Parental Rights

MARYLAND PROCEDURAL SAFEGUARDS NOTICE

Infants and Toddlers Early Intervention
Preschool Special Education
and
Special Education

REVISED **JULY 2017**

MARYLAND STATE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION/EARLY INTERVENTION SERVICES

Parental Rights
Maryland Procedural Safeguards Notice
Infants and Toddlers, Preschool, Special Education

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PROCEDURAL SAFEGUARDS NOTICE

The procedural safeguards notice includes a full explanation of parental rights in an easily understandable manner and in a parent's native language. This procedural safeguards notice applies to children and families receiving services through an Individualized Family Service Plan (IFSP) and to children and youth with disabilities receiving services through an Individualized Education Program (IEP).

The protections included in this document are established by the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq*., and the following chapters of the Code of Maryland Regulations or COMAR: COMAR 13A.05.01, COMAR 13A.08.03, and COMAR 13A.13.01. Each public agency shall establish, maintain, and implement procedural safeguards that meet the requirements of the IDEA. A public agency is the agency providing the IFSP or the IEP services to the child.

For children and families receiving services through an IFSP, parents are to receive a copy of Procedural Safeguards in conjunction with Prior Written Notice.

For children receiving services through an IEP, parents are to receive a copy of the procedural safeguards document one time a year, except a public agency is to give parents another copy of the document:

- Upon initial referral or parental request for evaluation;
- Upon receipt of the first written State complaint in a school year;
- Upon receipt of the first due process complaint in a school year;
- When a decision is made to take a disciplinary action; and
- Upon parent request.

A 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 document includes a full explanation of the parents' rights, in an easily understandable manner and in the parent's native language, unless it clearly is not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to translate the procedural safeguards orally or by other means in the parent's native language or other mode of communication. The public agency must keep written evidence to document the translation of the notice and the parents understood the content of the procedural safeguards.

NATIVE LANGUAGE

Parents have the right to receive information in the language they understand.

Native language, when used with an individual who has limited English proficiency, means the following:

- The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
- In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

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

Parents may request their child's completed IFSP or IEP to be translated into the parents' native language. If the native language spoken by the parents is spoken by more than one percent (1%) of the student population in the local school system, appropriate school personnel must provide the parents with the translated document within 30 days after the date of the request. This one percent translation requirement is also discussed in the mediation section of this document.

ELECTRONIC MAIL

Parents may choose to receive notices electronically if this option is available. If the public agency offers parents the choice of receiving documents by e-mail, a parent may choose to receive the following by e-mail:

- Prior written notice;
- Procedural safeguards notice; and
- Notices related to a request for due process.

PRIOR WRITTEN NOTICE

Parents have the right to receive written information about the public agency's actions concerning their child's early intervention services or special education.

Notice:

A public agency must give parents written notice each time it proposes, or refuses, to initiate or change the:

- Identification;
- Evaluation;
- Educational program;
- Educational placement of a child
- Provision of a free appropriate public education (FAPE) to a child; or
- Provision of early intervention services to the child and the child's family through an IFSP, or
- Provision of special education and related services to the child through an IEP.

When written notice relates to an action that requires parental consent, the public agency may give written notice at the same time.

Content of Written Notice:

For children and families receiving services through an IFSP, written notice must:

- Describe the action that is being proposed or refused;
- Explain the reasons for taking the action: and
- Include the Procedural Safeguards.

For children receiving services through and IEP, the written notice must:

- Describe the action(s) that the public agency proposed or refused to take;
- Explain why the public agency is proposing or refusing to take the action(s);

- Describe each evaluation procedure, assessment, record, or report the public agency used in deciding to propose or refuse the action(s);
- Include a statement that parents have protections under the procedural safeguards provisions in IDEA;
- Tell parents how they can obtain a description of the procedural safeguards if the action that the public agency is proposing or refusing is not an initial referral for evaluation;
- Include resources for parents to contact for help in understanding the IDEA;
- Describe any other choices that the child's Individualized Family Service Plan (IFSP) team or Individualized Education Program (IEP) team considered and the reasons why those choices were rejected; and
- Provide a description of other reasons why the public agency proposed or refused the action.

CONSENT

Parent Consent:

A public agency must get parental consent to assess a child for early intervention and special education and related services, and before providing early intervention and special education and related services. Parents have the right to withdraw consent at any time. There are some exceptions to consent for evaluation.

Consent means that the parents:

- Have been fully informed of all information relevant to the activity for which consent is sought, in their native language or other mode of communication;
- Understand and agree in writing to the carrying out of the activity for which their consent is sought and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- Understand that the granting of consent is voluntary and may be revoked at any time.

If parents withdraw consent, it does not cancel out an action that occurred between the time the public agency received consent and before its withdrawal.

If the parent revokes consent, in writing, for their child to receive special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

Parent Consent for Services through an IFSP:

Parents must give written informed consent before:

- All, screenings, evaluations, and assessments of the child and family
- Initiating the provision of early intervention services and additional assessments
- If written consent is not given, the local lead agency shall make reasonable efforts to ensure that the parent:
  - Is fully aware of the nature of the evaluation and assessment or the services that will be available; and
  - Understands that the child will not be able to receive the evaluation and assessment or the services unless written consent is given.

Parent Right to Decline Services through an IFSP:

A parent of an eligible child may determine whether they, their child, or other family members will accept or decline any early intervention service and may decline this service after first accepting it without jeopardizing other early intervention services. If a parent chooses to continue early intervention services for a child three or older, an educational component must be included. If the parent does not want the educational component, they are not eligible to receive early intervention services.

Parental Consent for Initial Evaluation:

Before a public agency can conduct an initial evaluation of a child to determine whether the child is eligible for early intervention services or special education and related services, the public agency must:

- Provide parents prior written notice of the proposed action; and
- Obtain parental consent.

The public agency must make reasonable efforts to obtain informed consent for initial evaluation to decide whether the child is a child with a disability that requires the provision of early intervention or special education and related services.

A parent's consent for initial evaluation does not mean the parent also gives consent for the public agency to start providing early intervention or special education and related services to their child.

Parental Consent for Services:

A public agency must obtain informed consent before providing early intervention or special education and related services to a child for the first time. A public agency must not use mediation or due process procedures to obtain an agreement or a ruling that the early intervention or special education and related services recommended by a child's IFSP or IEP team may be provided to the child without parental consent if the parents:

- Refuse to give consent for their child to receive early intervention or special education and related services; or
- Do not respond to a request to provide consent for the provision of special education and related services for the first time.

If the parents refuse to give consent for their child to receive early intervention or special education and related services for the first time, or if the parents do not respond to a request to provide consent, the public agency:

- Is not in violation of the requirement to make a free appropriate public education (FAPE) available to their child; and
- Is not required to have an Individualized Family Service Plan (IFSP) meeting or Individualized Education Program (IEP) meeting or develop an IFSP/IEP for their child.

