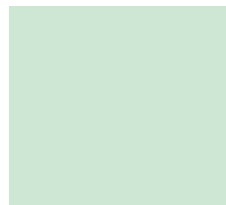
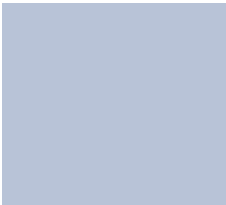


# PROCEDURAL SAFEGUARDS: HANDBOOK ON PARENTS' RIGHTS

SEPTEMBER 2008

Revised April 2009



## LOCAL EDUCATIONAL AGENCY (LEA) CONTACT

The local educational agency (LEA) is your local school system. This may be a county or city school system, public charter school or State-operated program. The acronym LEA is used throughout this document for your local school system.

It is important that you understand the Procedural Safeguards (legal rights) provided for you and your child with a disability. Staff is available to assist you in understanding your rights and will provide further explanation upon your request. If you have any questions or would like additional information, please contact the Exceptional Children (EC) Department in your local school, charter school, or State-operated program, or the LEA's EC Director.

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LEA's EC Director

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Telephone

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Email

LEA EC Directors are listed at <http://www.ncpublicschools.org/ec/directory/district>  
Charter Schools are listed at <http://www.ncpublicschools.org/charterschools/schools/>

**State Educational Agency (SEA)** The State Educational Agency is the North Carolina Department of Public Instruction (NCDPI). The acronym, NCDPI, is used throughout this document to refer to the SEA. The Exceptional Children (EC) Division is part of NCDPI.

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# Procedural Safeguards:

## Handbook on Parents' Rights | September 2008

### INTRODUCTION

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) is the federal law and Article 9, Section 115C of the North Carolina General Statutes is the State law concerning the education of students with disabilities. Part B of the IDEA refers to the part of the law for children with disabilities who are ages three (3) through 21.

Children with disabilities include those with autism, deaf-blindness, deafness, developmental delay, serious emotional disability, hearing impairment, intellectual disability, multiple disabilities, other health impairment, orthopedic impairment, specific learning disabilities, speech and/or language impairment, traumatic brain injury and visual impairment.

### PURPOSE OF THIS DOCUMENT

The IDEA requires schools to provide parents of a child with a disability a notice containing a full explanation of the Procedural Safeguards (legal rights) available under the IDEA and the accompanying federal regulations.

The numbers listed after each heading in this document refer to the sections for the legal citations in the federal regulations. The numbers after some of the sub-headings refer to the legal citations in the North Carolina Policies Governing Services for Children with Disabilities (Policies) where you can find the information. (Examples: 34 CFR §300.300 and NC 1504-1.13)

This document replaces the 2004 Handbook on Parents' Rights. It reflects the mandates of the IDEA (2004), federal regulations (August 14, 2006) and Policies (November 1, 2007).

This document is located at:  
<http://www.ncpublicschools.org/ec/policy/resources/>

### INFORMATION IN THE PROCEDURAL SAFEGUARDS

The Procedural Safeguards document LEAs are required to give parents applies 13 rights of children with disabilities and their parents.

1. Parental Consent
2. Prior Written Notice
3. Independent Educational Evaluation
4. Confidentiality and Access to Records
5. Unilateral Placement of Children with Disabilities by Parents in Private Schools at Public Expense
6. Availability of Mediation
7. State Complaint Procedures
8. Filing a Due Process Petition
9. Hearings on Due Process Petitions
10. State-Level Appeals
11. Civil Actions
12. Attorney's Fees
13. Disciplinary Procedures

### WHEN YOU WILL RECEIVE THE PROCEDURAL SAFEGUARDS

The Procedural Safeguards must be given to you **one time each school year** and at the following times:

- a. When your child is first referred for evaluation or when you request an evaluation;
- b. When you request a copy of the Procedural Safeguards;
- c. When your child is removed for disciplinary reasons and the removal results in a change in placement;
- d. Upon receipt of the first State complaint and/or the first due process petition in a school year, if you file a State complaint or request a due process hearing; and
- e. Upon each revision to the Procedural Safeguards.

### TO ASSIST YOU:

There are some definitions provided after the Procedural Safeguards headings and sub-headings. Acronyms and additional definitions used often in special education are at the end of this document in Appendix I. Throughout this document, day means calendar day unless it is written as business day or school day.



Explanations in more reader-friendly language are beside the citations. These begin with **In Other Words...**

# Procedural Safeguards: Handbook on Parents' Rights | September 2008

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# 1. PARENTAL CONSENT 34 CFR §300.300 and NC 1503-1

## DEFINITION

Consent means:

- a. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent;
- b. You understand and agree in writing to that action, and the consent describes that action, and lists the records (if any) that will be released and to whom; and
- c. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.
- d. Your withdrawal of consent does not undo an action that has occurred after you gave your consent and before you withdrew it.
- e. If you revoke consent in writing to end your child's receipt of special education services after the child has already received services, the LEA is not required to amend the education records to remove any references to your child's receipt of special education services

Your withdrawal of consent does not undo an action that has occurred after you gave your consent and before you withdrew it.

### → In Other Words...

You have certain consent rights. There are times when the LEA must ask for your written permission. These are explained below.

→ You can withdraw your permission, but cannot change what happened before you withdrew it.

## CONSENT FOR INITIAL EVALUATION → Form DEC2

Your LEA cannot conduct an initial evaluation of your child to determine whether your child is eligible under IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described in this section.

Your LEA must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the LEA to start providing special education and related services to your child.

If your child is enrolled in public school or you are planning to enroll your child in a public school, and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your LEA may, but is not required to, seek to conduct an initial evaluation of your child by requesting mediation or filing a petition for a due process hearing. Your LEA will not violate its obligations under Child Find to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

→ You must be notified and give written permission before the LEA can evaluate your child for special education and related services for the first time.

→ Giving permission to evaluate does not mean you have also given permission for special education services.

→ If you do not give written permission, the LEA can request mediation or file a due process petition to test your child without permission, but it is not required to do this.

## SPECIAL RULES FOR INITIAL EVALUATION OF WARDS OF THE STATE

Ward of the State in North Carolina means a child who, as determined by North Carolina law, is removed from the home and placed in custody with the Department of Social Services (DSS) or a person designated in a court order.

If a child is a ward of the State and is not living with you, the LEA does not need consent from you for an initial evaluation to determine if your child is a child with a disability if:

- a. Despite reasonable efforts to do so, the LEA cannot find you;
- b. Your rights have been terminated in accordance with NC law; or
- c. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than you.

## **PARENTAL CONSENT FOR SERVICES** → Form DEC6

Your LEA must obtain your informed consent before providing special education and related services to your child for the first time. The LEA must make reasonable efforts to obtain your informed consent.

If you do not respond to a request to provide consent for your child to receive special education and related services for the first time or if you refuse to give such consent, your LEA may not use mediation or a due process hearing in order to obtain agreement or a ruling that the special education and related services may be provided without your consent.

If you refuse to give consent for your child to receive special education and related services for the first time, *or you revoke consent after services are initiated*, or if you do not respond to a request to provide such consent and the LEA does not provide your child with the special education and related services for which it sought your consent, your LEA:

- a. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; and
- b. Is not required to have an Individualized Educational Program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

## **PARENTAL CONSENT FOR REEVALUATIONS** → Form DEC2

Your LEA must obtain your informed consent before it tests your child as part of the reevaluation process, unless it can demonstrate that it took reasonable steps to obtain your consent for your child's reevaluation assessments; and you did not respond.

If you refuse to consent to testing as part of your child's reevaluation, the LEA may, but is not required to, use mediation or a due process hearing to override your refusal to provide consent. Your LEA does not violate its obligations under the IDEA if it does not pursue the reevaluation testing in this manner.

## **DOCUMENTATION OF REASONABLE EFFORTS TO OBTAIN PARENTAL CONSENT**

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the LEA's attempts, such as:

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

## **WHEN CONSENT IS NOT REQUIRED**

Your consent is not required before your LEA may:

- a. Review existing data (records and information) as part of your child's initial evaluation or reevaluation; or
- b. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from the parents of all children.

Your LEA may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child and you do not provide consent for your child's initial evaluation or reevaluation, or you fail to respond to a request to provide your consent, the LEA cannot override your consent by using mediation or an impartial due process hearing.

→ **In Other Words...**  
After the evaluation, if the IEP Team decides your child is eligible, you must give written permission before your child can receive special education and related services for the first time. (You are a member of the IEP Team.)

→ If you do not give written permission for your child to receive special education after the initial evaluation, the LEA cannot use mediation or due process to provide the services without your permission.

→ You cannot file a State complaint or a due process petition against the LEA for failing to provide a free, appropriate public education (FAPE), if you did not give permission for your child to receive special education and related services.

→ If the IEP Team decides your child needs any testing for a reevaluation and you do not respond to requests for your permission, the school can test your child without your permission.

→ If you refuse to give permission, the LEA can request mediation or file a due process petition to test without your permission.

→ The LEA must keep records of the times it has tried to contact you about giving written permission for an evaluation of your child or to provide special education and related services to your child.

→ Before an evaluation or reevaluation, the IEP Team may review the data it already has and this does not require your permission.

→ The LEA does not need your permission to give your child with a disability a test or other evaluation that it is giving other children in the school, unless permission is required from the other parents.

→ The LEA cannot request mediation or file a due process to test without your permission if your child attends a private school that you pay for or is home schooled.

## 2. PRIOR WRITTEN NOTICE 34 CFR §300.503 and NC 1504-1.4

### DEFINITION

*Native language* - When used with an individual who has limited English proficiency, native language means:

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

### NOTICE → Form DEC5

Your LEA must give you written notice (provide you certain information in writing) whenever it:

- a. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
- b. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.
- c. Ceases services based on your written revocation of consent.

Note: Information about providing prior notice due to a disciplinary change in placement is located in Section 13 **Disciplinary Procedures**

### CONTENT OF NOTICE

The written notice must:

- a. Describe the action that your LEA proposes or refuses to take;
- b. Explain why your LEA is proposing or refusing to take the action;
- c. Describe each evaluation procedure, assessment, record, or report your LEA used in deciding to propose or refuse the action;
- d. Include a statement that you have protections under the Procedural Safeguards provisions in Part B of the IDEA (Part B means services for children ages 3 through 21);
- e. Tell how you can obtain a description of the Procedural Safeguards if the action that your LEA is proposing or refusing is not an initial referral for evaluation;
- f. Include resources for you to contact for help in understanding IDEA;
- g. Describe any other options that your child's Individualized Education Program (IEP) Team considered and the reasons why those options were rejected; and
- h. Provide a description of the reasons why your LEA proposed or refused the action.

