



**Sunshine Law Request**  
from the  
Missouri Attorney General's Office



ATTORNEY GENERAL OF MISSOURI

ERIC SCHMITT

April 22, 2022

Custodian of Records  
Francis Howell School District  
4545 Central School Road  
St. Charles, MO 63304  
*Sent via email to [jane.hepler@fhsdschools.org](mailto:jane.hepler@fhsdschools.org)*

**RE: Sunshine Law Request**

Dear Ms. Hepler:

I write to request copies of the following public records pursuant to Chapter 610 of the Missouri Revised Statutes:

1. Provide all documents, including electronic copies, related to the active school policy on 504 or IEP parent dispute resolution.
2. Provide all teacher training and professional development materials, including electronic copies and links or access to any online resources, beginning on January 01, 2021, through the date of this request, which relate to the active policy on 504 or IEP parent dispute resolution.
3. All email communications beginning on January 01, 2021, through the date of this request (including emails, email attachments and complete email chains) sent or received that relate to 504 or IEP disputes from parents.

I request that all responsive records be produced electronically, or be made available immediately for inspection.

This request seeks documents that are in the public interest because they are likely to contribute to a better understanding of the operations or activities of Francis Howell School District. In addition, this is not a request for commercial purposes. For these reasons, pursuant to § 610.026.1(1), RSMo, the Missouri Attorney General's Office requests a waiver of any fees associated with processing this request for records. Thank you for your time and attention to this matter.

Sincerely,

James S. Atkins  
General Counsel

Supreme Court Building  
207 W. High Street  
P.O. Box 899  
Jefferson City, MO-65102  
Phone: (573) 751-3321  
Fax: (573) 751-0774  
[www.ago.mo.gov](http://www.ago.mo.gov)



ATTORNEY GENERAL OF MISSOURI

ERIC SCHMITT

April 22, 2022

Custodian of Records  
Francis Howell School District  
4545 Central School Road  
St. Charles, MO 63304  
*Sent via email to [jane.hepler@fhsdschools.org](mailto:jane.hepler@fhsdschools.org)*

**RE: Sunshine Law Request**

Dear Ms. Hepler:

I write to request copies of the following public records pursuant to Chapter 610 of the Missouri Revised Statutes:

1. Provide all documents, including electronic copies, related to the active school policy on 504 or IEP parent dispute resolution.
2. Provide all teacher training and professional development materials, including electronic copies and links or access to any online resources, beginning on January 01, 2021, through the date of this request, which relate to the active policy on 504 or IEP parent dispute resolution.
3. All email communications beginning on January 01, 2021, through the date of this request (including emails, email attachments and complete email chains) sent or received that relate to 504 or IEP disputes from parents.

I request that all responsive records be produced electronically, or be made available immediately for inspection.

This request seeks documents that are in the public interest because they are likely to contribute to a better understanding of the operations or activities of Francis Howell School District. In addition, this is not a request for commercial purposes. For these reasons, pursuant to § 610.026.1(1), RSMo, the Missouri Attorney General's Office requests a waiver of any fees associated with processing this request for records. Thank you for your time and attention to this matter.

Sincerely,

James S. Atkins  
General Counsel

Supreme Court Building  
207 W. High Street  
P.O. Box 899  
Jefferson City, MO-65102  
Phone: (573) 751-3321  
Fax: (573) 751-0774  
[www.ago.mo.gov](http://www.ago.mo.gov)



# **Responsive Documents**

from the School District

**FRANCIS HOWELL**  
**SECTION 504 LEGAL TRAINING**  
FEBRUARY 8, 2022

**Betsey A. Helfrich, Esq.**  
The Law Office of Betsey Helfrich  
bhelfrichlaw@gmail.com

1

---

---

---

---

---

---

---

---

**SECTION 504**

2

---

---

---

---

---

---

---

---

**SECTION 504**

Section 504 of the Rehabilitation Act of 1973  
(Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq.

- Regulations at 34 CFR Part 104
- First U.S. federal civil rights protection for persons with disabilities
- Non-Discrimination law

3

---

---

---

---

---

---

---

---

## SECTION 504

Section 504 of the Rehabilitation Act provides, in pertinent part, that “no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

29 U.S.C. § 794(a).

4

---

---

---

---

---

---

---

---

## IDEA V. 504

- Individuals with Disabilities Education Act 1975
  - Missouri State Plan for Special Education
  - Standards and Indicators
- Section 504 of the Rehabilitation Act of 1973

5

---

---

---

---

---

---

---

---

## LEGAL RISKS

- Internal appeal per school district policy
- Office for Civil Rights complaint
- State or federal lawsuit
  - U.S. Supreme Court decision - *Fry v. Napoleon Cmty. Schs.*, 69 IDELR 116 (2017)

6

---

---

---

---

---

---

---

---

## OCR RESOURCE GUIDE

- OCR 2016, *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools*
- Tip:
  - On OCR's website ([www.ed.gov/ocr](http://www.ed.gov/ocr)); go to "Topics A to Z" and scroll down to Disability for all available resources



7

---

---

---

---

---

---

---

---

## 504 PROCESS

8

---

---

---

---

---

---

---

---

## PROCESS

Procedures  
Manual &  
Forms

Procedural  
Safeguards

9

---

---

---

---

---

---

---

---

## TRAINING

- \* Identify District's Coordinator of 504
  
- \*Make sure each building is aware of 504 contact
  
- \*Talk to teachers about 504 referrals and implementation

10

---

---

---

---

---

---

---

---

## SCENARIO

A parent emails you the following:

