

PARENTS RIGHTS IN SPECIAL EDUCATION: NOTICE OF PROCEDURAL SAFEGUARDS

As the parent(s) of a child who is receiving or may be eligible for special education and related services, you have certain rights according to State and federal laws. If you have questions about these rights and procedural safeguards, please contact your school district, or the Oklahoma State Department of Education (OSDE), Special Education Services (SES). 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) 2004.

In general, a copy of the procedural safeguards must be given to you (or your young adult who has reached the age of majority—18 years of age) only one time per year, except that a copy must also be given to you: upon initial referral or your request for evaluation; upon the first occurrence of the filing of a State or due process complaint; and upon your request.

Internet Web site—you school district may place a current copy of the procedural safeguards notice on its Internet Web site if such Web site exists.

The procedural safeguards notice must include a full explanation of the procedural safeguards, written in a language understandable to the public, and provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so if you native language or other mode of communication is not a written language, your school district must ensure that the notice is translate orally or by other means in your native language or other mode of communication; you understand the content of the notice; and that there is written evidence that these requirements have been met.

PRIOR WRITTEN NOTICE TO PARENTS

Your school district must provide prior written notice to you each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child.

The notice must include:

- A description of the action your school district proposes or reuses to take;
- An explanation of why your school district proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report you school district used in deciding to propose or refuse the action;
- A description of any other factors which are relevant to your school district's proposal or refusal;
- A statement that you have protection under the procedural safeguards of this part, and, if the notice is not a referral for an initial evaluation, the means by which a copy of a description of the procedural safeguards can be obtained, and include resources for you to contact for help in understanding Part B of the IDEA.

The notice must be:

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

NATIVE LANGUAGE

If your native language or other mode of communication is not a written language, your school district must ensure that the notice is translated for you orally or by other means in your native language or other mode of communication and that you understand the content of the notice.

In the case of an individual with LEP, native language refers to the language normally used by that person. In the case of a child, it refers to the language normally used by the child's parents in all direct contact with the child. In all direct contact with the child, it refers to the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or a person with no written language, the mode of communication is the language the person normally uses (such as sign language, Braille, or oral communication).

ELECTRONIC MAIL (E-MAIL)

If your school district offers you the choice of receiving documents by e-mail, you may also choose to receive the following documents by e-mail:

- Prior written notice;
- Procedural Safeguards Notice; and
- Notices related to a due process complaint.

PARENT CONSENT--DEFINITION

Consent means:

- You have been fully informed in your native language or other mode of communication of all information relevant to the activity for which you are giving consent;
- You understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes the activity and lists the records (if any) which will be released and to whom; and
- You understand that the granting of consent is voluntary and you may withdraw your consent at any time prior to carrying out the action.

Your consent is not required before your school district may:

- Review existing data as part of your child's evaluation or reevaluation; or
- Give your child a test or other assessment that is given to all children, unless, before that test or assessment, consent is required from all parents of all children.

PARENTAL CONSENT FOR INITIAL EVALUATION

Your school district must obtain your consent before conducting an initial evaluation to determine whether your child is eligible under Part B of the IDEA to receive special education and related services. Your consent for an initial evaluation does not mean that you have given

your consent for the school district to provide special education and related services to your child. Your school district must make reasonable effort to obtain your informed consent for initial evaluation to decide whether your child is a child with a disability.

WARDS OF THE STATE

If the child is a ward of the state and is not living with his/her parent(s) the school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

- Despite reasonable efforts to do so, the school district cannot find the parent(s) of the child;
- The rights of the parent(s) of the child have been terminated in accordance with State law; or
- A judge has assigned the right to make educational decisions and to consent for an individual evaluation to an individual appointed by the judge to represent the child.

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

- A foster child;
- Considered a ward of the state under Oklahoma State law; or
- 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 parent(s) refuse consent for evaluation, the LEA may continue to pursue an evaluation by utilizing the mediation and due process complaint hearing procedures, except to the extent where State law is inconsistent with this provision relate to parental consent. Parental consent for evaluation must not be construed as consent to placement for provision of special education and related services.