→ If you revoke consent, the LEA must provide written notice to you before stopping the special education services.

→ The prior written notice must clearly explain everything the LEA decided to do or refused to do, and why those decisions were made.

The prior written notice must clearly explain the other things the LEA considered, but decided against, and why it decided against them.

The prior written notice must clearly explain all the information used in making the decisions.

The prior written notice must have a statement that tells you about your protections in this document.

### NOTICE IN UNDERSTANDABLE LANGUAGE

The notice must be:

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

If your native language or other mode of communication is not a written language, your LEA must take steps to ensure that:

- a. The notice is translated for you orally or by other means in your native language or other mode of communication;
- b. You understand the content of the notice; and
- c. There is written evidence that a and b have been met.

→ If your native language is not one that can be written, the LEA will translate the notice for you orally.

### ELECTRONIC MAIL

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

- a. Prior written notice;
- b. Procedural Safeguards notice (this document); and
- c. Notices related to a due process petition.

→ You can ask the LEA to send these three notices by e-mail if the LEA offers you a choice about how you receive the notices.

### 3. INDEPENDENT EDUCATIONAL EVALUATIONS (IEE) 34 CFR §300.502 and NC 1504-1.13

#### DEFINITIONS

*Independent educational evaluation (IEE)* - An evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of your child.

*Public expense* - The LEA either pays for the full cost of the evaluation or ensures that the evaluation is provided at no cost to you, consistent with the provisions of the IDEA, which allow each state to use whatever state, local, federal and private sources of support are available in the state to meet these requirements.

#### GENERAL

You have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was conducted by your LEA.

If you request an independent educational evaluation, the LEA must provide you with information about where you may obtain it and about the LEA's criteria that apply to independent educational evaluations.

#### In Other Words...

→ If you disagree with the school's evaluation, you can ask for the LEA to pay for an evaluation by someone not employed by the LEA. The LEA will give you names of qualified people who can do the evaluation.

#### EVALUATION AT PUBLIC EXPENSE

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child conducted by your LEA, subject to the following conditions:

- a. If you request an independent educational evaluation at public expense, your LEA must, without unnecessary delay, **either**:
  - File a due process petition to request a hearing to show that its evaluation of your child is appropriate; **or**
  - Provide an independent educational evaluation at public expense, unless the LEA demonstrates in a hearing that the evaluation of your child that you obtained did not meet the LEA's criteria;
- b. If your LEA requests a hearing and the final decision is that your LEA's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense; **and**
- c. If you request an independent educational evaluation of your child, the LEA may ask why you object to its evaluation. However, your LEA may not require an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing for a due process hearing to defend its evaluation.

You are entitled to only one independent educational evaluation of your child at public expense for each evaluation your LEA conducted with which you disagree.

→ If you request an IEE, the LEA has to decide if it will pay for it or file a due process petition to show that its evaluation is appropriate. If the judge decides the LEA's evaluation is appropriate, then the LEA does not have to pay for an IEE.

→ You must tell the school staff which assessments you disagree with and those are the only ones the LEA must pay for when you request an IEE. You do not have to tell the LEA why you disagree with its evaluation.

→ You may request only one IEE (paid for by the LEA) for each LEA evaluation you disagree with and if the LEA has not completed an evaluation, you cannot request an IEE.

#### PARENT-INITIATED EVALUATIONS

If you obtain an independent educational evaluation of your child at public expense or you share with the LEA an evaluation of your child that you obtained at private expense:

- a. Your LEA must consider the results of the evaluation of your child, if it meets the LEA's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
- b. You or your LEA may present the evaluation as evidence at a due process hearing about your child.

→ The IEP Team must consider the results of all IEEs that meet the LEA's criteria when making decisions. (See the sub-heading **LEA Criteria**.)

#### REQUESTS FOR EVALUATIONS BY HEARING OFFICERS

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

→ If a judge orders an IEE as part of a due process hearing, the LEA must pay for it.



## LEA CRITERIA

When an LEA pays for an independent educational evaluation, the criteria for selecting an examiner for the independent evaluation must be the same criteria that the LEA uses when it arranges for an evaluation (as long as those criteria do not interfere with your right to an independent educational evaluation). Examples of the criteria are the location of the evaluation and the qualifications of the examiner.

Except for the criteria described above, an LEA may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.



### In Other Words...

The LEA must require you to use the same criteria it uses when selecting someone to conduct an evaluation. However, it cannot require you to use the same criteria if it interferes with your right to an IEE.

## 4. ACCESS TO RECORDS 34 CFR §§ 300.610 - 300.625 and NC 1505-2

### DEFINITIONS AS USED UNDER THIS SECTION

- a. **Destruction** - Physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- b. **Education records** - The type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act (FERPA). **Information about FERPA is located at** <http://ed.gov/policy/gen/guid/fpco/index.html>
- c. **Personally identifiable** - Information that includes your child's name, your name as the parent or the name of another family member; your child's address; a personal identifier such as your child's social security or student number, a list of personal characteristics; or other information that would make it possible to identify your child with reasonable certainty.

### CONFIDENTIALITY – NOTICE TO PARENTS

The NC Department of Public Instruction must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:



You have the right to be told by NCDPI how information on your child will be used and kept confidential by the State.

- a. A description of the extent to which the notice is given in the native languages of the various population groups in NC;
- b. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state uses in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- c. A summary of the policies and procedures that the LEA must follow about storage, disclosure to third parties, keeping records, and destruction of personally identifiable information; and
- d. A description of all of the rights of parents and children about this information, including the rights under the Family Educational Rights and Privacy Act (FERPA).

Before any major identification, location, or evaluation activity (Child Find), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity to locate, identify, and evaluate children in need of special education and related services.

### ACCESS TO RECORDS

The local educational agency (LEA) must allow you to inspect and review any education records relating to your child that are kept or used by your LEA under IDEA. The LEA must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting about an IEP or any impartial due process hearing (including a resolution meeting or a hearing about discipline) and in no case more than 45 days after you have made a request. Your right to inspect and review education records includes:



The LEA must not delay your review of your child's educational records and must let you review them before any IEP meeting or due process hearing. The LEA must let you review the records within 45 days of your request.

- a. Your right to a response from the LEA to your reasonable requests for explanations and interpretations of the records;
- b. Your right to request that the LEA provide copies of the records if you cannot effectively inspect and review the records; and
- c. Your right to have your representative inspect and review the records.



You have the right to review your child's education records, ask for an explanation of any records you do not understand, ask for copies if you cannot go to the school to review your child's records, and have someone who represents you review your child's records.

The LEA may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable NC law governing such matters as guardianship or separation and divorce.

## RECORD OF ACCESS

Each LEA must keep a record of parties obtaining access to education records collected, maintained, or used under IDEA (except access by parents and authorized employees of the LEA), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

→ **In Other Words...**  
The school must document who can see your child's record. If someone else reviews your child's record then that person must sign and date a form, and write why he/she reviewed the record.

## RECORDS ON MORE THAN ONE CHILD

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.

→ If there is information about another child in your child's records, that child's parents can only see their child's information. They cannot see your child's information.

## LIST OF TYPES AND LOCATIONS OF INFORMATION

On request, each LEA must provide you with a list of the types and locations of education records it collects, maintains or uses.

→ You can ask the LEA what kinds of records it keeps and where they are located.

## FEES

Each LEA may charge a fee for copies of your child's special education records, if the fee does not effectively prevent you from exercising your right to inspect and review those records. An LEA may not charge a fee to search/retrieve the information.

→ The LEA can charge a fee to copy your child's record, but it must be a reasonable fee that you are able to pay. The LEA cannot charge for looking for and getting the records.

## AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in the education records about your child collected, maintained and/or used under IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the LEA that maintains the information to change the information.

→ If you disagree with certain items in the records, you can ask for those items to be changed or removed from the record.

The LEA must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request. If the LEA refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose, as described under the sub-heading **Opportunity for a Hearing**.

→ If the school decides not to change or remove these items, you can ask for a hearing that will be conducted by the LEA.

If the LEA refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the sub-heading **Opportunity for a Hearing**.

→ If the school decides not to change or remove these items, you can ask for a hearing that will be conducted by the LEA.

## OPPORTUNITY FOR A HEARING

The LEA must, upon your request, provide you an opportunity for a hearing to challenge information in education records about your child to ensure that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## HEARING PROCEDURES

The LEA must conduct a hearing when you disagree with information in education records. The hearing is not a due process hearing. It is conducted according to the procedures under the Family Educational Rights and Privacy Act (FERPA).

**Information about FERPA is at:** <http://ed.gov/policy/gen/guid/fpco/index.html>

## RESULT OF HEARING

If, as a result of the hearing, the LEA decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must amend the information accordingly and inform you in writing.

→ If the decision from the hearing is that the information you disagreed with is not correct or violates your child's privacy or other rights, it must change the information.

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

→ If the decision from the hearing is that the information is correct and does not violate your child's privacy and other rights, then you have the right to place a statement in the record about the information or telling why you disagreed with it.

Such an explanation placed in the records of your child must:

- a. Be maintained by the LEA as part of the records of your child as long as the records or contested portion is maintained by the LEA; and
- b. If the LEA discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

➔ **In Other Words...**

If the LEA makes a copy of the record for another party, then it must also copy your written statement.

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## **CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION**

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Unless the information is contained in education records and the Family Educational Rights and Privacy Act (FERPA) authorizes its release, your consent must be obtained before personally identifiable information is released to parties other than officials of the school system.

Your consent is not required before personally identifiable information is released to officials of the LEA for purposes of meeting a requirement of IDEA except when:

- a. Your consent, or the consent of your child who has reached the age of majority (18 years old), must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services; or
- b. If your child attends or is going to attend a private school that is not located in the same LEA in which you reside, your consent must be obtained before any personally identifiable information about your child is released between officials in the LEA where the private school is located and officials in the LEA where you reside.

➔ The LEA must get your written permission before it can give information that identifies your child to people not employed by the LEA. There are times that your permission is not required, such as, when officials of the LEA need the information as a requirement of the IDEA.

➔ Written permission is required to share information with other agencies assisting with post-secondary transition services.