*My student needs help. I am requesting extended time on all tests. My child has ADHD and has for years. I want a 504 plan immediately.*

11

---

---

---

---

---

---

---

---

## PROCESS

- When to refer: if the student, because of a disability, needs or is believed to need special education or modification to regular education. *OCR Guidance 2009.*
  
- A practice that limits 504 evaluations to situations where parents expressly request them is unlawful.  
*Oxnard Elementary School Dist. OCR 2011.*
  
- Contact parent & discuss
  
- Provide 504 Referral Form

12

---

---

---

---

---

---

---

---



## FHSD 504 PROCEDURES MANUAL

■ Within ten (10) days of a parent/guardian verbal or written referral, the District will provide a copy of "Parent Section 504 Referral Form" (Form A) to the parent(s)/guardian(s) for completion. In addition to Form A, the District will also send to the parent(s)/guardian(s) a copy of "Parent Referral Response Letter" (Form B) and the Section 504 Procedural Safeguards.

■ **Staff Referral:**

If a District employee or contracted personnel is the referring party, the District will, within five (5) days, provide a copy of the "Staff Section 504 Referral Form" (Form C) to the staff member for completion within five (5) days.

13

---

---

---

---

---

---

---

---

## SCENARIO

A parent contacts Betty, the building 504 coordinator, and tells her that little Billy recently received a medical diagnosis of ADHD. Mom asks if Billy could please sit closer to the teacher and also have extra time while taking math tests as he finds it difficult to concentrate and perform on timed tests. She says she will bring you prescription from Billy's doctor that states: "504"

What should Betty do?

14

---

---

---

---

---

---

---

---

## SCENARIO

Maya is in fourth grade. She makes A's and B's. She's missed several days of school because of "stomach issues" according to mom. She's left school early several times because of vomiting after lunch. Mom took Maya to the doctor and the next week, hands Maya's teacher a medical evaluation report that says Maya has gastroesophageal reflux disease (GERD). Maya's mom asked the teacher if the school would evaluate Maya to see if she's eligible for Section 504 services. Maya's teacher told mom not to worry, an evaluation "isn't necessary right now because she's doing well in her classes" even with the absences. The teacher told Maya's mom she would let her know if her class performance or grades start to decline.

15

---

---

---

---

---

---

---

---

## PROCESS

### FHSD 504 MANUAL:

- Within 30 days of the parent's/guardian's completion of Form A, the District will administratively decide whether, based on completed Form A and other available existing information, there is reason to suspect that the student may have a 504 disability.
- If the District administratively determines that there is no reason to suspect that the student may have a 504 disability and that an initial evaluation is not warranted, the District will provide the parent(s)/guardian(s) with a Notice of Action (Form D) refusing the requested evaluation as well as an additional copy of the 504 Procedural Safeguards.
- If the District administratively determines that there is reason to suspect that the student may have a 504 disability and that an initial evaluation is warranted, please proceed to paragraph 11 below.
- If the District administratively determines that there is reason to suspect that the student may have an IDEA disability, the school counselor will provide the relevant information to the building's Special Education Administrator or other relevant personnel.

16

---

---

---

---

---

---

---

---

## PROCESS

### FHSD 504 MANUAL:

- If a parent/guardian or staff referral results in an administrative determination that there is reason to suspect a 504 disability, the District will convene a multidisciplinary team within ten (10) days of that administrative determination to conduct a Review of Existing Data on the student. The multidisciplinary team for a particular student should be comprised of persons knowledgeable about the student and the existing data such as the student's teacher(s), the school nurse, the building counselor and/or others. The parent(s)/guardian(s) are not mandatory participants, but should be invited to the meeting. Form E (Notification of 504 Meeting) should be used to invite the parent(s)/guardian(s) and other participants.
- At this meeting, the team should review all existing relevant data and information, including data and information provided by the parent(s)/guardian(s), and determine whether the existing data is sufficient to support the existence of a 504 disability and/or whether an evaluation is needed. The team should complete Form F to document the review of existing data process and the team conclusions.
- If the team determines that existing data alone is sufficient to support the existence of a 504 disability and to make relevant programming decisions, the team should complete Form G "504 Eligibility Determination Form." A copy of Form F and G should be provided to the parent(s)/guardian(s) along with a second copy of the District's 504 Procedural Safeguards within 20 days of the completion of the meeting. The District also should provide the parent(s) or guardian(s) with a Notice of Action (Form D) describing the team's decisions.
- If, after the review of existing data, the team determines that existing data demonstrates that the student (1) does not have a 504 disability or (2) is suspected of having an IDEA disability, the team should complete Form G "504 Eligibility Determination Form." The District also should provide the parent(s) or guardian(s) with a Notice of Action (Form D) describing the team's decisions. Completed copies of those Forms D, F and G should be provided to the parent(s)/guardian(s) along with a copy of the 504 Procedural Safeguards, within a reasonable time after the meeting, but in no event more than 20 days after the meeting.