Withdrawal of Parental Consent for Services:

If a parent of a child withdraws consent in writing for the continued provision of early intervention or special education and related services, at any time after the public agency begins the initial provision of special education and related services, the public agency:

- Is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent;
- May not continue to provide early intervention and special education and related services to the child, but must provide prior written notice to the parent of the parent's written request to stop all early intervention and special education and related service, before ceasing the provision of early intervention and special education and related services;
- May not use mediation or due process procedures to obtain agreement or a ruling that the services may be provided to the child;
- Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.

Withdrawal of consent does not cancel out an action that occurred between the time the public agency received consent and before the withdrawal of consent.

Parental Consent for Reevaluations for IFSP Children Only:

A public agency must obtain informed consent before it conducts an individualized evaluation and assessments of a child. If a parent does not give consent, the lead agency must make reasonable efforts to ensure that the parent:

- Is fully aware of the nature of the evaluation and assessment of the child that would be available; and
- Understands that the child will not be able to receive the evaluation and assessment unless consent is given.

If parents refuse consent for new assessments, the public agency may not use due process procedures to challenge the parent's refusal to provide consent.

Parental Consent for Reevaluations for IEP Children and Youth Only:

A public agency must obtain informed consent before it conducts an individualized evaluation and assessments of a child, unless the public agency can demonstrate:

- It took reasonable steps to obtain parental consent for reevaluation; and
- The parent did not respond.

If parents refuse consent for new assessments, the public agency may, but is not required to, seek to override the parent's refusal by using due process procedures to challenge the parent's refusal to provide consent. As with initial evaluation, the public agency does not violate its obligations under the IDEA if it declines to pursue new assessments.

Documentation of Reasonable Efforts to Obtain Parental Consent:

A public agency must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide early intervention or special education and related services for the first time, to reevaluate, and to locate parents of wards of the State for initial evaluations.

The documentation must include a record of the public agency's attempts to obtain parental consent, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to parents and any responses received; and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Other Consent Requirements:

Parental consent is not required before a public agency:

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

The public agency may not use a parent's refusal to consent to deny the parent or the child any other service, benefit, or activity.

If a parent enrolls their child in a private school at their own expense, a public agency may not use mediation or due process procedures to determine the child's eligibility and is not required to consider the child eligible to receive equitable services, if:

- The parent does not provide consent for their child's initial evaluation or reevaluation; or
- The parent fails to respond to a request to provide consent.

In addition to the actions for which the IDEA requires parental consent (initial evaluation, initial provision of services, and reevaluation), Maryland law requires that an IEP team must obtain the written consent of a parent if the team proposes to:

- Enroll the child in an alternative education program that does not issue or provide credits towards a Maryland High School Diploma;
- Identify the child for the alternative education assessment aligned with the State's alternative curriculum; or
- Include restraint or seclusion in the IEP to address the child's behavior as described in COMAR 13A.08.04.05.

If the parent does not provide written consent to any of the proposed actions listed above, the IEP team must send the parent written notice of their consent rights no later than five (5) business days after the IEP team meeting informing them that:

- The parent has the right to either consent to or refuse to consent to the action proposed; and
- If the parent does not provide written consent or a written refusal within fifteen (15) business days of the IEP team meeting, the IEP team may implement the proposed action.

If the parent refuses to consent to any of the proposed actions listed above, the IEP team may use the dispute resolution options listed in Education Article §8-413 (mediation or due process) to resolve the matter.

SURROGATE PARENTS

The local lead agency or the local school system shall assign a surrogate parent to represent an eligible child if:

- The parent cannot be identified;
- The public agency after reasonable efforts cannot find the child's parent; or
- The child is a ward of the State of Maryland.

Criteria for Surrogate Parents:

- No conflict with the interest of the child
- Has knowledge and skills that ensure adequate representation of the child
- Not an employee of the State or an employee of any service provider involved in the provision of early intervention or other services to the child or the child's family
- Not considered an agency employee solely because a person is paid by a public agency to be a surrogate parent

The local lead agency or the local school system shall notify the State Superintendent of Schools, or the Superintendent's designee, of the surrogate parent appointment. A surrogate parent may represent a child in all matters relating to the:

- Evaluation and assessment of the child;
- Development and implementation of child's IFSP, including annual evaluations and periodic reviews;
- Development, review, and revision of a child's IEP;
- Ongoing provision of early intervention services to child and family through the IFSP; or
- Provision of special education and related services to a child through the IEP.

Special Rules for Initial Evaluation of Wards of the State:

If a child is a ward of the State and is not living with his/her parents, the public agency does not need consent from the parents for an initial evaluation to determine if the child is a child with a disability if:

- Despite reasonable efforts to do so, the public agency cannot find the child's parent;
- The rights of the parents have been terminated in accordance with State law; or
- A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

INDEPENDENT EDUCATIONAL EVALUATION

If a parent disagrees with an evaluation completed by the public agency, the parent has the right to have the child evaluated by someone who does not work for the public agency.

Definitions:

- Independent educational evaluation means tests and assessment procedures conducted by appropriately qualified personnel not employed by the public agency responsible for the education of the child; and
- Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents.

Parents have the right to obtain an independent educational evaluation of their child under the IDEA subject to the procedures provided below. The public agency shall provide parents, upon request for an independent educational evaluation, information about:

- Where an independent educational evaluation may be obtained; and
- The public agency's criteria applicable for an independent educational evaluation.

Public Agency Criteria:

When an independent educational evaluation is at public expense, the criteria under which the independent educational evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that a public agency uses when it initiates an evaluation, to the extent those criteria are consistent with a parent's right to an independent educational evaluation. Except for the criteria described above, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

A Parent's Right to Evaluation at Public Expense:

Parents have the right to an independent educational evaluation at public expense if the parents disagree with an evaluation obtained by the public agency. If parents request an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either:

- Initiate a due process hearing to show that its evaluation is appropriate; or
- Ensure an independent educational evaluation is provided at public expense, unless the public agency demonstrates in a due process hearing that the evaluation obtained by the parents did not meet the public agency criteria.

If the public agency initiates a due process hearing and the final decision is that the public agency's evaluation is appropriate, parents still have the right to an independent educational evaluation, but not at public expense.

If parents request an independent educational evaluation, a public agency may ask parents for the reason why the parents object to the public evaluation. However, the parent's explanation is not required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating the due process hearing to defend the public agency's evaluation.

Parent Initiated Evaluation:

Parents always have the right to obtain an independent educational evaluation from qualified professionals of their choice, at their own expense. The IFSP/IEP team must consider the information from a parent-initiated evaluation at private expense, if it meets public agency criteria, when making any decisions with respect to the provision of FAPE to the child. The results of parent-initiated private evaluation may also be presented as evidence at a due process hearing regarding the child.