If the LEA pursues an evaluation by utilizing the due process complaint hearing procedures, and the hearing officer decides in favor of the LEA/agency, the LEA/agency may evaluate the child without the parent's consent. This is subject to the parents' rights under provisions for

administrative appeals, impartial reviews, civil actions, due process timelines, and status of the child during the proceedings under the IDEA. The LEA/agency must notify the parent(s) of its actions and that the parent(s) have appeal rights, as well as safeguards and rights at the hearing itself.

TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

When a young adult with a disability reaches the age of majority (18 years of age) under State law (except for a young adult with a disability who has been determined to be incompetent under State law):

- The school district must provide any notice required by the law to both the young adult and the parents;
- All other rights accorded to parents under the IDEA Part B transfer to the young adult;
- The school district must notify the individual and the parent(s) of transfer of rights; and
- All rights accorded to parent(s) under this law transfer to young adults who are incarcerated in an adult or juvenile federal, State, or local correctional institution.

If, under State law, a young adult with a disability who has reached the age of majority has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to his or her educational program, the State must establish procedures for appointing the parent(s) of the young adult, or if the parent(s) are not available, another appropriate individual, to represent the educational interests of the young adult throughout the period of eligibility of the young adult under this part.

EVALUATION

Either a parent or a school district may initiate a request for an initial evaluation to determine if the child is a child with disability.

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 assessments 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(s), the determination of whether the child is eligible as a child with a disability must be made by a group of qualified professionals and the parent(s). A copy of the evaluation report and the documentation of determination of eligibility will be given to the parent(s).

An initial evaluation must be conducted in a 45-school-day timeframe from receipt of parental consent for the initial evaluation until the initial eligibility determination is completed.

If the child has participated in a process that assesses the child's response to scientifically research-based intervention, the instructional strategies used and the student-centered data collected must include documentation that the child's parent(s) were notified about the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

PARENTAL CONSENT FOR SERVICES

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

Your school district must maintain documentation of reasonable efforts to obtain your informed consent.

The documentation must include a record of the school district's attempts in these areas, such as:

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

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a

request to provide such consent and the school district does not provide your child with the special education and related services for which it sought your consent, your school district must not provide special education and related services to your child.

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

- The school district is not in violation of the requirement to make available a FAPE to your child for its failure to provide those services to your child; and
- The school district is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

Except for an initial evaluation and initial placement of your child into special education, the federal regulations provide that consent may not be required as a condition of any benefit to you or your child. Any changes in you child's special education program, after the initial placement, are no subject to your 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.

PARENTAL CONSENT FOR REEVALUATIONS

Your school district must obtain your informed consent before it reevaluates you child, unless your school district can demonstrate that:

- You school district took reasonable measures to obtain your consent for your child's reevaluation; and
- You failed to respond.

You school district may, but is not required to, pursue your child's reevaluation by using the medication, due process complaint resolution meeting, and/or impartial due process complaint hearing procedures to override your refusal to consent to your child's reevaluation. However, as with initial evaluations, your school district does not violate its obligations under Part B of

the IDEA if it declines to pursue the reevaluation in this manner.

INDEPENDENT EDUCATIONAL EVALUATION

You have the right to obtain an independent educational evaluation (IEE) for your child.

If you request and IEE, the school district must provide you information about where and IEE may be obtained.

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

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

Whenever and IEE is at public expense, the criteria in which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria, that the school district uses when it initiates an evaluation.

You have the right to an IEE at public expense if you disagree with an evaluation of your child obtained by your school district. However, the school district may initiate a due process complaint hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, you still have the right to an IEE, but not at public expense.

The school district may require prior notice by you prior to obtaining an IEE at public expense; however, the school district may not fail to pay for an IEE if you do not notify the school district that an IEE is being sought.

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

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

PERSONALLY IDENTIFIABLE INFORMATION

Personally identifiable information includes: the name of the child, the child's parent(s), 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 RIGHTS

Each school district must permit you to inspect and review any educational records relating to your child with respect to identification, evaluation, and educational placement of you child, and the provision of a FAPE to your child, which are collected, maintained, or used by your school district under this part. The school district must comply with your request without unnecessary delay and before any meeting regarding and IEP or impartial due process hearing, 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:

- Your right to a response from the school district to your reasonable requests for explanations and interpretations of the records;
- Your right to have you representative inspect and review the records; and
- You right to request that the school district provide copies of the records if you cannot effectively inspect and review the records, unless you receive those copies.

