

Outline of Procedural Safeguards Available to the Parents of a Student with a Disability

This is an outline of the Part B Notice of Procedural Safeguards available to the parents of a student with a disability. The complete version of the *Part B Notice of Procedural Safeguards for Parents of Students with Disabilities* is available online at <http://www.fldoe.org/ese/doc/procedural.doc>. Model forms for mediation, state complaints, and due process hearing requests are available from the Bureau of Exceptional Education and Student Services at (850) 245-0476, Dispute Resolution.

Prior Written Notice: 34 CFR§300.503 – The school district must give written notice by providing the parent with certain information in writing whenever it proposes to initiate or to change the identification, evaluation, or educational placement of the student, or the provision of a free appropriate public education (FAPE) to the student; or, refuses to initiate or to change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

Parental Consent: 34 CFR§300.300 – Informed written consent must be provided by a parent before the school district:

- Conducts an initial evaluation of the student to determine eligibility to receive special education and related services
- Starts providing special education and related services to the student
- Reevaluates the student (unless the district can demonstrate that it took reasonable steps to obtain the parent's consent and the parent did not respond)

If a parent does not provide consent for an initial evaluation, the school district may, but is not required to, pursue the evaluation through mediation or due process hearing request

Independent Educational Evaluations (IEEs): 34 CFR§300.502 – Parents have the right to obtain an IEE, and the school district must provide information about where an IEE may be obtained. Parents may request an IEE *at public expense* if the parent disagrees with the evaluation provided by the school district. If a parent requests an IEE *at public expense*, the school district must, without unnecessary delay, either request a due process hearing to show that its evaluation is appropriate or ensure that an IEE is provided for the student.

Access to Education Records: 34 CFR§300.611 and 34 CFR§300.613-624 – Without unnecessary delay and before any meeting regarding an individual educational plan (IEP) or a due process hearing, the school district must permit the parent to inspect and review any education records relating to the student that are collected, maintained, or used by your school district under Part B of the Individuals with Disabilities Education Act (IDEA). The parent has the right to request the district to change information in the education records that is inaccurate, misleading, or violates the privacy or other rights of the student. The Family Educational Rights and Privacy Act (FERPA) protects the personally identifiable information in the student's records from disclosure to unauthorized parties.

Availability of Mediation: 34 CFR§300.506 – Mediation is available to allow parents and school districts to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process hearing request or state complaint. The mediation process is voluntary for both parties and may not be used to deny or delay the right to a due process hearing or state complaint, or to deny any other rights of parents under Part B of the IDEA. Mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The state is responsible for the cost of the mediation process. A written, signed mediation agreement is legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States.

Opportunity to Present and Resolve Complaints through the Due Process Hearing Request and State Complaint Procedures, Including 34 CFR§300.507-518 and 34 CFR§300.151-153 –

- **Due Process:** All parents of a child with a disability must be given a full explanation of all procedural safeguards available including the procedures for resolving a complaint through a due process hearing

request. Parents and school districts may request a due process hearing, using a two-year statute of limitations. The school district must inform the parent of any free or low-cost legal and other relevant services in the area upon request or if the parent or the school district requests a due process hearing. The party requesting a due process hearing must provide the request to the other party and to the state educational agency (SEA).

- **State Complaint Procedures:** A state complaint may be filed by a parent, an organization or another individual, even from another state. The written complaint must be signed and allege a violation of Part B of the IDEA or its regulations or related state requirements. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. Additional information is required. The complainant must forward a copy of the complaint to the school district or other public agency serving the child at the same time the complainant files the complaint with the SEA. If a state complaint is received that is also the subject of a due process hearing or the state complaint contains multiple issues of which one or more are part of such a hearing, the state must set aside the complaint, or any part of the complaint that is being addressed in the due process hearing, until the hearing is over.

The Child's Placement During the Pendency of any Due Process Hearing Request: 34 CFR§300.518 – During the time that any administrative or judicial proceeding is taking place, the student is to remain in his or her current educational placement unless the parent and the school district agree otherwise.

Hearings on Due Process Hearing Requests, Including Requirements for Disclosure of Evaluation Results and Recommendations: 34 CFR§300.507-518 – At least five (5) business days prior to the commencement of the hearing, each party must 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.

State-Level Appeals: Not applicable in Florida.

Civil Actions: 34 CFR§300.516 – Within ninety (90) days following a final order from a due process hearing, a party dissatisfied with the final order has the right to bring a civil action in the appropriate federal district court, state circuit court, or state district court of appeal.

Attorneys' Fees: 34 CFR§300.517 – Attorneys' fee may be awarded at the discretion of the court to the parents of a student with a disability as a prevailing party.

Procedures for Students Who Are Subject to Placement in an Interim Alternative Educational Setting (IAES): 34 CFR§300.530 – After a student with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the school district must provide educational services to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the individual educational plan (IEP) goals. The student's IEP team must determine the IAES.

- **Discipline Procedures: 34 CFR§300.530-536** – Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school district, the parent and relevant members of the IEP team must conduct a manifestation determination.

Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense: 34 CFR§300.148 – A school district is not required to pay the cost of education at a private school if the school district made a FAPE available for the student. However, a court or a hearing officer may require the school district to reimburse the parent(s) for the cost of private school placement if the court or hearing officer finds that the school district has not made FAPE available to the student in a timely manner. Reimbursement may be reduced or denied if the parent did not inform the district of the intent to enroll the student in a private school at public expense.