Request for an Evaluation by an Administrative Law Judge (ALJ):

If an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH) requests an independent educational evaluation as a part of a due process hearing, the cost of the evaluation must be at public expense.

CONFIDENTIALITY OF INFORMATION

Parents have the right to review their child's records and ask the public agency to correct their child's record if they think the record is not correct. Parents have the right to consent to release information about their child, yet consent is not required in some circumstances. Parents have the right to expect the public agency to keep their child's early intervention or educational records confidential and ask the public agency to destroy their child's educational information when it is no longer needed.

Definitions:

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of ''education records'' in 34 C.F.R. part 99 (the regulations implementing the Family Educational Rights and Privacy Act [FERPA] of 1974) including early intervention records.

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part C or Part B of the IDEA.

Personally identifiable information includes:

- Name of the child, child's parents, or other family member;
- Address of the child;
- A personal identifier, such as the child's social security number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Safeguards:

Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official of a public agency is responsible for protecting the confidentiality of personally identifiable information. In addition to the requirements of these procedural safeguards, federal and State laws and regulations also govern the protection of educational records. All public agency personnel who collect or use personally identifiable information must receive training regarding the State's policies and procedures on the confidentiality of personally identifiable information. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Consent:

The public agency must obtain parental consent before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under the IDEA, or for any purpose other than meeting the requirements of providing a child with a disability FAPE under the IDEA. Disclosures addressed in referral to and action by law enforcement and judicial authorities regarding reporting a crime committed by a child with a disability does not require parental consent to the extent that the transmission is permitted by FERPA.

The public agency may not release information from education records to participating agencies without parental consent unless authorized to do so under FERPA. MSDE has developed policies and procedures for public agencies, including sanctions, which the State uses to ensure that its policies and procedures are followed, and that the requirements for confidentiality, in accordance with IDEA and FERPA are met.
Each public agency is required to have procedures in place for how adequate notice is provided to fully inform parents about the requirements of confidentiality of personally identifiable information including a:

- Description of the extent that the notice is given in the native languages of the various population groups in the State;
- Description of the children on whom personally identifiable information is maintained, and the types of information sought;
- Summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- Description of policies and procedures used in the event that a parent refuses to provide consent; and
- Description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 C.F.R. §99.

Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the jurisdiction of the activity.

Access Rights:

For children and families receiving early intervention services, the local lead agency shall provide parents an initial copy of their child's early intervention record at no cost to the parents. Each public agency shall permit parents to inspect and review any education records relating to their child that is collected, maintained, or used by the public agency with respect to the identification, evaluation, and educational placement of their child, development and implementation of the IFSP and the provision of FAPE. For children and families receiving services through an IFSP, the local lead agency shall comply with a request without unnecessary delay and before any meeting regarding an IFSP, or any due process hearing, and in no case more than 10 days after the request.

For children receiving services through an IEP, the public agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing, and in no case more than 45 days after the request. A parent's right to inspect and review educational records under this section includes the parent's right to:

- A response from the public agency to reasonable requests for explanations and interpretations of the records;
- Request that the public agency provide copies of the record if failure to provide copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- Have the parent's representative inspect and review the records.

A public agency may presume parents have the authority to inspect and review records relating to their child unless the public agency has been advised that a parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

Record of Access:

Each public agency shall keep a record of individuals, other than parents and authorized employees of the public agency, obtaining access to education records collected, maintained, or used under Part C or Part B of the IDEA, including the name of the individual, the date access was given, and the purpose for which the individual is authorized to use the records. If any education record includes information on more than one child, the parents 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. Each public agency shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the public agency. Each public agency may charge a fee for copies of education records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A public agency may not charge a fee to search for or retrieve information from education records.

Amendment of Records at Parent's Request:

If a parent believes that information in the education records collected, maintained, or used under the IDEA is inaccurate or misleading or violates the privacy or other rights of their child, the parent may request the public agency that maintains the information, to amend the information. The public agency shall decide whether to amend the information in accordance with the parent request within a reasonable period of time of receiving the request. If the public agency refuses to amend the information in accordance with the request, it shall inform the parent of their refusal and advise the parent of their right to a hearing to challenge the information in educational records. A hearing conducted to challenge information in educational records must be conducted in accordance with FERPA procedures as found in 34 C.F.R. §99.22.

The public agency, upon request, shall provide the parent with an opportunity for a hearing to challenge information in education records 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 public agency decides that the information is inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, the public agency shall amend the information accordingly and so inform the parent of the amendment in writing. If, as a result of the hearing, the public agency decides that the information is not inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of their right to place in the records it maintains on their child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency.

Any explanation placed in the records of your child must:

- Be maintained by the public agency as part of the child's record as long as the record or contested portion is maintained by the public agency; and
- Disclose the explanation to any party requesting a copy of the child's record or the contested portion.

Procedures for the Destruction of Information:

The public agency is required to inform parents when personally identifiable information collected, maintained, or used under the IDEA is no longer needed to provide early intervention or educational services to their child. The information must be destroyed at the request of the parents. However, a permanent record of the child's name, address, and phone number, the child's grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Children's Rights:

Under the regulations for FERPA, parental rights regarding a child's education records transfer to the child once he/she reaches the age of 18, unless the child's disability makes him/her incompetent under State law. If the parent's rights under Part B of IDEA transfer to the child who reaches the age of majority, the rights regarding educational records must also transfer to the child. However, the public agency must provide the parent and the child any notice required under IDEA. Please refer to "Transfer of Parental Rights at Age of Majority" for more specific information.

Disciplinary Information:

A public agency may include in a child's records a statement of any current or previous disciplinary action that has been taken against the child and transmit discipline information; to the same extent that disciplinary information is included in, and transmitted with the records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action taken against the child.

DISCIPLINE OF CHILDREN WITH DISABILITIES

The information below applies to children with disabilities, ages 3 through 21, receiving services through an Extended IFSP or an IEP.

Parents have the right to specific procedures and protections if the public agency takes certain disciplinary actions towards their child. A public agency must provide a child educational services, after the child's removal for more than 10 days in a school year for a violation(s) of a student code of conduct.

Definitions:

For purposes of this part, the following definitions apply:

- Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- Illegal drug means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the IDEA or under any other provision of federal law.
- Weapon has the meaning given the term ''dangerous weapon'' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.
- Serious bodily injury means a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ, or mental faculty (18 U.S.C. 13645(h)(3)).

Authority of School Personnel:

School personnel may remove a child with a disability who violates the code of conduct for not more than 10 school days at a time for each violation, in accordance with the discipline policy used for all children, unless it is determined that the removal constitutes a change of placement from the current educational placement to:

- An interim alternative educational setting;
- Another setting; or
- Suspension.

When removals (10 days or less at one time) accumulate to more than 10 days in a school year, the child's IFSP or IEP team determines the extent of services needed to enable your child to participate in the general curriculum and toward his/her IEP goals.