17

---

---

---

---

---

---

---

---

## PROCESS

### FHSD 504 MANUAL:

- If the team determines that additional information including, but not limited to, formal assessment or observation is necessary to determine whether the student has a 504 disability or appropriate programming, the team should indicate on Form F ("Review of Existing Data/Evaluation Plan Form") what additional information or assessments are needed for the student's initial evaluation.
- After the team decides that an initial evaluation is necessary, the District should provide the parent(s)/guardian(s) with a copy of completed Form F ("Review of Existing Data/Evaluation Plan"), a Notice of Action proposing an initial evaluation and Form H seeking the parent's/guardian's informed written consent to the initial evaluation.
- The District will complete the initial evaluation and convene the team to determine whether the student has a 504 disability eligibility within 60 days of receiving the parent's/guardian's written consent to evaluate. At that meeting, the team will review and consider all existing data information, including data and information received from the parent(s)/guardian(s) and from the initial evaluation, and will, on the basis of that data and information, determine whether the student has a mental or physical impairment that substantially limits a major life activity. The team will complete Form G (Eligibility Determination Documentation) to document the results of the team's decision. The District will provide the parent(s)/guardian(s) with completed copies of those forms within a reasonable time after the meeting, but in no event more than 20 days after the meeting. The District also should provide the parent(s)/guardian(s) with a Notice of Action (Form D) documenting the team's decisions.

18

---

---

---

---

---

---

---

---

## PRE-PLACEMENT EVALUATION

Pre-placement evaluation: "A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement."

▪ 34 C.F.R. § 104.35(a)

19

---

---

---

---

---

---

---

---

## PRE-PLACEMENT EVALUATION

Evaluation could consist of:

- Review of existing data
- Observation
- Request for medical or additional outside information
- Assessment

See 4 C.F.R. § 104.35(b)(1)

20

---

---

---

---

---

---

---

---

## SCENARIO

After the evaluation results are obtained, Ken compiles the data and reviews it in his office. He can tell right away that the student is eligible under Section 504, so he drafts a plan for him. He pulls out his "ADHD plan" and puts the student's name on top and then emails it to the parent.

21

---

---

---

---

---

---

---

---

## PLACEMENT PROCEDURES

Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, **including persons knowledgeable about the child**, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.

▪ 34 C.F.R. § 104.35(c)

22

---

---

---

---

---

---

---

---

## SCENARIO

You need to hold the Section 504 eligibility meeting and you have it scheduled for Friday. Mom calls you on Thursday and says that a family emergency came up and she can't make it on Friday. Due to several delays, it is time to meet. You tell her you really need to meet and you will have to move forward without her.

23

---

---

---

---

---

---

---

---

## 504 TEAM

The regulations do not explicitly include parents, but "parents are key members of this knowledgeable group."

▪ *Escondido (CA) Union Elem. Sch. Dist.*, 109 LRP 24519 (OCR 01/06/09)

24

---

---

---

---

---

---

---

---

## 504 TEAM

Convene "group of knowledgeable persons" within 30 calendar days of determination that reason to suspect exists.



### Who?

Student's teacher	Counselor	School nurse (depends on situation)	Parents
-------------------	-----------	-------------------------------------------	---------

25

---

---

---

---

---

---

---

---

## SECTION 504 TEAM

When a meeting is convened for a student whose medical condition may require the provision of aids or services, a medical professional with adequate and student-specific knowledge of the medical condition should attend the meeting.

Student with asthma and food allergy; no nurse or doctor attended. Little discussion of medical issues at meeting. School nurse had discussion of medical condition when developing IHP prior to the meeting.

*\*Charlotte-Mecklenburg (NC) Schs., 54 IDELR 267 (OCR 2009)*

26

---

---

---

---

---

---

---

---

## SCENARIO

Mom lives in Arizona. She gets visitation with her children on holidays. She calls and asks for a copy of her child's most recent 504 documentation and asks to zoom into the eligibility meeting. Dad has previously told you that Mom is behind on child support payments and has asked you that you not share any information with mom until "she pays up."

27

---

---

---

---

---

---

---

---

## STUDENT RECORDS

**§452.375, RSMo:** Unless a parent has been denied custody or visitation rights (due to abuse, domestic assault, etc.) **both parents shall have access** to school records.

If school district refuses to provide non-custodial parent access to records, then the district could be sued, and non-custodial parent could collect all costs from district, including attorney's fees.

28

---

---

---

---

---

---

---

---

## SCENARIO

Kate used to live with her Grandma while her Mom was Texas for a year working. Mom is back in Missouri now and Kate is living with Mom. Tension between Grandma and Mom is high and they no longer speak. Grandma loves Kate and calls the school every once in awhile on Kate's attendance and grades and asks if she can sit in on the next 504 meeting. The front office transfers Grandma's call to you. Since she was recently Kate's guardian, can you share information with her?

29

---

---

---

---

---

---

---

---

## WHAT TO DO AT THE ELIGIBILITY MEETING?

Provide Procedural Safeguards if not previously provided

Review all existing relevant data and information, including data and information provided by the parent.

Is this a student with a disability?

- Utilize Section 504 Eligibility Determination Form G

30

---

---

---

---

---

---

---

---

## STUDENT WITH A DISABILITY

Students who satisfy this definition are entitled to a Free and Appropriate Public Education (FAPE):

**A person who has a physical or mental impairment which substantially limits one or more of such person's major life activities. 29 U.S.C. § 705(20)(B)**

31

---

---

---

---

---

---

---

---

## IMPAIRMENT DEFINED

Any physiological disorder or

condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

Physical or mental impairment:

includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, **dyslexia** and other specific learning disabilities, **Attention Deficit Hyperactivity Disorder**, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

32

---

---

---

---

---

---

---

---

## MAJOR LIFE ACTIVITIES – WHAT DO THEY ENCOMPASS?

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, **eating, sleeping, walking, standing, lifting, bending,** speaking, breathing, learning, **reading, concentrating, thinking, communicating,** and working.