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

RECORD OF ACCESS

Each school district must 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 school district), including the name of the party, the date access

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

RECORDS ON MORE THAN ONE CHILD

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

LISTS OF TYPES AND LOCATIONS OF INFORMATION

On request, each school district must provide you with a list of the types and locations of education records collected, maintained, or used by the school district.

FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

Each school district may not charge a fee to search for or to retrieve information under the IDEA, Part B. Each school district may charge a fee for copies of records, which are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in education records collected, maintained of used under this part is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the school district that maintains the information to change the information.

The school district must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of this request. If the school district decides to refuse to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as set forth under IDEA and the Family Education Rights and Privacy Act (FERPA).

OPPORTUNITY FOR A HEARING

The school district must, on request, provide you an opportunity for a hearing to challenge information in educational records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. If, as a result of the hearing, the school district decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

RESULTS OF A HEARING

If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the school district.

Such an explanation placed in the records of your child must be maintained by the school district as part of the records of your child as long as the record or contested portion is maintained by the school district. If the school district discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to the party.

CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

Unless the information is contained in education records, and the disclosure is authorized without parental consent under FERPA, you consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Your consent is not required before personally identifiable information is released to officials to participating agencies for purposes of meeting a requirement of Part B of the IDEA.

FILING 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 SEA.

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;
- Facts on which the statement is based;
- The signature and contact information of the complainant; and
- If alleging violations regarding a specific child:
 - The name of the child and the address of the residence of the child;
 - The name of the school in which the child attends;
 - In the case of a homeless child or youth, available contact information for the child and the name of the school in which the child attends;
 - A description of how the school district has violated the requirements under IDEA related to the allegation; and
 - The proposed resolution of the problem to the extent known and available to the party following the complaint at the time the complaint is filed.

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 the IDEA Part B. A form for this purpose is available from the OSDE-SES to assist you in filing a formal written complaint.

A written letter of findings will be issued within 60 calendar days after receipt of a formal written 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 your school district or the OSDE-SES.

FILING A DUE PROCESS COMPLAINT

You or the school district may file a due process complaint on any matter relating to a proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child, or the provision of a FAPE.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint due to:

- The school district specifically misrepresented that it has resolved the issue forming the basis of the complaint; or
- The school district withheld information from you that was required to be provided to you under Part B of the IDEA.

The school district must inform you of any free or low-cost legal or other relevant services available in your area if you request the information, or if you or the school district file a due process complaint.

DUE PROCESS COMPLAINT

To request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

You or the school district, whichever filed the complaint, must also provide the SEA with a copy of the complaint.

The due process complaint must be in writing, signed, and include:

- The name of the child;
- The child's date of birth;
- The address of the child's residence;
- The name of the school the child is attending;
- If the child is a homeless child or youth, the child's contact information and the name of the school the child is attending;

- The current grade or current placement of the child;
- The child's established or purported disability;
- A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem;
- A proposed resolution of the problem to the extent known and available to you or the school district 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 party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements.

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

A copy of this request must be mailed by you, or the attorney representing you on behalf of your child, to the school district, and to the OSDE-SES, Attention: Due Process Hearing Requests, 2500 North Lincoln Boulevard, Room 412, Oklahoma City, Oklahoma 73105-4599.

The due process complaint will be considered sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party, in writing, within 15 calendar days of receiving their complaint, that the complaint does not meet the requirements listed above. Within five calendar days of receiving the notification, that the receiving party considers a due process complaint insufficient, the hearing officer must make a determination if the due process complaint meets the requirements listed above, and must immediately notify the parties in writing of such determination.

You or the school district may make changes to the due process complaint only if:

- The other party approves of the changes in writing and is given the opportunity to resolve the due process complaint through resolution meeting; or
- By no later than five days before the due process hearing begins, the hearing

officer grants permission for the changes.

If the complaining party makes changes to the due process complaint, the timeline for the resolution meeting, and the time period for the resolution start again on the date in which the amended complaint is filed.

Nothing in this section may be construed to preclude you from filing a separate request for a due process complaint on an issue separate from the complaint already filed.

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

- An explanation of why the school district proposed or refused to take the action raised in the due process complaint;
- A description of each evaluation procedure, assessment, record or report the school district used as the basis for the proposed or refused actions; and
- A description of the other factors that are relevant to the school district's proposed or refused actions.