School personnel may consider unique circumstances on a case-by-case basis in determining whether a change in placement is appropriate for a child with a disability who violates the code of conduct. Change of placement includes removal for more than 10 consecutive days or a series of removals that constitute a pattern. When disciplinary action results in a change of placement, the public agency provides notice the day the public agency makes the decision and it must include the procedural safeguards document.

Manifestation Determination:

Within 10 school days of any decision to change the placement because of a violation of the code of conduct, the parent and the child's IFSP team or IEP team must review all relevant information in the child's file, including his/her IFSP or IEP, any teacher observations and any relevant information provided by the parent, to determine if the conduct in questions was:

- Caused by or had a direct and substantial relationship to the child's disability; or
- The direct result of the public agency's failure to implement the child's IFSP or IEP.

If the IEP team determines that either of the above statements is applicable, the conduct shall be determined to be a manifestation of the child's disability.

If the conduct was a manifestation of the child's disability, the IFSP team or IEP team must:

- Conduct a functional behavioral assessment and implement a behavioral intervention plan for the child, if the public agency had not previously done so;
- Review the child's behavior intervention plan if he/she already has such plan and modify it, as necessary to address the behavior; and
- Return the child to the placement from which he/she was removed, unless the parents and the public agency agree to a change of placement as part of modifying the child's behavioral intervention plan, except when the child has been removed to an interim alternative educational setting for drugs, weapons or serious bodily injury.

If the behavior is not a manifestation of the child's disability, school personnel may discipline the child in the same manner as other children, except appropriate educational services must continue.

Change of Placement:

When a child is removed for more than 10 days, that results in a change in placement, whether or not the behavior is a manifestation of the disability, or when a child is removed to interim alternative educational setting (IAES) for drugs, weapons or serious bodily injury, the child continues to receive services to enable him/her to continue to participate in the general education curriculum although in another setting and to progress toward meeting the goals set out in his/her IEP. The child must also receive, as appropriate, a functional behavioral assessment and behavior intervention services and modifications designed to address the behavioral violation so that it does not recur. The IEP team determines appropriate services and the location in which the services will be provided.

Interim Alternative Educational Setting:

School personnel may remove a child to an interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where the 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 local public agency;
- 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 State or local public agency; or
- Has inflicted serious bodily injury upon another person while at a school, on school premises, or at school function under the jurisdiction of a State or local public agency.

Appeal of Disciplinary Action:

If parents disagree with a decision regarding a manifestation determination or with any decision regarding placement for disciplinary reasons, the parents may file a due process complaint with the Office of Administrative Hearings (OAH) and the public agency. If the public agency believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, the public agency may file a due process complaint with OAH and the parents.

An Administrative Law Judge (ALJ), following the procedures described in the "Resolving Disagreements" section of this document, conducts the due process hearing. The hearing shall occur within 20 school days of the date the due process complaint is filed, and shall result in a determination in 10 school days after the hearing.

In making a determination in a disciplinary appeal, the ALJ may:

- Return the child to the placement from which he/she was removed; or
- Order a change in placement of the child to an appropriate interim alternative educational setting for not more than 45 school days if the ALJ determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

When a due process complaint is requested by either the parents or the public agency, the child remains in the interim alternative educational setting pending the decision of the ALJ or until the expiration of the time period provided (no more than 45 school days), whichever comes first, unless the parents and the public agency agree otherwise.

Child Not Yet Determined Eligible:

Children who have not been determined eligible for special education and who have engaged in a behavior that violates any rule or code of conduct may assert any of the protections provided, if the public agency had knowledge that the child had a disability before the behavior occurred.

The public agency has knowledge if, before the behavior resulting in the disciplinary action occurred:

- The parents expressed concern in writing, that their child needs special education and related services, to supervisory or administrative personnel of the public agency, or a teacher of the child;
- The parents requested an evaluation; or
- The child's teacher or other school personnel have expressed specific concern about a pattern of behavior demonstrated by the child, directly to the director of special education or other supervisory personnel of the public agency.

The public agency is not considered to have knowledge if:

- The parents refused to allow the public agency to evaluate their child;
- The parents refused to allow the public agency to provide special education services; or
- The child has been evaluated and it was determined that he/she was not a child with a disability under IDEA.

If the public agency does not have knowledge that a child has a disability prior to taking disciplinary action, the child may be subject to the same disciplinary measures as a child without disabilities who engages in comparable behaviors.

If a parent made a request for an evaluation, during the timeframe in which their child is subject to disciplinary measures, the evaluation must be expedited. Pending the results, the child remains in the educational placement determined by school authorities. If, based on the public agency's evaluation and information provided by parents, the child is determined to be a child with a disability, the public agency is to provide special education and related services and all procedural safeguards regarding discipline of children with disabilities apply.

Referral to and Action by Law Enforcement and Judicial Authorities:

IDEA does not prohibit public agencies from reporting a crime to appropriate authorities, and law enforcement. Judicial authorities may exercise their responsibilities in applying federal and State law to crimes committed by a child with a disability. Any agency reporting a crime shall supply copies of the child's special education and disciplinary records to the appropriate authorities to the extent allowed by COMAR 13A.08.02, Student Records, with parent consent, or in accordance with exceptions to parent consent specified in the policy.

PARENTAL UNILATERAL PLACEMENT OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

IDEA does not require a public agency to pay for the cost of education, including early intervention or special education and related services, of a child with a disability at a private school if the public agency made a free appropriate public education (FAPE) available and the parent chose to place their child in a private school.

IDEA does not require a public agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school if the public agency made a free appropriate public education (FAPE) available and the parents chose to place their child in a private school. However, the public agency shall include the child in the population of children placed in private schools by their parents, in accordance with the federal regulations. Disagreements between the parents and the public agency regarding the availability of FAPE and financial responsibility are subject to due process complaint procedures under IDEA. Please refer to "Resolving Disagreements" for more specific information.

If a child with a disability had previously received special education and related services under the authority of a public agency, and the parents enroll their child in a private preschool, elementary, or secondary school without the consent or referral of the public agency, an ALJ or a court, may require the public agency to reimburse parents for the cost of that enrollment if an ALJ or a court finds that the public agency had not made FAPE available to the child in a timely manner prior to that enrollment, and that the private placement is appropriate. An ALJ or a court may find your parental placement to be appropriate even if it does not meet the State standards that apply to education provided by public agencies.

Limitation on Reimbursement:

Reimbursement may be reduced or denied by an ALJ or a court if:

- At the most recent IEP team meeting parents attended prior to removing their child from the public school, parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- At least ten (10) business days (including any business days that occur on a holiday) prior to the parents removal of their child from the public school, parents did not give the public agency written notice of their intent to remove their child, including their concerns regarding their child's public placement; or
- If prior to the parents removal of their child from the public school, the public agency informed the parents, through the prior written notice requirements of its intent to evaluate their child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make their child available for the evaluation; or
- Upon a judicial finding of unreasonableness with respect to the parents actions.