**A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.**

33

---

---

---

---

---

---

---

---

## MAJOR LIFE ACTIVITIES CONT.

... reaching, lifting, bending, writing, communicating and interacting with others.

\*reflected in 2016 Final Rule

---

---

---

---

---

---

---

---

34

## SUBSTANTIAL LIMITATION

Interpreted Broadly

OCR 2015

- Does OCR endorse a single formula or scale that measures substantial limitation?
  - NO
- "Determination must be made on a case by case basis with respect to each student."

---

---

---

---

---

---

---

---

35

## SUBSTANTIAL LIMITATION

Compare the student to the average student of the same age/grade in the population

---

---

---

---

---

---

---

---


36



## MITIGATING MEASURES

Substantial limitation must be determined without the use of mitigating measures (medication, medical devices, health plans, accommodations, etc.).

Can consider use of eyeglasses/contacts



37

---

---

---

---

---

---

---

---

## EPISODIC IMPAIRMENTS

The ADAAA specifically provides that “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”

28 C.F.R. § 35.104(d)(1)(iv)

38

---

---

---

---

---

---

---

---

## HEALTH PLANS

- Generally focused on addressing a student’s medical needs
- Typically not developed within the formal procedures of Section 504
- Can’t be used as a reason to deny Section 504 eligibility or process
- Examples:
  - Diabetes
  - Allergies

39

---

---

---

---

---

---

---

---

## ELIGIBILITY DETERMINATION PRACTICAL GUIDANCE

### SPECIFIC TYPES OF IMPAIRMENTS

▪“While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II.”

▪ Dear Colleague Letter, (OCR 2012)

---

---

---

---

---

---

---

---

40

## ELIGIBILITY DETERMINATION PRACTICAL GUIDANCE

### TEMPORARY IMPAIRMENT/DISABILITY

▪ Questions of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

---

---

---

---

---

---

---

---

41

## NEW OCR GUIDANCE

- Released July 26, 2021
- The U.S. Centers for Disease Control and Prevention (CDC) identified long COVID as another term for post-COVID conditions
- Post-COVID conditions “are a wide range of new, returning, or ongoing health problems people can experience more than four weeks after first being infected with the virus that causes COVID-19.”
- Long COVID can be a disability under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973
- If a student’s long COVID substantially limits one or more major life activities, the student would have a disability under Section 504

---

---

---

---

---

---

---

---

42

## 504 PLAN RATES NATIONALLY

- U.S. Department of Education's Civil Rights Data Collection (CRDC) for the rates of students with 504 plans at state, district and school levels:
  - The national average for 2017-18 was 2.7%
  - States ranged from 6.3% in New Hampshire to 0.7% in Mississippi
  - In Louisiana, almost 11,000 with 0%

43

---

---

---

---

---

---

---

---

## REMEMBER

### 2 Steps:

Step 1: Does this student meet the standard for eligibility?

- Impairment which substantially limits a major life activity
  - Consider more than academics. Consider all major life activities (breathing, thinking...)
  - When active
  - Don't consider mitigating measures

### Then

Step 2: What accommodations does the student need for an equal opportunity to access his education?

- Can consider impact of mitigating measures
- Can think about grades, academic impact, how health plan is working

44

---

---

---

---

---

---

---

---

## PROCESS

FHSD 504 Manual:

If the student is determined to have a 504 disability, within 30 days of that decision, the District will convene a 504 multidisciplinary team to prepare an individualized 504 Non-Discrimination Plan for the student. The multidisciplinary team for a particular student should be comprised of persons knowledgeable about the student, the evaluation data and the placement options. The team may include such persons as the student's teacher(s), the school nurse, the building counselor and/or others. The parent(s)/guardian(s) are not mandatory participants, but should be invited to the meeting. If appropriate, the student may also be invited. Form E (Notification of 504 Meeting) should be used to invite the parent(s)/guardian(s) and other participants.

45

---

---

---

---

---

---

---

---

<h2>DEVELOPING A PLAN</h2>	<p style="text-align: center;">Draft clear Section 504 Plan</p> <p style="text-align: center;">Bringing draft is okay but develop/finalize together as team taking parent input into account</p> <p style="text-align: center;">Send copy to parents, distribute to responsible teachers and staff</p>
--------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

46

---

---

---

---

---

---

---

---

### CREATING 504 PLANS TO MEET STUDENT NEEDS

Under Section 504, an appropriate education is defined as “the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of [the 504 regulations].” 34 C.F.R. § 104.33(b)(1).

47

---

---

---

---

---

---

---

---

### WHAT ACCOMMODATIONS SHOULD AND SHOULD NOT DO

“Section 504 does not require a public school district to provide students with disabilities with potential-maximizing education, only reasonable accommodations that give those students the same access to the benefits of a public education as all other students.”

**J.D. v. Pawlet Sch. Dist., (2nd Cir. 2000).**

48

---

---

---

---

---

---

---

---

## WHAT ACCOMMODATIONS SHOULD AND SHOULD NOT DO

- District did not violate Section 504 when it denied a parent's request to heat up the food that an 11 year-old boy with diabetes brought in for lunch every day.
- A district does not have to provide every accommodation a parent requests for a student with a disability. Rather, the district only needs to ensure that the student has meaningful access to its programs and services.

**Moody v. New York City Dep't of Educ.** (2nd Cir. 2013)

---

---

---

---

---

---

---

---

49

## SCENARIO

The student is found eligible under Section 504. The parents request that to address the student's allergies, all students and staff should refrain from wearing any sort of scent to school. Is this an accommodation we need to make?