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

RESOLUTION SESSIONS

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in your due process complaint. The meeting:

- Must include a representative of the school district who has decision-making authority on behalf of the school district; and
- May not include an attorney of the school district, unless you are accompanied by an attorney.

You and the school district determine the relevant members of the IEP team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint. The school district is provided the opportunity to resolve the complaint, unless you and the school district agree in writing to waive the meeting, or agree to use the mediation process.

If the school district has not resolved the complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint, the due process hearing may occur.

The 45 calendar day timeline for issuing a final decision begins at the expiration of the 30 calendar day resolution period, unless you and the school district have both agreed to waive the resolution process or to use medication. In this case, the 45 calendar day timeline begins the next day.

If, after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30 calendar day resolution period, request the hearing officer dismiss your due process complaint.

If a resolution to the dispute is reached at the resolution meeting, you and the school district must execute a legally binding agreement that is:

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

If you and the school district enter into an agreement as a result of a resolution meeting, either party may void the agreement within three business days of the time that both you and the school district signed the agreement.

IMPARTIAL DUE PROCESS HEARING

At a minimum, a hearing officer must:

- Not be an employee of the SEA or the school district involved in the education or care of the child; however, a person is not an employee of the agency solely

because he/she is paid by the agency to serve as a hearing officer;

- Not have personal or professional interest that conflicts with hearing officer's objectivity in the hearing;
- Be knowledgeable of, and understand, the provisions of the IDEA, federal, and State regulations pertaining to the idea, and legal interpretations of the IDEA by federal and State courts;
- Have the knowledge and ability to conduct hearings, in accordance with appropriate standard legal practice; and
- Have the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

The party that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

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

DUE PROCESS HEARING RIGHTS

Any party to a hearing or an appeal must be accorded the right to:

- Be accompanied and advised by a lawyer or person with special knowledge or training regarding the problems of children with disabilities;
- Present evidence and confront, cross-examine, and require the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days prior to the hearing;
- Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
- Obtain a written, or, at your option, electronic findings of the facts and decisions, which shall be made available to the public and transmitted to the State advisory panel.

A hearing officer may prevent any party that fails to comply with this requirement from

introducing the relevant information at the hearing without the consent of the other party.

You must be given the right to have your child present, the right to open the hearing to the public, the right to have the record of the hearing, and the findings of fact and decisions provided at no cost to you.

HEARING DECISIONS

A hearing officer's decision on whether your child received a FAPE must be based on substantive grounds.

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

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

Nothing in the procedural safeguards section of the federal regulations under Part B of the IDEA can be interpreted to prevent you from filing a separate request for a due process hearing on an issue separate from a request already filed.

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

- Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; and
- Make those findings and decisions available to the public.

FINALITY OF DECISION, APPEAL, IMPARTIAL REVIEW

A decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision within 30 calendar days.

If a party is aggrieved by the findings and decision in the hearing, and appeal may be brought to the SEA.

If there is an appeal, the SEA must conduct an impartial review of the findings and decisions

appealed. The official conducting the review must:

- Examine the entire hearing record;
- Ensure 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;
- Give the parties an opportunity for oral or written argument, or both, at the discretion of a reviewing official;
- Make an independent decision on completion of the review; and
- Give you and the school district a copy of written, or at you option, electronic, findings of fact and decisions.

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

The decision made by the reviewing official is final, unless a party brings a civil action under the procedures described below.

TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

The SEA must ensure that no later than 45 calendar days after the expiration of the 30 calendar day period for resolution meetings, or, no later than 45 calendar days after the expiration of the adjusted time period:

- A final decision is reached in a hearing; and
- A copy of the decision is mailed to you and the school district.

The SEA must ensure that no later than 30 calendar days after the receipt of a request for a review:

- A final decision is reached in the review; and
- A copy of the decision is mailed to you and the school district.

A hearing officer may grant specific extensions of time beyond the 45 day calendar time period, if you or the school district request a specific extension of the timeline.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

RIGHT TO BRING A CIVIL LAW ACTION

Any party who does not agree with the findings and decisions in the State level review has the right to bring a civil action with respect to the matter that was the subject of the due process complaint hearing. The 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 dispute.

The parent bringing the civil action must have 90 calendar days from the date of the decision of the hearing officer to bring such an action.