Notwithstanding the notice requirements described above, the cost of reimbursement:

- Shall not be reduced or denied for the parents failure to provide such notice, if:
    - The public agency prevented the parents from providing notice,
    - The parents had not received written notice, under the IDEA notice requirements described above,

  - Compliance with the notice requirements would likely result in physical harm to the child, and
- May, at the discretion of a court or an ALJ, not be reduced or denied for failure to provide such notice if:
  - The parents are not literate and cannot write in English, or
  - Compliance with the notice as described above would likely result in serious emotional harm to the child.

TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

In Maryland, parental rights do not transfer to children with disabilities on reaching the age of majority, except under limited circumstances.

Under Maryland law, in certain limited circumstances, all rights accorded to the parents under IDEA shall transfer to a child with a disability. This transfer occurs when the child reaches the age of 18 years, if the child has not been adjudged incompetent under State law and there is documentation that:

- The parents are unavailable or unknown, and the child requests that the parental rights be transferred to the child rather than have a parent surrogate appointed;
- The parents have not participated in the special education decision making process for the child after repeated attempts by the public agency to involve the parents over the previous year;
- The parents have affirmatively rejected participation in the special education decision making process;
- The parents cannot participate in the special education decision making process due to prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of the parents and the parents have consented to the transfer of rights to the child;
- The parents cannot participate in the special education decision making process due to extraordinary circumstances beyond their control, and the parents have consented to the transfer of rights to the child; or
- The child is living outside of the parents' home and is not in the care or custody of another public agency.

If the parents of a child with a disability, with whom the child resides, do not consent to the transfer of rights to the child at the age of 18, and the child has not been adjudged incompetent under State law, either party may file a due process complaint to determine whether the rights should be transferred.

If a child with a disability has been represented by a parent surrogate in accordance with federal and State laws and regulations, the public agency shall provide any written notice required under federal and State laws and regulations to both the child and parent surrogate. All other rights afforded the parent surrogate under IDEA shall transfer to the child if the child has not been adjudged incompetent under State law and the child requests that the rights transfer.

RESOLVING DISAGREEMENTS

The following procedures describe the processes available to parents and public agencies for resolving disagreements regarding a child's early intervention or special education program and related services. These options include mediation, State complaint, and due process complaint.

Mediation:

Mediation is a process that may be used to resolve disagreements between the parents of a child with a disability and the public agency responsible for the education of the child.
If during an IEP team meeting a parent disagrees with a child's IEP or the special education services provided to the child, the IEP team shall provide the parent, in plain language:

- An oral and written explanation of the parent's right to request mediation;
- Contact information, including a telephone number, that a parent may use to receive more information about the mediation process; and
- Information regarding pro bono representation and other free or low-cost legal and related services available in the area.

Parents may request the information about mediation to be translated into the parents' native language. If the native language spoken by the parents is spoken by more than 1 percent of the student population in the local school system, the IEP team shall provide the parent with the translated document within 30 days after the date of the request.

An employee of the Office of Administrative Hearings (OAH) who is qualified and trained in effective mediation techniques conducts the mediation. The individual selected by OAH will not have a personal or professional conflict of interest.

- Mediation is at no cost to the parent or public agency responsible for the child's early intervention or education, including the cost of a meeting with parents to encourage mediation.
- A request for mediation is made to the public agency responsible for the early intervention or education of the child and the OAH. To assist parents with filing a request for mediation a form is available from the public agency and on the MSDE website at www.marylandpublicschools.org. For further assistance, contact the public agency's Special Education Office or the MSDE, Division of Special Education/Early Intervention Services, 410-767-7770.
- Parents or the public agency may be accompanied and advised by counsel during mediation.
- A mediation session will generally occur within 20 days of the receipt of a written request at a location convenient to parents and the public agency.
- Mediation sessions are closed proceedings. Discussions that occur during mediation must be confidential and cannot be used as evidence in any subsequent due process hearing or civil action. Parents or the public agency may be asked to sign a confidentiality pledge before the start of the mediation.
- An agreement reached by the parties in the mediation must be set forth in a written agreement that is enforceable in any State Court that has the authority to hear this type of case or in a federal district court.
- A public agency may not use mediation to deny or delay the parent's right to a hearing on the parent's due process complaint.

Meeting to Encourage Mediation:

A public agency may offer to parents, who elect not to use the mediation process, to meet at a time and location convenient to the parents, to explain the benefits of the mediation process and encourage parents to use the process.

Difference Between a State Complaint and a Due Process Complaint:

In addition to mediation, parents have the right to use the State complaint process or the due process complaint process to resolve disagreements with the public agency. These options have different rules and procedures.

The IDEA regulations have separate procedures for State complaints and for due process complaints. As explained below, any individual or organization may file a State complaint alleging a violation of any IDEA requirement by a public agency. Only a parent or a public agency may file a due process complaint on any matter relating to the identification, evaluation, early intervention services or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child.

MSDE staff generally must resolve a State complaint within 60 calendar days, unless the timeline is properly extended. An ALJ must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days after the end of the resolution period unless the ALJ grants a specific extension of the timeline at the parent's request or the public agency's request.

For an overview and comparison of these options, see the Attachment to this document.

State Complaint:

Individuals and organizations have the right to file a State Complaint with the Maryland State Department of Education (MSDE). In order for the State to conduct an investigation, the written complaint must meet specific criteria as required in the IDEA regulations.

If an individual or an organization believes a public agency has violated a federal or State law or regulation concerning an early intervention or special education requirement, or that a public agency has not implemented a due process hearing decision, a State complaint may be filed. The complaint must be filed with the MSDE and should be address to the Assistant State Superintendent, Division of Special Education/Early Intervention Services, MSDE, 200 West Baltimore Street, Baltimore, Maryland 21201. The person or organization that files a State complaint with MSDE must also send a copy of the complaint to the public agency at the same time. To assist with filing the complaint, detailed procedures and a form are available on the MSDE website at www.marylandpublicschools.org, or by calling the Division's Complaint Investigation and Due Process Branch at 410-767-7770.

The State complaint must include:

- A statement that the public agency has violated a requirement of federal or State law or regulation;
- The facts upon which the statement is based;
- The signature and contact information for the person/organization filing the State complaint; and

- If the State complaint is alleging a violation with respect to a specific child:
  - The name and address of residence of the child;
  - 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;
  - A description of the nature of the problem of the child, including facts relating to the problem; and
  - A proposed resolution of the problem to the extent known and available to the party at the time the State complaint is filed.

A State complaint must allege a violation that has occurred not more than one year prior to the State receiving the complaint. MSDE is to issue their findings within 60 calendar days of receipt of the State complaint, and may extend the 60-day timeline if:

- Exceptional circumstances exist regarding a particular complaint; or
- The parent and the public agency involved voluntarily agree to extend the time to try to mediation or alternative means of dispute resolution.