---

---

---

---

---

---

---

---

50

*Zandi v. Fort Wayne Comty Schools*, 59 IDELR 283 (N.D. In 2012)

- High school student allergic reactions to certain perfumes, fragrances and lotions
- rashes, facial swelling, tightness in the chest and back
- one reaction at school resulted in 5 day hospitalization
- School refused to implement written no spray policy
- School did encourage staff not to use spray perfume etc...
- No evidence policy would have made difference to student's safety

---

---

---

---

---






---

---

---

51

**SMITH V.  
TANGIPAHOA  
PARISH SCH.  
BD.**

-  Horse allergy
-  504 plan - requested parents avoid bringing horses on campus using horse equipment and clean clothes
-  Community outcry
-  Accommodations were reasonable, school not responsible for community response.
-  46 IDELR 282 (E.D. LA 2006)

52

---

---

---

---

---

---

---

---

**DRAFTING THE PLAN**

Don't list teacher's names

Be specific

Treat each student and situation individually

53

---

---

---

---

---

---

---

---

**REVIEW & REVISE:**

Teachers will fill out planner each day.

Student will receive extended time on assignments.

Student will receive a copy of notes.

Student will receive additional time for tests as needed.

54

---

---

---

---

---

---

---

---

Marsha has anxiety. She was diagnosed several years ago and there has been no new information about the diagnosis since then. Marsha hates PE class because one time a football hit her nose. She frequently skips PE class, her last class of the day, and at least three times a week she has her mom call in to have her excused from school several hours early due to her anxiety. Marsha is often seen leaving school with her older boyfriend, George Glass. Her current 504 says:

*Marsha's absences related to her disability will be excused*

Her 504 team is meeting because Marsha is missing a lot of school due to her mom calling in and Marsha is falling behind in all of her classes.

\_\_\_\_\_

How should Marsha's 504 team write an accommodation regarding her absences?

55

---

---

---

---

---

---

---

---

---

---

## TRANSFER STUDENTS

- Treat similar to IDEA process
- Provide comparable services
- Re-evaluate & Re-draft

56

---

---

---

---

---

---

---

---

---

---

## SCHOOL POLICY

Can a 504 team modify a school policy?

Yes. If application of a local policy would cause discrimination on the basis of disability or prevent receipt of a FAPE, it must be modified.

A school "must still consider whether the student is entitled to a reasonable modification of policies, practices, or procedures." "The extent of a school district's obligation to make reasonable modifications is fact-dependent and requires a case-by-case analysis." (See OCR Dear Colleague Letter, at question 10, 58 IDELR 79 (OCR 2012)).

57

---

---

---

---

---

---

---

---

---

---

<h2>SCHOOL POLICY</h2>	<p>OCR provides examples:</p> <ul style="list-style-type: none"> <li>• Allowing a wheelchair-bound student to use a teacher elevator (regular policy prohibits student use)</li> <li>• Student with diabetes allowed frequent snacks in class, although campus prohibits eating in classrooms.</li> </ul> <p><i>Piotrowski v. Rocky Point Union Free Sch. Dist., 76 IDELR 209 (E.D.N.Y. 2020): motion to dismiss denied in case where school is alleged to have punished student repeatedly for using his cell phone to use a diabetes-management app, as allegations sufficient to state bad faith/gross misjudgment.</i></p>
------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

58

---

---

---

---

---

---

---

---

---

---

<h2>SCENARIO</h2> <p>Dad requests occupational therapy for Bobby. You talk as a team and occupational therapy is not needed to provide Bobby an equal opportunity to access his education. Dad says, "I won't agree to this plan unless OT is part of it."</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

59

---

---

---

---

---

---

---

---

---

---

<h2>DECISIONS</h2> <p>Section 504 does not require that all members of the team agree to educational decisions. If parents disagree with the team decision, they may resolve the dispute through a due process hearing.</p> <p>*<i>Calvert County (MD) Pub. Schs., 41 IDELR 139 (OCR 2003)</i></p> <p>*See also <i>Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools (OCR 2016)</i>.</p> <p><b>*Provide Notice of Action (Form D) &amp; Procedural safeguards</b></p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

60

---

---

---

---

---

---

---

---

---

---



## WHEN TO PROVIDE NOTICE OF ACTION

- If not eligible or no reason to suspect
- Before start of initial 504
- Before any change or denial of a change to placement or services
- In discipline situations where the student is long-term suspended

61

---

---

---

---

---

---

---

---

## RECORDING OF MEETINGS

- HB432
- Truly agreed and finally passed on May 13, 2021
- Became effective August 28th
- IEP Recording:  
Prevents any public school district and from prohibiting a parent or guardian from audio recording any meeting held under the Federal Individuals with Disabilities Education Act (IDEA) or a Section 504 plan meeting
- Previously Board Policy prohibited recording, now revised.
- Advance Notice?

62

---

---

---

---

---

---

---

---

## DISTRICT RECORDING

If a parent informs you they will be recording, the District should also record

What device should you use to record?

Inform everyone and make device visible

63

---

---

---

---

---

---

---

---

When a parent tells you they will be recording:  
Thank you for informing us that you will be recording. We respect your right to record this meeting. Our procedure when parents record is to also record the meeting and save this recording as part of your student's special education [504] file. Therefore, we will be recording as well. I will put the tape recorder here on (this device/the table... etc.) so it can best capture everyone's voice.