➔ If your child attends a private school in another LEA, the LEA where you live must get your written permission to share the record with the LEA where the private school is located.

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## **SAFEGUARDS**

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Each LEA must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official of each LEA must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction on policies and procedures about confidentiality under IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each LEA must 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.

➔ The LEA must keep your child's records confidential and keep a list of all employees who can review your child's records without written permission.

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## **DESTRUCTION OF INFORMATION**

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Your LEA must inform you when personally identifiable information collected, maintained or used is no longer needed to provide educational services to your child. The information must be destroyed at your request. However, a permanent record of your child's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

➔ When the LEA no longer needs personally identifiable information to provide services to your child, it must inform you. You have the right to ask for your child's record to be destroyed when it is no longer needed, but the LEA can keep directory information.

## 5. REQUIREMENTS FOR UNILATERAL PLACEMENT OF CHILDREN WITH DISABILITIES BY THEIR PARENTS IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

34 CFR §300.148 and NC 1501-6 through NC 1501-8

### PLACEMENT OF CHILDREN BY PARENTS IF FAPE IS AT ISSUE

IDEA does not require an LEA to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the LEA made a free appropriate public education (FAPE) available to your child and you chose to place your child in a private school or facility. However, the LEA where the private school is located must include your child in the population whose needs are addressed in the section of IDEA about children whose parents placed them in a private school.



#### In Other Words...

If the LEA made a FAPE available to your child and you decided to enroll your child in a private school, then the LEA is not required to pay for the private school. The LEA where the private school is located may provide some services through a private school service plan if those services are part of the services the LEA provides to parentally placed private school students.

### REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT

If your child previously received special education and related services under the authority of an LEA and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the LEA, a hearing officer or court may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by NCDPI and LEAs.



If a hearing officer or court decides the LEA did not make a FAPE available for your child, then the LEA may have to pay for private school placement, if it is an appropriate placement.

### LIMITATION ON REIMBURSEMENT

The cost of reimbursement described in the paragraph above may be reduced or denied:

- a. If at the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the LEA to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense **or** at least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the LEA of that information;
- b. If, prior to your removal of your child from the public school, the LEA provided prior written notice to you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make your child available for the evaluation; **or**
- c. Upon a court's finding that your actions were unreasonable.



If you decide to enroll your child with a disability in a private school and ask the LEA to pay, you must have told school officials at the last IEP Team meeting you attended **or** 10 business days before withdrawing your child that you were going to enroll your child in a private school. In this situation, business day includes any holidays that fall on Monday through Friday. You must have also told school officials what your concerns were about the public school program. The court may decide the LEA does not have to pay or the court may lower the costs if you did not tell school officials, did not bring your child to an evaluation the LEA wanted to conduct, or acted without reason.

However, the cost of reimbursement:

- a. Must not be reduced or denied for failure to provide the notice if:
  - The school prevented you from providing the notice;
  - You had not received notice of your responsibility to provide the notice described above; **or**
  - Compliance with the requirements above would likely result in physical harm to your child; **and**
- b. May, in the discretion of the court or a hearing officer, not be reduced or denied for your failure to provide the required notice if:
  - The parent is not literate or cannot write in English; **or**
  - Compliance with the above requirement would likely result in serious emotional harm to your child.



The court cannot deny or reduce the payment if the school kept you from providing the notice, did not give you the Procedural Safeguards that tell you about providing the notice or if following the requirements might result in physical harm to your child.



If you did not provide the notice because you cannot read, you cannot write in English, or if following the requirements might result in serious emotional harm to your child then the court cannot reduce or deny the payment.

## 6. AVAILABILITY OF MEDIATION 34 CFR §300.506 and NC 1504-1.7

### DEFINITION

*Mediation* is an informal meeting of the parent and the school led by a neutral third party, the mediator. Mediation is a voluntary process, which the parties themselves control. The mediator helps the parents and school resolve disagreements concerning the child's identification, evaluation, program, or placement. Mediation can help the parties reach agreement about specific issues, as well as build a better working relationship for the future. Mediation can help resolve differences between parents and schools efficiently and effectively.

More information about mediation is at: <http://www.ncpublicschools.org/ec/policy/dispute/mediation/>

→ **Note:** Mediation is a service offered free of cost to you and the LEA and can be requested by sending a completed request form to:

**Mediation Coordinator**  
NCDPI EC Division  
6356 Mail Service Center  
Raleigh, NC 27699-6356  
Fax: to 919.807.3755.

### GENERAL

The EC Division of NCDPI makes mediation available to allow you and the LEA to resolve disagreements involving any matter under IDEA, including matters arising prior to the filing of a due process petition.

Mediation is available to resolve disputes under IDEA, whether or not you have filed a due process petition to request a due process hearing as described under the heading **Filing a Due Process Petition**.

→ **In Other Words...**

You and/or the LEA may request mediation any time you and the LEA cannot resolve a dispute. You do not have to file a due process petition in order to request mediation.

### REQUIREMENTS

The procedures must ensure that the mediation process:

- Is voluntary on your part and the LEA's part;
- Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under IDEA; and
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The EC Division maintains a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The EC Division must select mediators on a random, rotational or other impartial basis. The EC Division is responsible for the cost of the mediation process.

**Note:** The cost of the mediation process does not include any attorneys' fees, if you and/or the LEA bring attorneys to the mediation.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the LEA.

If you and the LEA resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

- States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- Is signed by both you and a representative of the LEA who has the authority to bind the LEA. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction (a state court that has the authority to hear this type of case), federal court, or through a State complaint investigation.

→ A **mediator** is an impartial person who does not tell you or the LEA what to do, but assists you and the LEA to resolve differences and disputes.

→ If you and the LEA resolve the dispute, then the mediator writes an agreement for all parties to sign and it is legally binding.

→ Discussions that happen during the mediation process must be kept confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any federal or state court.

### IMPARTIALITY OF MEDIATOR

The mediator:

- May not be an employee of the NCDPI or the LEA that is involved in the education or care of your child; and
- Must not have a personal or professional interest that conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of an LEA or the EC Division solely because he or she is paid by the LEA or the EC Division to serve as a mediator.

→ The mediator does not work for NCDPI or the LEA where your child goes to school.

→ The State pays the mediator, but that does not make the mediator a State employee. The LEA may provide and pay for an impartial mediator, but that does not make the mediator an employee of the LEA.

## 7. STATE COMPLAINT PROCEDURES 34 CFR §300.152 and NC 1501-10

### DEFINITION

**State Complaint** - A State complaint is a signed written statement that alleges a school or local educational agency is not following special education law and regulations found in IDEA, Article 9 of Section 115C in the NC General Statutes. This statement is a formal request for the EC Division to investigate the allegation(s) of noncompliance.

More information about State complaints is located at <http://www.ncpublicschools.org/ec/policy/dispute/complaints/>

### In Other Words...

### FILING A COMPLAINT

An organization or individual may file a signed written State complaint under the procedures described below.

The State complaint must include:

- a. A statement that an LEA or other public agency has violated, Federal regulations, NC General Statutes 115C (Article 9), and/or Policies;
- b. The **facts** on which the statement is based;
- c. The signature and contact information for the complainant; and
- d. If alleging violations about a specific child:
  - The name and address of the 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 problem, including facts relating to it; and
  - A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

→ If the complaint does not have all the required items, it will be returned to you. If this happens, NCDPI will send you a letter and tell you what you need to do if you choose to change the complaint and file it again. It is important for you to include specific facts about what you believe the school did not do that the law says it must do. Send any documents (forms, papers, etc.) that support your complaint.

The complaint must allege a violation that occurred not more than **one year** prior to the date that the complaint is received as described under the sub-heading **Adoption of State Complaint Procedures**.

→ You must file a complaint within one year of the date you believe the school did not follow federal regulations, Article 9, or the *Policies*.

The party filing the State complaint must forward a copy of the complaint to the LEA or other public agency serving the child at the same time the party files the complaint with the EC Division.

→ You must send a copy to the other party (the LEA or other public agency).

**Note:** Issues that are not part of federal regulations, Article 9, or the *Policies* will not be investigated. Examples are: promotion, retention, personnel issues, and discrimination.

### ADOPTION OF STATE COMPLAINT PROCEDURES

NCDPI has written procedures for:

- a. Resolving any complaint, including a complaint filed by an organization or individual from another state;
- b. The filing of a complaint with the NCDPI; and
- c. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

→ **Note:** Before filing a complaint, you should talk with your child's teacher, principal, the local EC Director, or other personnel in the LEA.

## MINIMUM STATE COMPLAINT PROCEDURES TIME LIMIT

Within 20 calendar days after a complaint is filed, the NCDPI will:

- a. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and
- b. Provide the LEA or other public agency with the opportunity to respond to the complaint, including, at a minimum, at the option of the agency, a proposal to resolve the complaint and an opportunity for a parent who has filed a complaint and the agency agree to voluntarily engage in mediation.

Within 60 calendar days after a complaint is filed, the EC Division will:

- a. Review all relevant information and make an independent determination as to whether the LEA or other public agency is violating a requirement of Federal regulations, Article 9, and/or *Policies*;
- b. Carry out an independent on-site investigation, if the investigator determines that an investigation is necessary; and
- c. Issue a written decision to the complainant that addresses each allegation in the complaint, contains findings of fact, conclusions, and the reasons for the EC Division's decision(s).



### **In Other Words...**

You have 20 days after filing a complaint to send more information to NCDPI. The LEA also has 20 days to respond and send any information.



It takes up to 60 days to investigate a formal written complaint and send the report to you.

**Note:** By using mediation, you may be able to resolve the issue(s) about your child's special education services and related services more quickly and not have to wait 60 days.

## TIME EXTENSION; FINAL DECISION; IMPLEMENTATION

The formal State complaint procedures described above also must:

- a. Permit an extension of the 60 calendar day time limit only if exceptional circumstances exist with respect to a particular State complaint, or you and the LEA or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution; and
- b. Include procedures for effective implementation of the NCDPI's final decision, if needed, including technical assistance activities; negotiations and corrective actions to achieve compliance.



The timeline for completing the investigation and sending you the report can be made longer than 60 days if there are unusual circumstances, or you and the LEA are trying to resolve the issues using mediation.



The EC Division will monitor the LEA's correction of any violations until they are completed.