At a minimum, MSDE shall:

- Conduct an independent on-site investigation, if it is determined necessary;
- Provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the State complaint;
- Review all relevant information and make an independent determination as to whether a public agency has violated requirements of federal and State laws; and
- Issue a written decision to the complainant and the public agency that addresses each allegation in the complaint and contains findings of fact and conclusions.

The decision will also include the reasons for the final decision and procedures for the effective implementation of the final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. If MSDE determines a public agency has failed to provide appropriate services, the final written decision shall address how a public agency is to remediate the denial of those services appropriate to the needs of the child, and appropriate future services for all children with disabilities.

Resolving a State Complaint:

Mediation and other less formal methods to resolve the disagreement may be available and are encouraged. If the parties resolve the complaint, MSDE does not need to conduct an investigation under the federal regulations.

Resolving a State Complaint that is the Subject of a Due Process Hearing:

If MSDE receives a State complaint that is also part of a due process hearing, or if a State complaint contains multiple issues of which one or more are part of a hearing, MSDE must set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of that due process hearing. However, any issue in the State complaint that is not part of the due process hearing must be resolved using the timeline and procedures described above. If an issue is raised in a State complaint that has previously been decided in a due process hearing, involving the same parties, the hearing decision is binding, and MSDE shall inform the complainant to that effect.

Due Process Complaint:

The parent or a public agency may file a due process complaint on any matter relating to the identification, evaluation, early intervention services or educational placement, or the provision of a free appropriate public education (FAPE) to a child.

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

This timeline does not apply if the parent could not file a due process complaint within the timeline because the public agency specifically misrepresented that it had resolved the issues identified in the due process complaint, or the public agency withheld information from the parent that it was required to provide under IDEA.

To file a due process complaint, the parent or the public agency (or the parent's attorney or the public agency's attorney) must submit a due process complaint to the other party and the OAH. The complaint must contain all of the content listed below and must be kept confidential.

To assist parents in filing a due process complaint, a Request for Mediation and Due Process Complaint Form is available from the public agency from which the early intervention services are provided, where the child attends school, and on the MSDE website at www.marylandpublicschools.org. For further assistance, contact the public agency's early intervention office, special education office, or the MSDE Division of Special Education and Early Intervention Services at (410) 767-7770.

Content of the Due Process Complaint:

The due process complaint must include:

- The name of the child ;
- Address of the child's residence (or, for a homeless child , available contact information);
- Name of the school the child is attending;
- Name of the public agency responsible for the education of the child (i.e., local school system);
- A description of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time of the complaint.

The parent or the public agency may not have a due process hearing until the parent or the public agency (or the parent's attorney or the public agency's attorney), files a due process complaint that includes this information.

Response to the Due Process Complaint:

When a party files a due process complaint, the public agency responsible for the child's early intervention and education shall:

- Inform the parent of free or low cost legal and other relevant services available;
- Provide the parent with a copy of the procedural safeguards document; and
- Inform the parent of the availability of mediation.

If the public agency has not sent a prior written notice to the parents regarding the issues raised by the parent in the due process complaint, the public agency shall send the parent a response, within 10 days of receiving the due process complaint, containing:

- An explanation of why the public agency proposes or refuses to take the action(s);
- A description of any other options that the public agency considered and the reasons why those options were rejected;
- A statement that the parents of a child with a disability have protections under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

This response does not preclude the public agency from asserting that the parent's due process complaint was insufficient, where appropriate.

The other party to a due process complaint (parent or public agency) must send the other party a response that specifically addresses the issues in the due process complaint, within 10 calendar days of receiving the due process complaint.

Sufficiency of Notice:

The due process complaint is considered sufficient unless the party receiving the complaint notifies OAH and the other party in writing within 15 days of receiving it that the receiving party believes the due process complaint does not meet the content requirements. Within five (5) days of receiving notice of the deficiency, OAH will determine whether the due process complaint meets the content requirements and immediately notify the parties in writing,

A party may amend its due process complaint only if the other party consents in writing and is given the opportunity to resolve the issues through a resolution meeting as noted below; or OAH grants permission not later than five (5) days before a due process hearing occurs. The timeline for the resolution meeting and the due process hearing begins again with the filing of the amended due process complaint.

Child's Status During Proceedings:

During the pendency of any administrative or judicial proceeding (except as provided under the discipline section), unless the parent and public agency agree otherwise, the child must remain in his or her current early intervention or educational placement. If the proceeding involves an initial application for initial admission to public school, the child, with parental consent, must be placed in the public program until the completion of all proceedings. If the decision of the ALJ agrees with the parents that a change of early intervention services or education placement is appropriate, that placement becomes the child's current placement during the pendency of subsequent appeals.

Resolution Process:

Within 15 calendar days of receiving a parent's due process complaint, and before the due process hearing begins, the public agency must hold a meeting with the parent and the relevant member or members of the Individualized Family Service Plan (IFSP) team or Individualized Education Program (IEP) team who have specific knowledge of the facts identified in the parent's due process complaint.

The meeting:

- Must include a representative of the public agency who has decision-making authority on behalf of the public agency; and
- May not include an attorney representing the public agency unless the parent brings an attorney.

The parent and the public agency determine the relevant members of the IFSP or IEP team to attend the meeting. The purpose of the meeting is for the parent to discuss the due process complaint, and the facts that form the basis of the complaint, so that the public agency has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

- The parent and the public agency agree in writing to waive the meeting;
- The parent and the public agency agree to try mediation; or
- The public agency initiated the due process complaint.

If the public agency has not resolved the due process complaint to the parent's satisfaction within 30 calendar days of receiving the complaint (the resolution period), the due process hearing may occur.

The 45-day timeline for issuing a final decision begins at the end of the 30-day resolution period, unless one of the following circumstances described below in the "Adjustments to the 30 Calendar Day Resolution Period" or the "Expedited Timelines" section applies.

Adjustments to the 30 Calendar Day Resolution Period:

Except when the parent and the public agency have agreed to extend the resolution process, waive the resolution process, or to use mediation, a parent's failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If, after making reasonable efforts and documenting such efforts, the public agency is not able to obtain the parent's participation in the resolution meeting, the public agency may, at the end of the 30-day resolution period, request that the ALJ dismiss the due process complaint. Documentation of the public agency's efforts must include a record of attempts to arrange a mutually agreed upon time and place, such as:

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

If the public agency does not hold the resolution meeting within 15 calendar days of receiving notice of a parent's due process complaint or does not participate in the resolution meeting, the parent may request that the hearing commence and the decision be issued within 45 calendar days.

If the parent and the public agency agree in writing to waive the resolution meeting, then the 45-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-day resolution period, if the parent and the public agency agree in writing that no agreement is possible, then the 45-day timeline for the due process hearing starts the next day.