64

---

---

---

---

---

---

---

---

**SAYING NO**

<p><b><u>What To Say:</u></b></p> <ul style="list-style-type: none"><li>-Ultimately, based on the input of the team, I am going to deny that request as not required for FAPE for Bobby.</li><li>-I'll provide you a notice of action and your procedural safeguards.</li></ul>	<p><b><u>What NOT To Say:</u></b></p> <ul style="list-style-type: none"><li>-We don't do that here.</li><li>-I already talked to the superintendent and she said no.</li><li>-That would cost way too much money and our budget has no room for it.</li><li>-We would have to hire someone to do that and the District will never go for it.</li></ul>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

65

---

---

---

---

---

---

---

---

**IMPLEMENT THE PLAN!**

Teachers must implement the provisions of 504 plans!  
OCR Guidance 2009.

If a modification is no longer appropriate or needed, team should convene to determine whether the plan should be changed.

66

---

---

---

---

---

---

---

---

## SCENARIO

The band teacher does not believe that making an accommodation to the end of year award trip standards should be made for the student with a disability in her class who has to arrive late due to frequent doctor appointments. You calmly explain the requirements of the law to her and why an exception is needed and she says, "not in my class..." What do you do?

67

---

---

---

---

---

---

---

---

*Wethersfield (CT) Pub. Schs., 120 LRP 18707 (OCR 04/30/20)*

-OCR concluded that a Connecticut district may have violated Section 504 and Title II when it failed to implement the 504 plan of a high schooler with a learning disability

-504 plan stated that he was entitled to, among other accommodations, a "list of operations word bank to utilize on homework and with extended time on assessments." However, the parents claimed the student did not receive appropriate accommodations from January to May 2019 in his honors-level pre-calculus course.

OCR noted that the pre-calculus teacher failed to offer the student an operations word bank on seven homework assignments and two quizzes as required by his 504 plan.

68

---

---

---

---

---

---

---

---

## WHO SHOULD RECEIVE A COPY?

Districts may disclose personally identifiable information concerning a student to "school officials" within the institution who have a "legitimate educational interest" in the student. FERPA regulations allow the school to determine which individuals possess such an interest.

34 CFR 99.31(a)(1)

504 Distribution best practices:

- Keep documentation of distribution.
- Don't forget bus drivers and cafeteria staff.

69

---

---

---

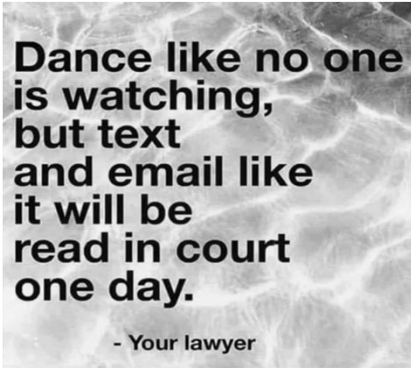
---

---

---

---

---



70

---

---

---

---

---

---

---

---

**EXTRACURRICULAR AND NON-ACADEMICS**

- ADA and Section 504 - may not deny a qualified disabled person to the opportunity to participate in or benefit from an aide, benefit or service.
- Issue of accessibility and equal opportunity
- District "shall provide non-academic and extracurricular services and activities in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities."

34 C.F.R. § 104.37

71

---

---

---

---

---

---

---

---

**OCR: DEAR COLLEAGUE LETTER (2013)**

- A District must conduct an individualized inquiry to determine whether reasonable modifications or necessary aids or services would provide a student with a disability with an equal opportunity to participate in an extracurricular activity.
- Provision of an equal opportunity "does not mean every student with a disability has the right to be on an athletic team, and it does not mean that school districts must create separate or different activities for students with disabilities."
- Letter provided examples:
  - Light with starter pistol for runner who is deaf.

72

---

---

---

---

---

---

---

---

## ATHLETIC TEAMS

*Clemons v. Shelby County*, 120 LRP 19190 (6th Cir. 2020):

Evidence that coach predetermined whether a student with disability would make tennis team could make disability complaint successful.

73

---

---

---

---

---

---

---

---

## FIELD TRIPS

- May not prohibit a student from going on a field trip simply because the student has a medical condition.
- Must include the student and provide accommodations and services the student needs, because of the condition, to remain safe on the trip.
- Ex: *Eastern (OH) Local Schs.*, 70 IDELR 78 (OCR 2017)
  - A principal and school nurse who expressed doubt that a high schooler could manage her diabetes care on two field trips violated Section 504 when they effectively barred her from the outings.

74

---

---

---

---

---

---

---

---

## FIELD TRIPS

- May prohibit disabled student from participating if participation presents unacceptable risk to student's health or safety. Must demonstrate reason/justification.
- Must provide reasonable accommodation for equal opportunity
- Can't require parent to accompany if similar obligation not imposed on other parents.
  - *Calcasieu Parish (LA) Sch.* (OCR 2005) - violation of 504 where district required parents of student with insulin-dependent diabetes to attend field trips.

75

---

---

---

---

---

---

---

---

## AWARDS & RECOGNITION

### Awards:

*Park Hill (MO) School District, 116 LRP 19504 (OCR 2016):*

Parent of first grade student alleged:

- School has separate end of the year awards ceremonies for students in special education classrooms and students in regular education classrooms;
- School has separate lunch tables for students who are in special education classrooms during the lunch period and students who are in regular education classrooms during the lunch period; and
- Elementary School yearbook placed the pictures of students in special education classrooms at the back of the yearbook with other students in special education classrooms instead of with their regular education homerooms and used a different format of background graphics that prevented people from reading their names.