## REMEDIES FOR DENIAL OF APPROPRIATE SERVICES

In resolving a formal State complaint in which the NCDPI has found a failure to provide appropriate services, the NCDPI will address:

- a. The failure to provide appropriate services, including corrective action appropriate to address the needs of your child; and
- b. Appropriate future provision of services for all children with disabilities.



The NCDPI will order the LEA to correct any violations of the law that were found during the complaint investigation.

## STATE COMPLAINTS AND DUE PROCESS HEARINGS

If a written State complaint is received that is also the subject of a due process hearing as described under the heading **Filing a Due Process Petition** or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside the State complaint or any part of the State complaint that is being addressed in the due process hearing, until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.



If you file a State complaint and a due process petition about the same issue or issues, then the State complaint will not be investigated until the judge makes a decision about the due process petition.

If an issue in a State complaint has previously been decided in a due process hearing involving the same parties (you and the LEA), then the due process hearing decision is binding on that issue and the EC Division must inform the complainant that the previous decision is binding.



If you file a State complaint on an issue or issues that have already been ruled on during a due process hearing, then the EC Division will let you know that the judge's decision is the one the LEA must follow. If the LEA does not follow the judge's decision, you can file a State complaint about that.

A complaint alleging an LEA's or other public agency's failure to implement a due process hearing decision must be resolved by filing a written complaint with the EC Division of the NCDPI.

## DIFFERENCES BETWEEN THE STATE COMPLAINT AND DUE PROCESS PROCEDURES

**Note:** In addition to mediation, you have the right to use the State complaint process or a due process hearing to resolve disagreements with the LEA. These methods have different procedures, which are described in the federal regulations and the *Policies*.

The federal regulations for IDEA specify separate procedures for State complaints and for requests for due process hearings.

STATE COMPLAINT	DUE PROCESS
Any individual or organization may file.	Parents of a child, an adult student (age 18 or older), or an LEA may file.
Allegations of procedural violations of IDEA, Article 9 of the NC General Statutes 115C, and/or <i>Policies</i> .	Disputes about the identification, evaluation, educational placement of a child with a disability, FAPE, or a manifestation determination.
Must file within one calendar year of alleged violation.	Must file within one calendar year of disputed activity.
Sixty (60) calendar days for investigation to be completed and report sent to you and the LEA.	Thirty (30) days for resolution period and 45 days for hearing and decision to be issued, unless the hearing officer grants a specific extension of the timeline at the request of parent or LEA.
Decision made by NCDPI staff after investigation of evidence.	Decision by impartial Administrative Law Judge (ALJ) after a hearing.
Decision is final and cannot be appealed.	Decision is final unless appealed.

## MODEL FORMS

The EC Division has developed model forms to help you file a State complaint and/or a due process petition. However, the EC Division does not require you to use these model forms. You can use the EC Division's forms or other appropriate model forms, as long as they contain the required information. The model forms are located at <http://www.ncpublicschools.org/ec/policy/dispute/complaint/> and <http://www.ncpublicschools.org/ec/policy/dispute/dueprocess/>

➔ **In Other Words...**  
To make sure that you include all the required items in a State complaint or a due process petition, you can use the forms developed by the EC Division.

## 8. FILING A DUE PROCESS PETITION

34 CFR §§ 300.507 – 300.518 and NC 1504-1.8 through NC 1504-1.19

### DEFINITION

**Due process petition** – A form that is filed with the Office of Administrative Hearings **and** the Superintendent **or** EC Director of the local LEA.

More information about due process is at:  
<http://www.ncpublicschools.org/ec/policy/dispute/dueprocess/>

➔ **Note:** IDEA uses the term due process *complaint*. North Carolina uses due process *petition*.

### GENERAL

You or the LEA may file a due process petition on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child. Parents **must** file the petition with the Superintendent **or** the EC Director of their LEA **and** the Office of Administrative Hearings (OAH).

The due process petition may be hand-delivered or mailed to your local Superintendent **or** EC Director using your local LEA's mailing address.

The due process petition **must** be sent to:

**Chief Hearings Clerk**  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Phone: 919.431.3000  
Fax: 919.431.3100

A copy of your due process petition **must** be sent to:

**Consultant for Due Process**  
EC Division, NCDPI  
6356 Mail Service Center  
Raleigh, NC 27699-6356  
Phone: 919.807.3969  
Fax: 919.807.3755

➔ The LEA can also file a due process petition. You cannot file a due process petition on issues that are not part of the federal regulations, Article 9, and/or *Policies*. Some of these are promotion, retention, personnel issues, and discrimination.

➔ You must file the petition with the LEA's Superintendent **or** the EC Director **and** the Office of Administrative Hearings. Sending it to the EC Division is not an official filing.



The timelines begin when the Superintendent **or** the EC Director of the local LEA receives the petition you filed. If the LEA files a due process petition, the timelines begin when you receive it.

➔ **In Other Words...**  
The hearing timelines begin the day the LEA receives the due process petition, or if the LEA files a petition the timelines begin the day you receive it.

The due process petition must indicate an action or actions that happened not more than **one calendar year** before you or the LEA knew or should have known about the alleged action that forms the basis of the due process petition.

➔ In North Carolina, you **must file within one calendar year** of the alleged violation(s) of the federal regulations, Article 9, and/or *Policies*, unless the LEA stated it had resolved the issues or it withheld required information from you.

The above timeline does not apply to you if you could not file a due process petition within the timeline because:

- a. The LEA specifically misrepresented that it had resolved the issues identified in the petition; or
- b. The LEA withheld information from you that it was required to provide under IDEA.

## INFORMATION FOR PARENTS

The LEA must inform you of any free or low-cost legal and other relevant services available in the area if you request the information.

➔ You may ask the LEA about any free or low-cost attorneys in your area.

## DUE PROCESS PETITION

The petition must contain all of the content listed below and must be kept confidential:

- a. The name, age, and disability category of your child;
- b. The address of your child's residence;
- c. The name of your child's school;
- d. If your child is a homeless child or youth, your child's contact information and the name of your child's school;
- e. A full description of the nature of the problem of your child relating to the proposed or refused action, including specific facts relating to the problem; and
- f. A proposed resolution of the problem to the extent known and available to you or the LEA at the time.

## NOTICE REQUIRED BEFORE A HEARING ON A DUE PROCESS PETITION

You or the LEA may not have a due process hearing until you or the LEA (or your attorney or the LEA's attorney) files a due process petition that includes the required information listed above.

## SUFFICIENCY OF PETITION

In order for a due process petition to go forward, it must be considered sufficient. The due process petition will be considered sufficient (to have met the content requirements above) unless the party receiving the due process petition (you or the LEA) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the petition, that the due process petition does not meet the requirements listed above.

➔ If you do not include all of the items listed under the sub-heading **Due Process Petition** (a-f), the LEA can ask the judge to dismiss it. The LEA must do this within 15 days of receiving the petition.

Within five (5) calendar days of receiving the notification that the receiving party (you or the LEA) considers a due process petition insufficient, the hearing officer must decide if the due process petition meets the requirements listed above, and notify you and the LEA in writing immediately.

➔ The judge must make a decision within five (5) days.

## PETITION AMENDMENT

You or the LEA may make changes to the petition only if:

- a. The other party approves of the changes in writing and is given the chance to resolve the issue(s) in the due process petition through the resolution process, described below; or
- b. By no later than five (5) days before the due process hearing begins, the hearing officer grants permission for the changes.

➔ The party that filed the petition cannot make changes to it unless the other party agrees in writing.

If the complaining party (you or the LEA) makes changes to the due process petition, the timelines for the resolution meeting (within 15 calendar days of receiving the petition) and the timeline for resolution (within 30 days of receiving the petition) start again on the date the amended petition is filed.

➔ If the petition is changed, the timelines start over on the day you file the amended petition with the LEA Superintendent **or** EC Director, **and** OAH.

## **RESPONSE TO A DUE PROCESS PETITION**

The party receiving a due process petition must send (within 10 calendar days of receiving the petition) the other party a response that specifically addresses the issue(s) in the petition.

→ **In Other Words...**  
Within 10 days, the party the petition was filed against must send a written response to the other party.

## **LEA RESPONSE TO A DUE PROCESS PETITION**

If the LEA has not sent a prior written notice to you about the issues contained in your due process petition, it must, within 10 calendar days of receiving the due process petition, send you a response that includes:

- a. An explanation of why the LEA proposed or refused to take the action raised in the due process petition;
- b. A description of other options that your child's IEP Team considered and the reasons why those options were rejected;
- c. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
- d. A description of the other factors that are relevant to the LEA's proposed or refused action.

Providing the information in items a-d above does not prevent the LEA from asserting that your due process petition was insufficient.

→ If the LEA never gave you prior written notice about the issues in your due process petition, it must do so within 10 days after it receives the petition.

→ The LEA can still challenge your petition as insufficient.

## **RESOLUTION PROCESS**

Within 15 calendar days of receiving the due process petition, the LEA must convene a resolution meeting with you and the relevant member or members of the IEP Team who have specific knowledge of the facts in your due process petition. The meeting:

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

You and the LEA determine the relevant members of the IEP Team to attend the meeting. The purpose of the meeting is for you to discuss your due process petition and the facts that form the basis of the issue(s) in the petition, so that the LEA has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

- a. You and the LEA agree in writing to waive the meeting; or
- b. You and the LEA agree to use the mediation process.

→ IDEA requires you to meet with members of the IEP Team to try and resolve the issue(s). This is called a resolution meeting.

→ All of the members of the IEP Team do not have to attend. You and the LEA make that decision. The LEA may not bring an attorney to the resolution meeting unless you do.

→ You and the LEA may agree in writing to not have a resolution meeting. You and the LEA may agree to use the mediation process.

## **RESOLUTION PERIOD**

If the LEA has not resolved the due process petition to your satisfaction within 30 days of the receipt of the due process petition (during the time period for the resolution process), the due process hearing may occur.

The 45-day timeline for issuing a final decision begins the day after the 30-day resolution period ends.

Except where you and the LEA have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

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

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

If the LEA fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process petition or fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-day due process hearing timeline begin.

→ You and the LEA have 30 days to try and resolve the issues before the 45-day timeline starts for a due process hearing.

→ If you do not attend the resolution meeting, the judge will not hear your case, and the timelines may be delayed until you agree to participate in a meeting. If you still do not attend the resolution meeting, then at the end of the 30-day resolution period the LEA can ask the judge to dismiss your case.

→ The LEA must keep detailed records of its attempts to schedule the resolution meeting with you.