If the parent and the public agency agree to try mediation, at the end of the 30-day resolution period, both parties can agree in writing to continue the mediation process until an agreement is reached. However, if either the parent or the public agency withdraws from the mediation process, then the 45-day timeline for the due process hearing starts the next day.

Resolution Settlement Agreement:

If a resolution to the dispute is reached at the resolution meeting, the parent and the public agency must enter into a legally binding agreement that is:

- Signed by the parent and a representative of the public agency who has the authority to hold the public agency to the agreement; and
- Enforceable in any State court of competent jurisdiction (a state court that has authority to hear this type of case) or in a federal district court.

If the parent and the public agency enter into an agreement as a result of a resolution meeting, either party may void the agreement within three (3) business days.

Due Process Hearing:

The parent or the public agency involved in a dispute has the opportunity for an impartial due process hearing when filing a due process complaint.

An Administrative Law Judge (ALJ):

- Is an employee of the Office of Administrative Hearings;
- Will not have a personal or professional interest that conflicts with their objectivity in the hearing;
- Is knowledgeable and understands the provisions of the IDEA, and federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA; and
- Has the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Subject Matter of a Due Process Complaint:

The party (the parent or the public agency) that files the due process complaint may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Hearing Rights:

Either party to any due process hearing (including a hearing on IDEA disciplinary procedures) has the right to:

- Represent yourself or be represented by an attorney at due process hearings in accordance with State Government Article §9-1607.1, Annotated Code of Maryland;
- Be accompanied and advised by a lawyer and persons with special knowledge or training with respect to 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 that party at least 5 business days before the hearing;
- Obtain a written, or, at the parent's option, electronic, word-for-word record of the hearing; and
- Obtain written, or, at the parent's option, electronic findings of fact and decisions.

Additional Disclosure of Information:

At least five (5) business days before a due process hearing, the parent and the public agency must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that the parent or the public agency intend to use at the hearing. An ALJ may prevent any party that does not comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parent's Rights:

The parent has the right to:

- Have the child present;
- Open the hearing to the public; and
- Have the record of the hearing, the findings of fact, and decisions provided to you at no cost.

Hearing Decision:

The ALJ decision on whether a child received a free appropriate public education (FAPE) must be based on substantive grounds. In matters alleging a procedural violation, an ALJ may find that the child did not receive FAPE only if the procedural inadequacies:

- Interfered with the child's right to a FAPE;
- Significantly interfered with the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or
- Caused a deprivation of an educational benefit.

None of the provisions described above can be interpreted to prevent an ALJ from ordering a public agency to comply with the requirements in the procedural safeguards section of the federal regulations under Part B of the IDEA (34 CFR 300.500 through 300.536).

Separate Due Process Complaint:

Nothing in the procedural safeguards section of IDEA prevents a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Timelines and Convenience of a Hearing:

Not later than 45 calendar days after the end of the 30 calendar day period for resolution meetings or, as described under "Adjustments to the 30 Calendar Day Resolution Period" or "Expedited Timelines," not later than 45 calendar days after the end of the adjusted time period:

- A final decision is reached in the hearing; and
- A copy of the decision is mailed to each of the parties.

An ALJ may grant specific extensions of time beyond the 45-day time period at the request of either party. Each hearing must occur at a time and place that is reasonably convenient to the parent and the child.

Expedited Timelines:

A public agency is responsible for arranging an expedited due process hearing when a due process complaint is filed on behalf of a child with a disability, regarding:

- A child with a disability who is not currently enrolled and attending school;
- The placement of a child with a disability in an interim alternative education setting; or
- A manifestation determination.

The due process hearing must occur within 20 school days of the date the complaint is filed. The ALJ must make a determination within 10 school days after the hearing. A resolution meeting must occur within seven (7) calendar days of receiving notice of the due process complaint and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receiving the due process complaint.

Finality of Hearing Decision:

An ALJ decision is final unless appealed by either the parents or the public agency. Any party aggrieved by the findings and decisions has the right to bring a civil action with respect to the complaint presented in the due process hearing.

Appeal:

Any party to the hearing who does not agree with the findings and decision has the right to appeal by bringing a civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within 120 days of the date of the ALJ decision.

In any civil action, the court will:

- Receive the records of the administrative proceedings;
- Hear additional evidence at the parent's request or at the public agency's request;
- Base its decision on the preponderance of the evidence: and
- Grant the relief that the court determines to be appropriate.

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U. S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other federal laws protecting the rights of children with disabilities. Except, that before filing for civil action under these laws the parents or a public agency must have exhausted the procedures for a due process hearing with OAH. This means that parents may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, parents must first use the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

ATTORNEYS' FEES

In any action or proceeding brought under IDEA, the court may award reasonable attorneys' fees to:

- The parents or guardians of a child with a disability who is the prevailing party;
- To a prevailing party who is MSDE or any other public agency against the attorney of the parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of the parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- To a prevailing party who is MSDE or any other public agency against the attorney of the 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.

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

Fees may not be awarded under the following circumstances:

- For any IFSP or IEP team meeting unless it is convened as a result of a due process hearing or judicial action;
- For mediation conducted prior to filing a due process complaint;
- For resolution meetings; and
- For services following a written settlement offer to the parent if:
    - The offer is made within the timelines under Rule 68, Federal Rules of Civil Procedure, or in an administrative proceeding, more than ten days before the proceeding begins;
    - The offer is not accepted within ten days; and
    - The court finds the relief obtained by the parent in the hearing is not more favorable to the parent than the offer of settlement. Fees and costs may be awarded if the parent was substantially justified in rejecting the settlement offer.

Fees <u>may</u> be reduced under the following circumstances:

- The parent or the parent's attorney unreasonably prolonged resolving the dispute;
- The amount of fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;
- The time and services were excessive considering the nature of the proceeding; or
- The attorney did not provide the appropriate information in filing the due process hearing request notice.

Fees <u>will not</u> be reduced if:

- The public agency prolonged the resolution; or
- There was a violation of the procedural safeguard requirements.

Because the parent's right to recover attorneys' fees depends upon meeting certain conditions set out in the IDEA, parents should discuss this matter with their attorneys.