District entered resolution agreement

76

---

---

---

---

---

---

---

---

## DISCIPLINE

IDEA and Section 504 students receive additional disciplinary protections

77

---

---

---

---

---

---

---

---

## NEW U.S. SUPREME COURT CASE

*Mahanoy Area School District v. B.L.:*

- Heard in April 2021
- In 2017, a high school cheerleader learned she had not made the varsity team.
- She posted a picture of herself and a friend, middle fingers up, with the text, "f--- school f---- softball f---- cheer f---- everything" on snapchat
- She was suspended from the Junior Varsity cheer team
- First U.S. Supreme Court case to address the limits of school discipline for student off-campus, online speech

78

---

---

---

---

---

---

---

---

## NEW U.S. SUPREME COURT CASE

- The *Tinker v. Des Moines* standard allows discipline of student speech if it causes or can reasonably be foreseen to cause a substantial disruption to the school environment or invade the rights of others.
- The U.S. Court of Appeals for the 3rd Circuit found that *Tinker* does not apply to off-campus speech.
- Court handed down decision on June 23, 2021 in favor of student.

79

---

---

---

---

---

---

---

---

## NEW U.S. SUPREME COURT CASE

- “While public schools may have a special interest in regulating some off-campus student speech, the special interests offered by the school are not sufficient to overcome B.L.’s interest in free expression in this case.”
- The 8-1 decision states that schools cannot punish a student for their speech off campus unless it “**materially disrupts classwork or involve** substantial disorder or invasion of the rights of others.”

80

---

---

---

---

---

---

---

---

## CHANGE OF PLACEMENT?

### Short-Term Suspension

-10 school days or less=NO change of placement

### Long-Term Suspension

-More than 10 consecutive days OR more than 10 days cumulative and a pattern

-Pattern:

- The length of each removal,
- The total amount of time the child has been removed, and
- The proximity of the removals to one another

81

---

---

---

---

---

---

---

---

## SCENARIO

Greg was suspended on September 24th for 5 days OSS for fighting.

On November 10th, Greg punches another student and the High School Principal is going to give Greg 3 days OSS.

- *What do you need to do?*
- *Look at pattern?*
- *Manifestation determination?*

82

---

---

---

---

---

---

---

---

## SCENARIO

Sarah makes a serious threat of harm against the school on November 15th.

Superintendent skips over the Principal's 10 days and the afternoon of November 15th immediately gives Sarah 90 days OSS, her first OSS of the year.

83

---

---

---

---

---

---

---

---

## SCENARIO — WHEN DID PLACEMENT CHANGE?

Sarah makes a serious threat of harm against the school on November 15th.

Superintendent skips over the Principal's 10 days and on the afternoon of November 15th gives Sarah 90 days OSS, her first OSS of the year.\* (placement changed on November 15th)

Hold manifestation determination meeting within 10 school days of November 15th

84

---

---

---

---

---

---

---

---



## ACTIONS REQUIRED FOR LONG-TERM SUSPENSIONS

- Communication between administration and 504 personnel
- Follow general education procedures: due process, notification, notice of hearing before Board and...
- MUST provide parents with Procedural Safeguards
  - When the decision is made to long-term suspend the student
- Must hold a Manifestation Determination Meeting to determine if conduct is related to the child's disability
  - Within 10 school days of the decision to change placement.
  - Use Form K – Manifestation Determination Form

---

---

---

---

---

---

---

---

85

## THE MANIFESTATION DETERMINATION MEETING

### WHEN is it held?

-Within 10 school days of decision to long-term suspend

### WHO attends?

- LEA representatives
- Parent
- Relevant members of the 504/IEP team

### WHAT to consider?

-Student's file, the 504/IEP, teacher observations and relevant information provided by parents

### WHY?

- Is there a direct and substantial relationship between behavior and disability
- Did behavior result from not implementing the 504/IEP?

---

---

---

---

---

---

---

---

86

## CASE EXAMPLE: *MILLER SCHOOL DISTRICT MISSOURI AHC,*

CASE NO. 19-0691 (2019)

- High School Student
- Educational Autism
- Emailed a student and counselor indicating he had a knife at school
- School investigated, found steak knife, student admitted he had knife
- Counselor asked if he understood it was wrong, he said yes
- Manifestation determination meeting was two hours long
- Team reviewed all key data, decided not related
- This incident was planned, knew it was wrong, out of character
- District decision upheld by hearing officer

---

---

---

---

---

---

---

---

87

**IDEA: CONDUCT IS NOT RELATED TO THE DISABILITY**

- Student CAN be long-term suspended
- LEA may apply the same discipline consequence as peers
- IEP team must...

- (1) Determine services and placement beginning on the 11th day that allow the student to...
  - (a) Receive educational services to continue to participate in general education just in an alternate setting during the suspension
  - (b) Progress towards IEP goals
  - (c) Receive an FBA, if appropriate

88

---

---

---

---

---

---

---

---

**SECTION 504: CONDUCT IS NOT RELATED TO THE DISABILITY**

- Section 504 students:
  - Can be suspended with no services
  - Must be afforded the same opportunity to make up work etc...during time of suspension as general education students

89

---

---

---

---

---

---

---

---

**CONDUCT IS RELATED TO THE DISABILITY**

- 504/IEP Student CANNOT be long-term suspended
- 504/IEP team must...

- (1) Return child to current placement
- (2) Consider/Revise BIP

90

---

---

---

---

---

---

---

---

## SCENARIO

You and a parent are having a discussion about a disciplinary matter and she says:

*I recently heard that if my daughter had a 504 she couldn't get in trouble. I am officially requesting a 504 to be effective immediately for her PTSD and ADHD.*

What do you do?