→ If the LEA does not hold the resolution meeting within 15 days from receiving your petition or if the LEA does not attend the meeting, then you can ask the judge to go ahead and start the 45-day hearing timeline.

## ADJUSTMENTS TO THE 30 CALENDAR DAY RESOLUTION PERIOD

If you and the LEA 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 you and the LEA agree in writing that no agreement is possible, then the 45-day timeline for the due process hearing starts the next day.

If you and the LEA agree to use the mediation process at the end of the 30-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. In this case, you must submit a motion to the Administrative Law Judge (ALJ) requesting an extension and include the signed agreement to continue mediation. However, if either you or the LEA withdraws from the mediation process, then the 45-day timeline for the due process hearing starts the next day.

➔ **In Other Words...**  
The 45-day timeline begins **the day after** one of these three things happens:

1. You and the LEA agree to not have the resolution meeting;
2. You and the LEA have met and agree a resolution is impossible; **or**
3. You and the LEA have been given an extension to continue mediation after the 30-day timeline, but one party quits the mediation process.

## WRITTEN SETTLEMENT AGREEMENT

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

- a. Signed by you and a representative of the LEA who has the authority to bind the LEA; and
- b. Enforceable in any state court of competent jurisdiction (a state court that has the authority to hear this type of case), in a district court of the United States, or through a State complaint.

➔ If you and the LEA resolve the dispute, then the agreement must be in writing and signed. The signed agreement is legally binding and can be enforced through the courts or the State complaint process.

## AGREEMENT REVIEW PERIOD

If you and the LEA enter into an agreement at the resolution meeting, either party may void the agreement within three (3) business days of the time that both you and the LEA signed the agreement.

➔ If you and the LEA resolve the dispute, you have three (3) *business days* to change your mind. (Definition of *day* is in Appendix I.)

## THE CHILD'S PLACEMENT WHILE THE DUE PROCESS PETITION AND HEARING ARE PENDING

Except as provided under the heading **Disciplinary Procedures**, once a due process petition is sent to the other party, during the resolution process time period and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or LEA agree otherwise, your child must remain in his or her current educational placement.

If the due process petition involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all proceedings.

If the due process petition involves an application for initial services under Part B of the IDEA for your child who is or will soon turn three (3) years old and is transitioning from being served under Part C of the IDEA because he/she is no longer eligible for Part C services, the LEA is not required to provide the Part C services that your child had been receiving.

If your preschool child is found eligible under IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the LEA must provide those special education and related services that are not in dispute (those which you and the LEA both agree upon).

➔ Except under the sub-heading **Special Circumstances** about disciplinary procedures, your child "stays put" in his/her current educational placement unless you and the LEA decide to change the placement. (Information about *placement* is in Appendix I.)

➔ If this is the first time your child is enrolling in public school, he/she must be placed in a public school program, with your permission, until the due process hearing is over.

➔ If your child is a preschool child and was receiving Infant-Toddler Program Services before turning three (3) years old, the LEA does not have to provide the same services to your child. If your child was determined eligible for preschool special education and related services and you gave your permission for the services, then the LEA must provide the services written in the IEP that you and the LEA both agree upon.

## 9. HEARINGS ON DUE PROCESS PETITIONS

34 CFR §300.511 and NC 1504-1.12 through NC 1504-1.14 and NC 1504-1.16

### IMPARTIAL DUE PROCESS HEARING

Whenever a due process petition is filed, you or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, as described under the sub-headings **Due Process Petition** and **Resolution Process**.

#### ***In Other Words...***

### IMPARTIAL HEARING OFFICER

At a minimum, the Administrative Law Judge:

- Must not be an employee of the NCDPI or the LEA that is involved in the education or care of your child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
- Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
- Must be knowledgeable and understand the provisions of the IDEA, federal regulations, Article 9 of NC General Statutes 115C, Policies, and legal interpretations of the IDEA by federal and state courts; and
- Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

→ **Note:** In NC, the hearing officer is an Administrative Law Judge (ALJ).

→ The judges who conduct special education hearings must meet certain qualifications.

### SUBJECT MATTER OF DUE PROCESS HEARING

The party (you or the LEA) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process petition, unless the other party agrees.

→ Neither you nor the LEA can bring up issues at the hearing that were not in your due process petition, unless the other party agrees.

### TIMELINE FOR REQUESTING A HEARING

You or the LEA must request an impartial hearing by filing a due process petition within **one year** of the date you or the LEA knew or should have known about the issue(s) addressed in the petition.

### EXCEPTIONS TO THE TIMELINE

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

- The LEA specifically misrepresented that it had resolved the problem or issue that you are raising in your petition; or
- The LEA withheld information from you that it was required to provide to you under IDEA.

→ You may not file a due process petition for issues that are more than one (1) year old, unless the LEA misled you about solving the issues, or did not share information it was required to give you.

### HEARING RIGHTS GENERAL

Any party to a due process hearing (including a hearing relating to disciplinary procedures) or an appeal, as described under the sub-heading **Appeal of Decisions and Impartial Review** has the right to:

- Be accompanied and advised by an attorney and/or persons with special knowledge or training about the problems of children with disabilities (NC law does not recognize a non-attorney representing a party at a due process hearing);
- 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 shared with the other party at least five (5) business days before the hearing;
- Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
- Obtain written, or, at your option, electronic findings of fact and decisions.

→ A due process hearing is an administrative proceeding, and you may need to bring an attorney. You or your attorney, if you have one, have a right to present evidence, examine or cross-examine witnesses and obtain a record of the proceedings, including the findings of fact and decision.

→ You may represent yourself (*pro se*), but no one else may represent you unless he/she has a license to practice law.

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## **ADDITIONAL DISCLOSURE OF INFORMATION**

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At least five (5) business days prior to a due process hearing, you and the LEA must share with each other all evaluations completed by that date and recommendations based on those evaluations that you or the LEA intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.



### ***In Other Words...***

You and the LEA cannot present evidence or an evaluation report at the hearing that was not shared with the other party at least five (5) business days before the hearing.

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## **PARENTAL RIGHTS AT HEARINGS**

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You have the right to:

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

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## **DECISION OF HEARING OFFICER**

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The Administrative Law Judge's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds.

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

- Interfered with your child's right to a free appropriate public education (FAPE);
- Significantly interfered with your opportunity to participate in the decision-making process about the provision of a free appropriate public education (FAPE) to your child; or
- Caused a deprivation of an educational benefit.

These rules do not prevent a hearing officer from ordering an LEA to comply with the requirements in the Procedural Safeguards section of the Federal regulations.



If you filed the due process petition on an issue that was a violation of the procedures the LEA is supposed to follow, the judge has to decide if the procedural violation prevented your child from receiving a FAPE or making educational progress, or kept you from participating in making decisions about your child's FAPE.

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## **TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS**

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The Office of Administrative Hearings must ensure that no later than 45 days after the expiration of the 30-day resolution period or, as described under the sub-heading **Adjustments to the 30-day Resolution Period**, no later than 45 days after the expiration of the adjusted time period for resolution, a final decision is reached in the hearing and a copy of the decision is mailed to the LEA and you, or your attorney if you are represented by counsel.

A hearing officer may grant specific extensions of these timelines, if you or the LEA make a request for a specific extension of the timeline.

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



After the 30-day period for resolving the issue(s) has ended, the judge has 45 days to give you and the LEA his/her decision.



If the judge gave you and the LEA an extension on the 30-day timeline for resolution, then he/she must give you and the LEA the decision 45 days after the end of the extension.



The judge can grant more time if you or the LEA make a specific request for him/her to do so.

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## **SEPARATE REQUEST FOR A DUE PROCESS HEARING**

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Nothing in the Procedural Safeguards section of the IDEA regulations can be interpreted to prevent you from filing a separate due process petition on an issue separate from a due process petition already filed.



If you have filed a due process petition, you can file another one if it is about a different issue.

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## **FINDINGS AND DECISION TO STATE ADVISORY PANEL AND GENERAL PUBLIC**

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The EC Division must provide the findings and decisions, with any personally identifiable information deleted, to the State Advisory Panel and make those findings and decisions available to the public.



**Note:** In North Carolina, the State Advisory Panel is called Council on Educational Services for Exceptional Children.

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## **CONSTRUCTION CLAUSE**

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None of the provisions described above can be interpreted to prevent a hearing officer from ordering an LEA to comply with the requirements in the Procedural Safeguards section of the federal regulations under IDEA. None of the provisions under: **Filing a Due Process Petition, Model Forms, Resolution Process, Impartial Due Process Hearing, Hearing Rights, and Hearing Decisions** can affect your right to file an appeal of the due process hearing decision with the EC Division.

## 10. STATE-LEVEL APPEALS 34 CFR §300.514 and NC 1504-1.15 through NC 1504-1.16

### FINALITY OF HEARING DECISION

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, unless appealed. Either party involved in the hearing (you or the LEA) may appeal the decision to the EC Division within 30 days of receipt of the decision from the Office of Administrative Hearings.

→ **In Other Words...**  
If you disagree with the judge's decision in a due process hearing, you may appeal it to the EC Division within 30 days of receiving the decision.

### APPEAL OF DECISIONS AND IMPARTIAL REVIEW

If a party (you or the LEA) disagrees with the findings and decision in the due process hearing, the party may appeal to the EC Division.

→ The EC Division will appoint an impartial State review officer to review the record from the hearing. The review officer will examine the record, may ask you and the LEA for more evidence or may ask you and the LEA to present an oral or written argument.

If there is an appeal, the EC Division must appoint an impartial review officer to conduct an impartial review of the findings and decision appealed.

The review officer conducting the review must:

- a. Examine the entire hearing record;
- b. Ensure that the procedures at the hearing were consistent with the requirements of due process;
- c. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described previously under the sub-heading **Hearing Rights** apply;
- d. Give the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- e. Make an independent decision on completion of the review; and
- f. Give you and the LEA a copy of the written or, at your option, electronic findings of fact and decisions.

→ The review officer will make a decision and give the LEA and you a report.

### TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

The EC Division must ensure that no later than 30 days after the receipt of an appeal of the Administrative Law Judge's decision a final decision is reached in the review and a copy of the decision is mailed to you and the LEA, or your attorney if you are represented by council.

→ The review official must make a decision and send it in writing to you and the LEA within 30 days of receiving the appeal.