In any civil action, the court:

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

ATTORNEYS' FEES

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the cost

- To a prevailing party who is the parent of a child with a disability;
- To a prevailing party who is a school district 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 school district against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of the action or proceeding.

A court awards reasonable attorneys' fees based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating fees awarded.

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.

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 you, 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 calendar days before the proceeding begins;
- The offer is not accepted within ten calendar days; and
- The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you 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 court action, or, at the discretion of the State, for mediation.

PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING

AUTHORITY OF SCHOOL PERSONNEL

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.

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).

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 your child's disability, school personnel may apply the disciplinary procedures to your child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except school must provide services to your child. Your child's IEP team determines the interim alternative educational setting for such services. These services that must be provided to your child if removed from his or her current placement may be provided in an interim alternative educational setting.

You child, if removed from his or her current placement for more than 10 school days must:

- Continue to receive educational services, so as to enable him or her to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals identified in his or her IEP; and receive, as appropriate, an FBA, behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not happen again.

Within 10 school days of any decision to change the placement of your child because of a violation of a code of student conduct, the school district, you, and other relevant members of the IEP team (as determined by you and the school district) must review all relevant information in your child's file, including his or her IEP, any teacher observations, and any relevant information you have provided to determine if:

- The conduct in question was caused by, or was in direct and substantial relationship to, his or her disability; or
- The conduct in question was the direct result of the school district's failure to implement his or her IEP.

If the school district, you, and other relevant members of the IEP team determine that either is applicable for your child, the conduct must be determined to be a manifestation of your child's disability.

DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION

If the school district, you, and other relevant members of the IEP team determine that the

conduct was a manifestation of your child's disability, the IEP team must either:

- Conduct an FBA and implement a BIP for your child, unless the school district had conducted such assessment prior to such determination and the behavior that resulted in a change in placement; and
- If a BIP already has been developed, the IEP team must meet to review the plan, and modify it, as necessary, to address the behavior.

Unless determined to be special circumstances, the school district must return your child to the placement from which your child was removed, unless you and the school district agree to a change of placement as part of the modification of the BIP.

DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF THE DISABILITY

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

If the school district initiates disciplinary procedures applicable to all children, the school district must ensure that the special education and disciplinary records of your child are transmitted for consideration by the person(s) making the final determination about the disciplinary action.

SPECIAL CIRCUMSTANCES

Regardless of whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting for up to 45 school days if your child:

- Carries or possesses a weapon to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of a SEA or a school district;
- Knowingly has 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 school district; or

- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a SEA or school district.

“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.

Not later than the date on which the decision to take disciplinary action is made, the school district must notify you of that decision, and provide you with a procedural safeguards notice.

CHANGE OF PLACEMENT DUE TO DISCIPLINARY REMOVALS

The removal of your child from his or her current educational placement is a change of placement if:

- The removal is more than 10 consecutive days; or
- Your child has been subjected to a series of removals that constitute a pattern of removal because:
 - The series of removals totaled more than 10 school days in a school year;
 - Your child's behavior is substantially similar to your child's behavior in previous incidents that resulted in the series of removals;
 - Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another; and
 - Whether a pattern of removals constitutes a change of placements is determined on a case-by-case basis by the school district, and, if challenged, is subject to review by judicial proceedings.

APPEALS

You may file a due process complaint to request a due process hearing if you disagree with:

- Any decision regarding placement made under the discipline provision; or
- The manifestation determination.

The school district may file a due process complaint to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

AUTHORITY OF HEARING OFFICER

A hearing officer must conduct the due process hearing and make a decision. The hearing officer may:

- Return your child to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading **Authority of School Personnel**, or that your child's behavior was a manifestation of your child's disability; or
- Order a change in the placement of your child 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 your child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated, if the school district believes that returning your child to the original placement is substantially likely to result in injury to your child or others.

Whenever you or a school district disagrees with a determination that your child's behavior was not a manifestation of your child's disability or with any decision regarding placement, you or the school district may request a hearing.

The SEA or school district must arrange for an expedited hearing when you request one.

Whenever you or the school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings **Due Process Complaint Procedures, Hearings on Due**

Process Complaints, and Appeal of Decisions; Impartial Review, except as follow:

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

A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings. Except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings.

PLACEMENT DURING APPEALS

When you or the school district has filed a due process complaint related to disciplinary matters, your child must (unless you and the SEA or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period of removal provided for and described under the heading **Authority of School Personnel**, whichever comes first.