ATTACHMENT:

IDEA DISPUTE RESOLUTION PROCESSES COMPARISON CHART

	MEDIATION	DUE PROCESS COMPLAINT	RESOLUTION PROCESS	STATE COMPLAINT
Who can initiate the process?	Parent or public agency, but must be voluntary for both	Parent or public agency	Public agency schedules the resolution meeting upon receipt of a due process complaint unless the parties agree to waive or use mediation	Any individual or organization including those from out of state
What is the time limit for filing?	None Specified	2 years of when the party knew or should have known of the problem with limited expectations[1]	Triggered by a parent's due process complaint	1 year from the date of the alleged violation
What issues can be resolved?	Any matter under Part 300, including matters arising prior to the filing of a due process complaint (there are exceptions)[2]	Any matter relating to the identification, evaluation or educational placement or provision of a free appropriate public education (there are exceptions)	Same as the issues raised in the parent's due process complaint	Alleged violations of Part B of IDEA or Part 300
What is the timeline for resolving the issues?	None specified	45 days from the end of the resolution period unless a specific extension to the timeline is granted[3, 4]	Public agency must convene a resolution meeting within 15 days of receipt of the parent's due process complaint, unless the parties agree in writing to waive the meeting or agree to use mediation Resolution period is 30 days from receipt of the parent's due process complaint unless the parties agree otherwise or the parent or public agency fails to participate in the resolution meeting or the public agency fails to convene the resolution meeting within 15 days of receipt of the parent's due process complaint[3, 5, 6, 7]	60 days from receipt of the complaint unless an extension is permitted[8]
Who resolves the issues?	Parent and public agency with a mediator The process is voluntary and both parties must agree to any resolution	Hearing Officer/ Administrative Law Judge (ALJ)	Parent and public agency Both parties must agree to any resolution	Maryland State Department of Education[9]

[1]The time limit does not apply to a parent if the parent was prevented from filing a due process complaint due to: (1) specific misrepresentations by the public agency that it had resolved the problem forming the basis of the due process complaint; or (2) the public agency's withholding of information from the parent that was required under Part 300 of IDEA to be provided to the parent (34 C.F.R. §300.511(f)).

[2] Such exceptions include: the public agency many not file a due process complaint or use mediation to override a parent's refusal to consent to the initial provision of special education services (34 C.F.R. §300.300(b)(3)); the public agency may not file a due process complaint or use mediation to override a parent's refusal to consent to an initial evaluation or reevaluation of a parentally-placed private school child or home schooled child; (34 C.F.R. §300.300(c)(4)(i)); the right of parents of parentally placed private school children to file a due process complaint is limited to the public agency's failure to meet the child find requirements (34 C.F.R. §300.140); the public agency's failure to provide a highly qualified teacher is not an issue subject to due process, but a State complaint could be filed with the State Education Agency (SEA) (34 C.F.R. §300.156(e)).

[3] If the due process complaint is filed for an expedited hearing pursuant to discipline procedures, or the child is not currently enrolled and attending school, the resolution period is 15 calendar days (with the meeting being held within 7 days). If the matter has not been resolved to the satisfaction of both parties, the hearing must occur within 20 school days of the date the hearing is requested and a decision must be issued with 10 school days after the hearing. (34 C.F.R. §300.532(c) and COMAR 13A.05.01.15).

[4] A hearing officer/ALJ may grant specific extension of time at the request of either party. (34 C.F.R. §300.516(c)).

[5] The regulations allow for adjustments to the 30-day resolution period. The 45 day timeline for the due process hearing starts the day after one of the following events: (1) both parties agree in writing to waive the resolution meeting; (2) after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process. (34 C.F.R. §300.510 (c)).

[6] Parent failure to participate in the resolution meeting delays the timelines for the resolution process and due process hearing until the meeting is held. (34 C.F.R. §300.510(b)(3)).

[7] If the public agency fails to hold the resolution meeting within 15 days of receiving the parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of an ALJ to begin the due process hearing timeline (34 C.F.R. §300.510(b)(5)).

[8] The timeline for resolving the State complaint may be extended if exceptional circumstances exist with respect to a particular complaint, or the parent (or individual or organization, if mediation or other alternative means of dispute resolution, is available to the individual or organization under State procedures) and the public agency agree to extend the time to engage in mediation or to engage in other alternative means of dispute resolution, if available in the State (34 C.F.R. §300.152(b)(1)).

[9] The MSDE complaint procedures provides the public agency with the opportunity to respond to the complaint, including, at the discretion of the public agency, a proposal to resolve the complaint; and an opportunity for the parent who files a complaint and the public agency to voluntarily engage in mediation. (34 C.F.R. §300.152(a)(3)). In some cases, the complainant and public agency may be able to resolve the dispute without the need for MSDE to resolve the matter.

Maryland State Department of Education
Division of Special Education/Early Intervention Services
200 West Baltimore Street
Baltimore, Maryland 21201
410-767-0249 (phone)
410-333-1571 (fax)
http://www.marylandpublicschools.org

FREE OR LOW COST SERVICES FOR ASSISTANCE IN UNDERSTANDING THE SPECIAL EDUCATION PROCESS

Frederick County Public Schools is dedicated to ensuring that parents understand the special education process and their rights throughout the special education process. To such end, parents are encouraged to ask questions of the personnel at their child's school. This would include the special education teacher and administrative staff.
Additional resources provided by Frederick County Public Schools:

Office of Special Education
Supervisor of Special Education
191 South East Street
Frederick, MD 21701
www.fcps.org
Phone: 301-644-5295
Fax: 301-644-5304

Partners for Success
Rock Creek School
191 Waverley Drive
Frederick, MD 21702
www.fcps.org
Phone: 240-236-8744
Fax: 240-236-8701

The following organizations also can be contacted by parents for more information about the special education process.

The Arc of Frederick County
620-A Research Court
Frederick, MD 21703
www.arcfc.org
Phone: 301-663-0909
Fax: 301-695-6454
TDD: 301-663-0936

The Freedom Center
14 West Patrick Street, Suite 10
Frederick, MD 21701
www.thefreedomcenter-md.org
Phone: 301-846-7811
Fax: 301-846-9070

Maryland Disability Law Center
1500 Union Avenue, Suite 2000
Baltimore, MD 21211
www.mdlclaw.org
Phone: 410-727-6352, ext. 0
Phone: 800-233-7201
TDD: 410-235-5387
Fax: 410-727-6389

Parents' Place of Maryland
801 Cromwell Park Drive, Suite 103
Glen Burnie, MD 21061
www.ppmd.org
Phone: 410-768-9100
Phone: 1 – 800-394-5694
Fax: 410-768-0830

For a list of attorneys and advocacy organizations which may provide legal services to individuals in special education hearings and mediations, contact the Office of Special Education Identified above.

RECEIPT OF MARYLAND STATE DEPARTMENT OF EDUCATION PARENTAL RIGHTS DOCUMENT

NAME OF STUDENT _____

DATE OF BIRTH _____SCHOOL_____

This is to verify that I have received a copy of Procedural Safeguards, Parental Rights, 2017.

I understand that my rights include the right to receive:

(1) this and all other written notices in the language I understand (primary language) or if needed, a translation of such orally, in sign language, or in Braille as appropriate;

(2) answers from school personnel to additional questions I may have, and;

(3) a copy of the Procedural Safeguards upon the initial referral of my child for an evaluation, at each meeting to develop, review, or revise my child's Individualized Education Program (IEP), with each notice of a reevaluation; and if I file a written request for a mediation/due process hearing.

My signature below indicates that I received the booklet.

_____
SIGNATURE OF PARENT/PARENT SURROGATE OR GUARDIAN

DATE SIGNED _____

Revised 2017