A review officer may grant specific extensions of time beyond the periods described above (45 days for a hearing decision and 30 days for a review decision) if you or the LEA make a request for a specific extension of the timeline. Each review involving oral arguments must be conducted at a time and place that is reasonably convenient to you and your child.

→ The review officer can grant more time if you or the LEA make a specific request for him/her to do so.

### FINALITY OF REVIEW DECISION

The decision made by the reviewing official is final unless you or the LEA brings a civil action, as described below under the heading **Civil Actions**.

→ If you disagree with the decision the review official makes, you can file a law suit in civil court. (See information below.)

### FINDINGS AND DECISION TO STATE ADVISORY PANEL AND GENERAL PUBLIC

The EC Division, after deleting any personally identifiable information, must provide the findings and decisions of the appeal to the State Advisory Panel and make those findings and decisions available to the public.

→ **Note:** In North Carolina, the State Advisory Panel is called the Council on Educational Services for Exceptional Children.

## 11. CIVIL ACTIONS 34 CFR §300.516 and NC 1504-1.17

Any party (you or the LEA) who does not agree with the findings and decision by a State review officer has the right to bring a civil action with respect to the matter that was the subject of the due process hearing (including a hearing relating to disciplinary procedures). The action may be brought in a state court of competent jurisdiction (a state court that has the authority to hear this type of case) or in a district court of the United States without regard to the amount in the dispute.

➔ ***In Other Words...***  
If you disagree with the review officer's decision, you may file a law suit in state or federal court.

### ***TIME LIMITATION***

The party (you or the LEA) bringing the action shall have 30 days from the date of the decision of the State review officer to file a civil action.

➔ You have 30 days after receiving the review officer's decision to file civil action.

### ***ADDITIONAL PROCEDURES***

In any civil action, the court:

- a. Receives the records of the administrative proceedings;
- b. Hears additional evidence at your request or at the LEA's request; and
- c. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

### ***JURISDICTION OF DISTRICT COURTS***

The district courts of the United States have authority to rule on actions brought under IDEA without regard to the amount in dispute.

### ***RULE OF CONSTRUCTION***

Nothing in 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 the filing of a civil action under these laws seeking relief that is also available under IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under IDEA.

➔ You may file an action in civil court under other Federal laws, but you must go through the due process procedure first.

This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process petition, resolution meeting, and impartial due process hearing procedures) before going directly into court.

## 12. ATTORNEYS' FEES 34 CFR §300.517 and NC 1504-1.18

In any action or proceeding brought under IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to NCDPI or LEA, **to be paid by your attorney**, if the attorney filed a petition or court case that the court finds is frivolous, unreasonable, or without foundation or continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

In any action or proceeding brought under IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to NCDPI or LEA, **to be paid by you or your attorney**, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay or unnecessarily increase the cost of the action or proceeding.

**Note:** North Carolina's Administrative Law Judges cannot award attorneys' fees.

### AWARD OF FEES

A court awards reasonable attorneys' fees as follows:

- a. Fees must be based on the rates established in the community in which the hearing was held for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded;
- b. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under IDEA for services performed after a written offer of settlement to you if:
  - The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
  - The offer is not accepted within 10 calendar days; and
  - The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement;
- c. Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer;
- d. Fees may not be awarded relating to any meeting of the IEP Team unless the meeting is held as a result of an administrative proceeding or court action; and
- e. Fees also may not be awarded for mediation as described under the heading **Availability of Mediation**.

A resolution meeting, as described under the sub-heading **Resolution Process**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under IDEA, if the court finds that:

- a. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
- b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
- c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- d. The attorney representing you did not provide to the LEA the appropriate information in the due process petition as described under the sub-heading **Due Process Petition**.

However, the court may not reduce fees if the court finds that the State or LEA unreasonably delayed the final resolution of the action or proceeding or there was a violation under the Procedural Safeguards provisions of IDEA.

#### → **In Other Words...**

If you win the case, the court may decide that the LEA must pay your attorney's fees, if you have an attorney.

→ The court may decide that your attorney must pay the LEA's costs and/or the NCDPI's costs, if any, if your attorney filed a petition that was trivial, unreasonable, or without any basis; or if your attorney continued the case after it became clear that it was trivial, unreasonable, or without any basis.

→ The court can decide that you or your attorney must pay the LEA's costs and/or the NCDPI's costs, if you filed due process for inappropriate reasons, such as to harass, cause unnecessary delay or increase the cost of the action or proceeding.

→ Attorneys' fees are based on the average rate in the community where the attorney practices.

→ If a written settlement offer is made more than 10 days before the hearing begins, and you do not accept the offer within 10 days, the court may not order the LEA to pay your attorney fees if it learns that the decision or ruling was less favorable than the settlement offer.

→ However, the court may order the fees to be paid if you win the case and it is decided you were right to reject the settlement offer.

→ Fees cannot be paid for IEP Team meetings, mediation, or a resolution meeting.

→ The court can reduce the amount of the attorneys' fees if it finds that you or your attorney unreasonably delayed the final resolution, the fees unreasonably exceed the usual hourly rate in the attorney's community, the time and legal services were more than normally required for that type of action, or you or your attorney did not provide the LEA with the appropriate information in the due process petition.

→ The court cannot lower the attorneys' fees if the State or LEA unreasonably delayed the final resolution or there was a violation under the Procedural Safeguards.



### AUTHORITY OF SCHOOL PERSONNEL AND CASE-BY-CASE DETERMINATION

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

**Note:** A removal is usually called an out-of-school suspension (OSS), but it also includes any time the school calls and asks you to pick up your child before the end of the school day because of disciplinary reasons. It also includes in-school-suspension (ISS) if services are not provided to your child, and suspension from the bus, **IF** transportation is a related services on your child's IEP.

#### → **In Other Words...**

School personnel may take into consideration the type of disability your child has, the intent of the action(s), and other unique things about your child and/or the circumstances, but they are not required to do this.

### GENERAL

To the extent that they also take such action for children without disabilities, school personnel may remove a child with a disability, who violates a code of student conduct, from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for no more than **10 school days in a row**.

School personnel may also impose additional removals of your child of no more than **10 school days in a row** in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement as described under the sub-heading **Change in Placement**.

Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, the LEA must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**. These services must begin on the 11<sup>th</sup> day of removal from school.

→ If nondisabled children are removed for 10 or less school days for breaking the rules, then your child with a disability can also be removed.

→ Your child can be removed for 10 or less school days during the school year for separate disciplinary incidents, unless the removals cause a change in placement due to a pattern as described below.

→ The LEA must begin providing educational services to your child beginning on the 11<sup>th</sup> day he/she has been removed in a school year.

### CHANGE IN PLACEMENT FOR DISCIPLINARY REASONS

A removal of your child with a disability from his/her current educational placement is a change of placement **if**:

- a. The removal is for more than 10 school days in a row; **or**
- b. Your child has been subjected to a series of removals that create a pattern because:
  - The series of removals total more than 10 school days in a school year;
  - Your child's behavior is substantially similar to your child's behavior in previous incidents that resulted in the series of removals; and
  - There are additional factors such as the length of each removal, the total amount of time your child has been removed, and the closeness of the removals to one another.

→ Removing your child for more than 10 school days in a row **is** a change in placement.

Removing your child is a change in placement **if** there is a pattern to the removals. A pattern exists when:

- 
1. Your child has been removed for more than 10 school days in one school year;
  2. Your child's behavior for the current discipline incident is very similar to the behavior for any removals he/she already has during the school year; **and**
  3. There are other factors, such as the number of days of each removal, the total number of days removed and the closeness of each of the removals to each other.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the LEA and, if challenged, is subject to review through due process and judicial proceedings.

→ The LEA decides if there is a pattern. If you disagree, you can file due process.

### SERVICES

The services that must be provided to your child with a disability who has been removed from his/her current placement may be provided in an interim alternative educational setting (IAES).

An LEA is only required to provide services to a child with a disability who has been removed from his/her current placement for 10 school days or less in a school year, if it provides services to children without disabilities who have been similarly removed.

→ If the LEA provides services to nondisabled children when they are removed for 10 or less school days, it must provide services for your child with a disability.

Your child with a disability who is removed from his/her current placement for more than **10 school days** must:

- a. Continue to receive educational services, so as to enable him/her to continue to participate in the general education curriculum, although in another setting;
- b. Continue to progress toward meeting the goals set out in his/her IEP; **and**
- c. Receive, as appropriate, a functional behavioral assessment (FBA), and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

After your child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less and if the removal is not a change of placement, **then** school personnel, in consultation with at least one of your child's teachers, determine the extent to which services are needed to enable your child 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.

If the removal is a change of placement, your child's IEP Team determines the appropriate 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 in his/her IEP.

## **NOTIFICATION** → Form DEC5a

On the date school personnel make the decision that a disciplinary removal of your child is a change of placement, the LEA must notify you of that decision, and provide you with the Procedural Safeguards notice.

## **MANIFESTATION DETERMINATION**

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA; the parent; and relevant members of the IEP Team (as determined by the parent and the LEA) must:

- a. Review all relevant information in the student's file, including your child's IEP, any teacher observations, and any relevant information provided by you to determine if the conduct in question was caused by or had a direct and substantial relationship to your child's disability; **or**
- b. If the conduct in question was the direct result of the LEA's failure to implement your child's IEP.

If the LEA, you, and relevant members of your child's IEP Team determine that either of the above conditions was met, the conduct must be determined to be a manifestation of your child's disability.

If the LEA, you, and relevant members of your child's IEP Team determine that the conduct in question was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate action to remedy those deficiencies.

## **DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION OF YOUR CHILD'S DISABILITY**

If the LEA, you, and relevant members of the IEP Team determine that the conduct was a manifestation of your child's disability, the IEP Team must either:

- a. Conduct a functional behavioral assessment (FBA), unless the LEA had conducted a functional behavioral assessment (FBA) before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (BIP) for your child; **or**
- b. If a behavioral intervention plan (BIP) has been developed, review the behavioral intervention plan (BIP), and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading **Special Circumstances**, the LEA must return your child to the placement from which your child was removed, unless you and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan through the IEP process.

## → **In Other Words...**

When your child has been removed for more than 10 school days, the educational services must be such that your child can continue work in all classes, continue to make progress on the IEP annual goals, and if appropriate, have his/her behavior assessed and receive services and modifications to keep the behavior from happening again.

→ If the current removal **is not** a change in placement, then school personnel and at least one of your child's teachers decide what service is needed for your child to continue his/her work in all classes and continue to make progress on the IEP annual goals.

