parents Center
1-877-553-4332 or (405) 619-0500

Oklahoma Commission of Children and
Youth (OCCY)
(405) 606-4900

Alternative Dispute Resolution Program
(Mediation)
Administrative Office of the Courts
1-877-521-6677 or (405) 522-7876

Office of Handicapped Concerns
1-800-522-8224 V/TDD
(405) 521-3756 V/TDD

Oklahoma Disability Law Center
1-800-226-5883 V/TDD
Tulsa (918) 743-6220 V/TDD
Oklahoma City (405) 525-7755 V/TDD

Legal Aid of Western Oklahoma
(405) 521-1302

Legal Services of Eastern Oklahoma
(918) 584-3211
(918) 428-4357 (Hot Line)
(888) 534-5243 (Hot Line)

Oklahoma Indian Legal Services
1-800-658-1497 or (405) 943-6457

Department of Career and Technology
Education
(405) 377-2000
(405) 743-6816 TDD

Oklahoma Department of Health
(405) 271-5600

Department of Mental Health & Substance
Abuse Services
(405) 522-3908

Department of Human Services (DHS)
(405) 521-2778

Department of Rehabilitation Services
(DRS)
1-800-845-8476
(405) 951-3400 V/TDD

Office of Juvenile Affairs (OJA)
Educational Services
(405) 962-6106

Department of Corrections
(405) 962-6139