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

If a child who has been determined to be eligible for special education and related services under IDEA Part B, violates a code of student conduct, but the school district had knowledge before the behavior that brought about the disciplinary action that the child was a child with a disability, then the child may assert any of the procedural safeguards described in this notice.

Basis of knowledge for disciplinary matters-

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

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

Exception—

A school district must not be deemed to have knowledge that the child is a child with a disability:

- If the child's parent has not allowed an evaluation of the child;
- If the parent of the child has refused services; or
- The child has been evaluated and determined not to be a child with a disability under IDEA Part B.

CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE

If prior to taking disciplinary measures against the child, a school district does not have knowledge that child is a child with a disability, as described in **Basis of Knowledge for Disciplinary Matters and Exceptions**, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors.

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

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

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the school district must provide special education and related services in accordance with the provision under IDEA Part B, including the disciplinary requirements described above.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

The IDEA Part B does not:

- Prohibit a school district from reporting a crime committed by a child with a disability to appropriate authorities; or
- Prevent Oklahoma State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and Oklahoma State law to crimes committed by a child with a disability.

Transmittal of records—

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

- Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the agency reports the crime; and
- May transmit copies of the child's special education and disciplinary records only to the extent permitted by FERPA.

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

The IDEA Part B does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a FAPE available to your child, and you chose to place your child in a private school or facility.

However, the school district where the private school is located must include your child in the population whose needs are addressed under Part B provisions of IDEA regarding children who have been placed by their parents in a private school at 34 CFR §§ 300.131 through 300.144.

Reimbursement for private school placement—

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private elementary or secondary school without the consent of a referral by the school district, a court or a hearing officer may require the school district to reimburse you for the cost of that enrollment if the court or hearing officer finds that the school district had not made a FAPE available to your child in a timely manner prior to that enrollment, and that the private placement is appropriate.

A hearing officer or a court may find you placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the SEA and the school district.

Limitations on reimbursement—

The cost of reimbursement may be reduced or denied if:

- At the most recent IEP meeting that you attended prior to removal of your child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the school district to provide a FAPE to your child, including stating your concerns and your intent to enroll your 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 your child from the public school, you did not give written notice to the school district of the information described above; or
- Prior to the removal of your child from the public school, the school district provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make your child available for such evaluation; or

- Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement must not be reduced or denied for failure to provide notice if:

- The school district prevented you from providing the notice;
- You cannot read or write in English;
- You had not received notice of your responsibility to provide the notice described above; or
- Compliance with the requirements above would likely result in physical harm to your child.

RESOURCES FOR PARNETS AND SCHOOLS

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

Joint Oklahoma Information Network
(JOIN)
500 North Broadway, Suite 300
Oklahoma City, Oklahoma 73102
Dial 2-1-1

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)

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

Oklahoma ABLE Tech
1514 West Hall of Fame
Stillwater, Oklahoma 74078

Oklahoma Advanced Practice Nurse
Coalition
(918) 660-3937

Oklahoma Association of Clinical Nurse
Specialists
(405) 951-8214

Oklahoma Board of Nursing
(405) 962-1800

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

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

Oklahoma Department of Corrections
(405) 962-6139

Oklahoma Department of Health
(405) 271-5600

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

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

Oklahoma Department of Rehabilitation Services
(DRS)
Office of Disability Concerns
(800) 522-8224 V/TDD
(405) 521-3756 V/TDD
(800) 845-8476
(405) 951-3400 V/TDD

Oklahoma Disability Law Center (ODLC)
(800) 266-5883 V/TDD
Tulsa (918) 743-6220 V/TDD
Oklahoma City (405) 525-7755 V/TDD

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

Oklahoma Parent Training and Information
Center
(877) 553-4332

Oklahoma State Department of Education
(OSDE)
Special Education Services, Room 412
2500 North Lincoln Blvd.
Oklahoma City, OK 73105-4599
(405) 521-3248 or (405) 521-4875 TTY

Project ECCO (Enriching Children's
Communications Opportunities)
(866) 514-9620

Special Education Resolution Center
(SERC)
4825 South Peoria, Suite 2
Tulsa, Oklahoma 74105
(888) 267-0028
(918) 712-9632

*Parents Rights in Special Education 2007