→ If the current removal **is** a change in placement, then the IEP Team decides what service is needed for your child, and where/when the service will be provided to your child so he/she can continue work in all classes and make progress on the IEP annual goals.

→ The day school personnel decide a disciplinary removal is a change in placement you must be given notice and the Procedural Safeguards (this document). School personnel may use form DEC 5a to serve as the notice and the invitation to the manifestation determination meeting.

→ If school personnel decide to change your child's placement because of behavior, you and appropriate members of the IEP Team must meet to decide if the behavior was caused by your child's disability **or** a direct result of the school not following the IEP. This is called a manifestation determination meeting.

→ If it is decided that the behavior was the direct result of the school not following the IEP, the LEA must immediately take steps to correct this.

→ If the behavior **is** a manifestation of your child's disability, his/her behavior must be assessed unless it has already been assessed and the IEP Team must develop a behavioral intervention plan (BIP). If your child already has a BIP, then the IEP Team must review the BIP and change it if necessary to address the specific behavior.

→ If the behavior **is** a manifestation of your child's disability, he/she must return to the previous educational placement (except when there are **Special Circumstances**) unless you and the LEA agree to change the placement using the IEP process.

## ADDITIONAL AUTHORITY

If the behavior that violated the student code of conduct was not a manifestation of your child's disability and the disciplinary change of placement would exceed **10 school days in a row**, school personnel may apply the disciplinary procedures to your child with a disability in the same manner and for the same length of time as it would to children without disabilities, except that the school must provide services, as described previously, to your child.

Your child's IEP Team determines the interim alternative educational setting (IAES) for such services.



### **In Other Words...**

If the behavior **is not** a manifestation of your child's disability and nondisabled children are removed for the same type of behavior, then your child can be removed, but the LEA must provide services. The IEP Team decides where the services will be provided. This is called an interim alternative educational setting (IAES).

## DEFINITIONS

**Controlled substance** — 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)). Controlled substances under schedule I have no acceptable medical use in the United States. They have a high potential for abuse and there is no accepted safety for use of the drug or other substance under medical supervision. Controlled substances under schedules II, III, IV and V have a currently accepted medical use for treatment in the United States. They range from having a high potential for abuse to a low potential for abuse. Physical or psychological dependence on these drugs ranges from severe dependence to limited dependence.

**Illegal drug** — A controlled substance; but does not include a controlled 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 that Act or under any other provision of Federal law.

**Serious bodily injury** — Injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of a function of a bodily member, organ or faculty.

**Weapon** — A dangerous weapon is a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 and ½ inches.

## SPECIAL CIRCUMSTANCES

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove him/her to an interim alternative educational setting (determined by your child's IEP Team) for up to 45 school days, if your child:

- a. Carries a weapon to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the NCDPI or an LEA;
- b. Knowingly has or uses illegal drugs or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the NCDPI or an LEA; or
- c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NCDPI or an LEA.



If your child carries or has a weapon; has, uses, solicits the sale of, or sells illegal drugs; or causes serious bodily injury to another person, he/she can be removed to an IAES for up to 45 school days. (See definition of *day* in Appendix I.) This may happen at school, on school property, or at a school function (such as, after school activity, school bus, field trip, etc.)

**Note:** Your child may be removed for up to 45 days even if it is decided that the behavior was a manifestation of your child's disability.

## DETERMINATION OF SETTING

The IEP Team must determine the interim alternative educational setting (IAES) for removals that are changes of placement and removals under the sub-headings **Additional Authority** and **Special Circumstances** above.



**Note:** In North Carolina, if the IEP Team determines that homebound instruction is the IAES for your child, then the appropriateness of the homebound instruction must be evaluated every month by designee(s) of the IEP Team.

## APPEAL IN GENERAL

The parent of a child with a disability may file a due process petition to request an expedited due process hearing if he or she disagrees with:

- Any decision about placement made under these discipline provisions; or
- The manifestation determination described above.

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

**Note:** Expedited **means the timelines are shorter.**

## AUTHORITY OF HEARING OFFICER

A hearing officer who meets the requirements described under the sub-heading **Impartial Hearing Officer** must conduct the due process hearing and make a decision.

The hearing officer may:

- Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the sub-heading **Authority of School Personnel, or** that your child's behavior was a manifestation of your child's disability; **or**
- Order a change of placement of your child with a disability to an appropriate interim alternative educational setting (IAES) for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated after the 45 school days, if the LEA believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

Whenever a parent or an LEA files a due process petition to request an expedited hearing, all the requirements under the previous headings: **Filing a Due Process Petition, Hearings on Due Process Petitions, and State-Level Appeals** must be followed, except for the timelines and written response.

The timelines are expedited as follows:

- The Office of Administrative Hearings must arrange for an expedited due process hearing, which must occur within **20 school days** of the date the hearing is requested and must result in a determination within **10 school days** after the hearing; and
- Unless you and the LEA agree in writing to waive the resolution meeting, or agree to use mediation, a resolution meeting must occur within **seven (7) calendar days** of the date the LEA's Superintendent **or** EC Director received notice of the expedited due process petition. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15 calendar days** of the date the LEA's Superintendent **or** EC Director received notice of the due process petition.

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

## PLACEMENT DURING APPEALS

When, as described above, the parent or LEA has filed a due process petition related to disciplinary matters, your child must (unless you and the NCDPI or LEA agree otherwise) remain in the interim alternative educational setting (IAES) pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the sub-heading **Authority of School Personnel**, whichever occurs first.

## PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES IN GENERAL

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the LEA had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred that your child was a child with a disability, then you may assert any of the protections described in this notice on behalf of your child.

### → In Other Words...

You can request an expedited due process hearing to appeal any decision made about the placement of your child because of behavior or the results of the manifestation determination meeting.

→ The LEA can ask for an expedited due process hearing if it believes keeping your child in his/her current placement is very likely to cause injury to your child or anyone else.

→ If the judge decides that school personnel went beyond their authority to remove your child or that the behavior was a manifestation of his/her disability, then the judge may return your child to the placement your child was in before the removal.

→ The judge can order your child to an appropriate IAES for up to 45 school days if he/she believes keeping your child in the current placement is very likely to cause injury to your child or anyone else.

→ After 45 school days, the LEA can go back to the judge to ask that your child stay in the IAES for up to 45 more school days.

→ The timelines for a due process hearing that is the result of a disciplinary decision are shorter. Everything else about the due process procedures stays the same, except that the receiving party does not have to send a written response to the other party.

→ The hearing must be scheduled within 20 school days from the date the petition is received. The judge must send a written decision within 10 school days after the hearing.

→ The LEA must schedule the resolution meeting within seven (7) days of receiving the due process petition.

→ Your child must "stay put" in the IAES until the judge makes a decision, or until the removal days end.

→ If your child has not been identified as a child with a disability who is eligible for special education and related services, but the LEA knew he/she might have a disability then you can ask for the protections described under the heading **Disciplinary Procedures.**

## **BASIS OF KNOWLEDGE FOR DISCIPLINARY MATTERS**

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

- a. You expressed concern in writing that your child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of your child;
- b. You requested an evaluation related to eligibility for special education and related services under IDEA;
- c. Your child's teacher, or other LEA personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the EC Director or to other supervisory personnel of the LEA; or
- d. Your child's behavior and performance, prior to the disciplinary action, clearly and convincingly establish a need for special education.



### **In Other Words...**

The LEA is considered to have knowledge that your child might be a child with a disability:

- If you had written concerns that your child may need special education and related services and gave your written concerns to your child's teacher or administrators;
- You requested an evaluation for special education and related services;
- School personnel, including your child's teacher, expressed concerns about a pattern of behavior to the EC Director or other LEA supervisors; **or**
- Your child's behavior and academic performance may be significant enough to establish a need for services.

## **EXCEPTION**

An LEA would not be deemed to have such knowledge if:

- a. You have not allowed an evaluation of your child or refused special education services;
- b. Your child has been evaluated and determined not to be a child with a disability under IDEA; **or**
- c. You have revoked consent for the provision of special education services.



The LEA did not have knowledge that your child may be a child with a disability if it asked to evaluate your child and you did not give permission; your child has been evaluated, but was not eligible for special education; **or** you have withdrawn previously given consent for special education services.

## **CONDITIONS THAT APPLY IF THERE IS NO BASIS OF KNOWLEDGE**

If prior to taking disciplinary measures against your child, an LEA does not have knowledge that he/she is a child with a disability, as described above under the sub-headings **Basis of Knowledge for Disciplinary Matters** and **Exception**, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

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

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

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA, and information provided by you, the LEA must provide special education and related services in accordance with IDEA, including the disciplinary requirements described above.



If the LEA did not have knowledge that your child may be a child with a disability then the LEA can discipline your child just like it does a nondisabled child. The LEA is not required to provide services.



If a request is made for an evaluation during this time, the LEA must conduct it quickly, but your child cannot return to his/her educational placement.



If your child is eligible for special education and related services, then the LEA must provide those services.

## **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES**

IDEA does not:

- a. Prohibit an agency from reporting a crime committed by your child with a disability to appropriate authorities; **or**
- b. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by your child with a disability.



If your child with a disability commits a crime, he/she can be referred to the police or courts.

## **TRANSMITTAL OF RECORDS**

If an LEA reports a crime committed by a child with a disability, the LEA:

- a. Must ensure that copies of your child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
- b. May transmit copies of your child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).



In some instances, the police or courts may be able to get information from your child's education record.

# Acronyms, Definitions, and Information

Several words used throughout the Procedural Safeguards have been defined according to the Federal Regulations and the *Policies*. The Federal Regulations contain a more extensive list of definitions, beginning with 34 CFR § 300.4. They can be found at <http://idea.ed.gov/explore/home>. Acronyms that are used often in special education are listed for you. Not all of these acronyms and definitions are used in the Procedural Safeguards.

1. **§** — § means Section.
2. **Administrative Law Judges (ALJs)** — In North Carolina, ALJs are the people who make decisions in due process cases that go to hearings.
3. **Article 9** — The North Carolina State law governing special education is Article 9 of Chapter 115C of the North Carolina General Statutes.
4. **Areas of Disability** — Following are the areas of disability under IDEA and the acronyms used by the State and LEAs:
  - AU** .....Autism Spectrum Disorder
  - DB** .....Deafness-Blindness
  - DD** .....Developmental Delay
  - DF** .....Deafness
  - ED** .....Serious Emotional Disability (Sometimes the acronym SED is used.)
  - HI** .....Hearing Impairment (Also called hard of hearing.)
  - ID** .....Intellectual Disability
  - MU** .....Multiple Disabilities
  - OHI** .....Other Health Impairment
  - OI** .....Orthopedic Impairment
  - SI** .....Speech and/or Language Impairment (Sometimes the acronym SLI is used.)
  - SLD** .....Specific Learning Disabilities (Sometimes the acronym LD is used. Dyslexia, dyscalculia, and dysgraphia are types of specific learning disabilities.)
  - TBI** .....Traumatic Brain Injury
  - VI** .....Visual Impairment, including Blindness
5. **Children's Developmental Services Agency (CDSA)** — The lead agency in North Carolina for infants and toddlers, ages birth through two (0–2).
6. **Charter Schools** — In North Carolina, charter schools are public schools and must follow the same federal regulations and *Policies* as other public schools for children with disabilities.
7. **Child with a Disability (CWD) or Student with a Disability (SWD)** — A child evaluated in accordance with *Policies* 1503-2 through 1503-3 as having one of the disabilities listed above and who, by reason of the disability, needs special education and related services.
8. **Code of Federal Regulations (CFR)** — This is where you will find the federal regulations for the IDEA.
9. **Complainant** — An individual or organization who has submitted a State complaint to the North Carolina Exceptional Children Division.
10. **Day** — Calendar day unless otherwise specified.
  - a. **Business day** — Monday through Friday, except Federal and State holidays.
  - b. **School day** — Any day school is in session for students, including a partial day. It has the same meaning for students with disabilities as it does for nondisabled students.
11. **DEC** — On the special education forms DEC means Division of Exceptional Children. LEAs are not required to use the State forms and may use their own.
  - DEC/Prior Notice Invitation to Conference - Parent
  - DEC/Prior Notice Invitation to Conference - Student Over 18
  - DEC/Prior Notice Invitation to Conference - Student Under 18  
(May also be used for students over 18 who are incompetent or unable to make educational decisions.)
  - Request to Excuse IEP Team Members
  - DEC 1 Special Education Referral
  - DEC 1 (2a and 2b of 4) Preschool Referral Concerns
  - DEC 2 Consent for Evaluation-Reevaluation
  - DEC 3 Eligibility Determination, includes the following worksheets: AU worksheet, DB worksheet, DD worksheet, Deaf-HI worksheet, SED worksheet, ID worksheet, MU worksheet, OHI worksheet, OI worksheet, SI worksheet, SLD Rtl worksheet, SLD discrepancy worksheet, TBI worksheet, and VI worksheet
  - DEC 4 IEP
    - ♦ DEC 4 worksheet 1 for Deaf and HI
    - ♦ DEC 4 worksheet 2 for extended school year (ESY)
    - ♦ DEC 4a Secondary Transition
    - ♦ DEC 4b Related Services Support Plan
  - DEC 5 Prior Written Notice
    - ♦ DEC 5a Prior Written Notice - Discipline
  - DEC 6 Consent for Services
  - DEC 7 Reevaluation
  - Manifestation Determination worksheet
  - Private School Services Plan
12. **Due Process Hearing** — A due process hearing is a formal hearing, which is guaranteed under federal and state special education law, before an impartial Administrative Law Judge.
13. **Exceptional Children Division (EC Division)** — The EC Division is responsible for ensuring the implementation of federal and state laws about special education.
14. **Evaluation** — The procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child may need.
15. **Family Educational Rights and Privacy Act (FERPA)** — The law that protects the confidentiality of educational records.
16. **Facilitated IEP (FIEP) Team Meeting** — IEP Facilitation is a process using an impartial facilitator to assist the IEP Team members in communicating more effectively and keeping the focus on student outcomes. An IEP facilitator is provided at no cost to the parent(s) or the LEA.

## Acronyms, Definitions, and Information

17. **Free appropriate public education (FAPE)** — Education and related services are based on the unique needs of the child with a disability. Special education and related services must be provided without cost to the parents and according to standards of the Public Schools of North Carolina, Department of Public Instruction, for children in preschool, elementary, secondary, or public charter schools in the State and according to an individualized education program (IEP).
18. **Individuals with Disabilities Education Improvement Act (IDEA)** — IDEA is the federal special education law.
19. **Individualized Family Services Plan (IFSP)** — An IFSP is the plan for infants-toddlers with disabilities and their families.
20. **Individualized Education Program (IEP)** — An IEP is a written statement for a child with a disability that is developed, reviewed, and revised in accordance with the federal regulations and *Policies* through which the child receives a FAPE.
21. **Infant-Toddler Program (ITP)** — ITP is the program that serves children with disabilities from birth through two years (0–2).
22. **Interim Alternative Educational Setting (IAES)** — A child with a disability may be placed in another educational setting for disciplinary reasons.
23. **Least Restrictive Environment (LRE)**— The IEP Team must consider educating a child with a disability in an environment that is appropriate for that child. Some children are educated in a more restrictive environment than others due to the significance of their needs.
24. **Local Educational Agency (LEA)** — Any school program conducted by a public school or agency and approved by the North Carolina Department of Public Instruction. In North Carolina, this includes county, city, and charter schools and State-operated programs.
25. **Mediation** — This is a voluntary process in which an impartial individual (mediator) assists the parties in having a full discussion and reaching an agreement. A mediator may be requested through the EC Division at no cost to the parent(s) or the LEA.
26. **NC Department of Public Instruction (NCDPI)** — NCDPI is North Carolina’s State Educational Agency (SEA).
27. **Parent** — IDEA uses the term *parent* to mean:
  - a. A biological or adoptive parent of a child;
  - b. A foster parent, unless State law, regulations or contracts with a State or local entity prohibits a foster parent from acting as a parent. A foster parent may serve as *parent* if the biological parent’s rights to make educational decisions have been terminated by the Court.
    - A therapeutic foster parent cannot serve as parent.
  - c. A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child, but not the State if the child is a ward of the State;
  - d. A person acting in the place of a biological or adoptive parent (including a grandparent, stepparent or other relative) with whom the child lives or a person who is legally responsible for the child’s welfare; or
  - e. A surrogate parent who has been appointed in accordance with the federal regulations at 34 CFR §300.515.If a Court Order identifies a specific person or persons in the list above to act as the *parent* of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the *parent* for purposes of this document.
  - a. Except as provided above, when more than one party is qualified to act as a parent, the biological or adoptive parent must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child; and
  - b. The term parent does not include a State agency or local agency, such as the Department of Social Services, or one of its employees if the child is in the custody of such agency.
28. **Private Schools** — Non-profit private schools, including religious schools or facilities that meet the definition of elementary school or secondary school in North Carolina. Registered home schools are recognized as private schools in North Carolina.
29. **Part B** - The part of the Individuals with Disabilities Education Improvement Act that is the special education law for children ages three through twenty-one (3–21).
30. **Part C** — The part of the Individuals with Disabilities Education Improvement Act that is the special education law for children ages birth through two (0–2).
31. **Placement** — In special education placement is used in two different ways:
  - a. That a child has been determined to be eligible for special education and related services; and
  - b. The level on the continuum of services, which means the amount of time the student will be removed from his/her nondisabled peers.Placement does not mean the location of services. The U.S. Department of Education, Office of Special Education Programs (OSEP) states the following: *Historically, we have referred to “placement” as points along the continuum of placement options available for a child with a disability, and “location” as the physical surrounding, such as the classroom. It is the Department’s longstanding position that maintaining a child’s placement in an educational program that is substantially and materially similar to the former placement is not a change in placement.*
32. **Public Agency** — A State agency that is responsible for providing education to children with disabilities. It includes the NCDPI; LEAs; Department of Health and Human Services; Department of Correction; and Department of Juvenile Justice; to the extent the public agency may be responsible for the provision of special education and related services and/or their actions impact upon a child receiving a free appropriate public education.
33. **Prior Written Notice (PWN)** — The PWN is described in Section 2 of this document. LEAs are not required to use the state form (DEC 5) and may use their own. An LEA may write a letter to you as the prior written notice.
34. **Reevaluation** — This is a review process and does not necessarily mean testing.
35. **Related Services** — These are supportive services that are required to assist a child with a disability to benefit from special education.
36. **Resolution Session** — When a due process petition is filed, the LEA must schedule a resolution session to try and resolve the dispute before a due process hearing.
37. **State Advisory Panel (SAP)** — In North Carolina, the State Advisory Panel is called the Council on Educational Services for Exceptional Children. The council advises the State Board of Education on issues about the unmet needs of children with disabilities.
38. **Special Education (SPED)** — SPED is specially designed instruction, provided at no cost to the parent, to meet the unique needs of a child with a disability.
39. **Special Education Laws** — These laws include the federal statute, the Individuals with Disabilities Education Improvement Act (IDEA); accompanying federal regulations; Article 9 of NC General Statutes 115-C; and [North Carolina Policies Governing Services for Children with Disabilities](#).
40. **State Complaint** — A signed, written complaint stating that a public agency has violated a procedural requirement of the Individuals with Disabilities Education Improvement Act or the North Carolina laws about special education.
41. **State Educational Agency (SEA)** — The North Carolina Department of Public Instruction (NCDPI).

# Resources for Parents

The organizations listed below are available to assist North Carolina's parents of children with disabilities.

## **Disabilities Rights of North Carolina**

1.800.821.6922 or 1.888.268.5535 (TDD) or 919.856.2195

<http://www.disabilityrightsncc.org>

Disabilities Rights of North Carolina (DRNC) is a private, non-profit organization in North Carolina that works to improve the lives of people with disabilities by protecting their rights. It is part of a nationwide protection and advocacy system. DRNC has replaced the Governor's Advocacy Council (GAC).

## **Exceptional Children's Assistance Center (ECAC)**

1.800.962.6817 or 704.892.1321

<http://www.ecac-parentcenter.org>

This is the North Carolina Parent Training and Information Center (PTI) that provides free information and assistance with educational issues to parents of children with disabilities. The Center offers workshops, a lending library, newsletter, and a Parent Information Line answered by parents.

## **Family Support Network of North Carolina**

1.800.852.0042

<http://www.fsnncc.org/>

The Family Support Network has a free statewide information and referral service, parent-to-parent programs, and workshops for parents of children with disabilities. Call the Network for specific disability information and for listings for all the different disability support groups.