---

---

---

---

---

---

---

---

91



**QUESTIONS?** |

92

---

---

---

---

---

---

---

---

92

**Francis Howell R-III**  
**4545 Central School Rd**  
**St. Charles, Missouri 63304**  
**Phone: 636-851-4000**

**PARENTS' RIGHTS IN BRIEF**  
***Section 504 of the Rehabilitation Act of 1973***

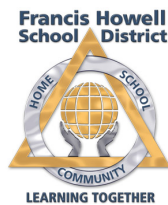
It is the policy of the Board of Education to provide a free and appropriate public education to and reasonable modification of policies, practices or procedures for each eligible student with a disability under Section 504. It is the intent of the District to ensure that students who are or may be eligible for accommodations, aids and services, and/or reasonable modification of policies, practices, or procedures under Section 504 are identified, evaluated, and if eligible, provided with appropriate accommodations, aids and services, and/or reasonable modifications of policies, practices, or procedures.

Parents (or students, if age 18 or older) have the following rights under Section 504:

1. Right for your child to take part in and receive benefits from the District and its programs and activities, including nonacademic and extracurricular programs and activities, without discrimination on the basis of his/her disability;
2. Right to be informed, in your native language and mode of communication, of any proposed actions related to identification, evaluation, or educational placement of your child;
3. Right to examine all relevant records of your child;
4. Right to have an evaluation of your child that draws on information from a variety of sources in order to determine his/her eligibility for Section 504 services and/or accommodations;
5. Right to have periodic reevaluations of your child, including reevaluation before any significant change in your child's placement;
6. Right for your child to receive appropriate accommodations, aids and services, and/or accommodations in the least restrictive environment that is appropriate to meet his/her needs if he/she is found eligible under Section 504, and right to provide your input before Section 504 program/placement decisions are finalized;
7. Right to a manifestation determination review before any disciplinary removal of your child that constitutes a significant change in placement, in order to determine if your child's misconduct was related to his/her disability;
8. Right to request an impartial due process hearing under the District's Section 504 Procedures And Procedural Safeguards to address issues about the identification, evaluation, educational placement of, or provision of a free appropriate public education to your child, to participate in and be represented by legal counsel at the hearing, and to appeal the hearing decision through the District's review procedure;
9. Right to file a grievance under the District's Uniform Grievance Procedure to address any claim of discrimination on the basis of disability, and to appeal the grievance decision; and
10. Right to forego or terminate the District's impartial due process hearing and/or grievance procedures described above and file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR").

NOTE: Copies of the District's Section 504 Procedures And Procedural Safeguards and the District's Uniform Grievance Procedure, as well as contact information for OCR, are available at XXX.

XXX  
Building Administrator/Designee



Book	FHSD POLICIES
Section	6000 INSTRUCTIONAL SERVICES/ 6200 Instruction
Title	Instruction for Students with Disabilities
Code	6250
Status	Active
Adopted	August 1, 2007
Last Revised	January 1, 2011
Last Reviewed	March 15, 2018

It is the policy of the District to provide a free appropriate public education to all public school students with disabilities. Students with disabilities are defined as those students who have one of the categorical disabilities as enumerated in the Missouri State Plan for Part B of the Individuals with Disabilities Education Act (IDEA) and who also require special education services or who have a mental or physical impairment that substantially limits one or more major life activities as defined by Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

The District will provide special education and/or related services to students with disabilities in accordance with applicable law, including the IDEA, and its amendments, Section 504 of Rehabilitation Act of 1973, §162.670-.995, RSMo., and Missouri's State Plan for Part B. For appeal procedures regarding identification, evaluation or educational placement of a student under Section 504, refer to Regulation 2110 - Equal Education Opportunity.

To obtain a copy of the District's IDEA procedural safeguards including appeal procedures, please contact the Director of Alternative Learning at 636-851-4060.

When providing print materials to students with visual impairments, the District will adhere to the National Instructional Materials Accessibility Standards (NIMAS) or will provide timely, high quality, accessible print materials.

August 2007  
 January 2011  
 Reviewed March 2014  
 Reviewed March 2018

**See Regulation 6250**



Book	FHSD POLICIES
Section	6000 INSTRUCTIONAL SERVICES/ 6200 Instruction
Title	Independent Educational Evaluation Policy for Disabled Students under the IDEA
Code	6255
Status	Active
Adopted	January 1, 2011

The parent(s)/guardian(s) of a student with a disability pursuant to the Individuals with Disabilities Education Act (IDEA) or of a student suspected of having an IDEA disability has the right to obtain an independent evaluation subject to the provisions of this Policy. The parent(s)/guardian(s) has the right to an independent educational evaluation at public expense if they disagree with an evaluation or any component of an evaluation obtained or conducted by the District. The parent(s)/guardian(s) may request one independent educational evaluation in response to each evaluation completed by the District. If the parent(s)/guardian(s) request for an independent evaluation comes one year or more from the date of the completion of the District's evaluation, the District may seek to complete a reevaluation prior to paying for an independent educational evaluation.

#### **Definitions:**

1. An independent educational evaluation (IEE) means an evaluation conducted by a qualified examiner who is not employed by the District. An independent educational evaluation must meet the educational evaluation criteria used by the District when it initiates an evaluation to the extent those criteria are consistent with the parent's/guardian's right to an IEE.
2. Public expense means that the District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. The District may, therefore, use whatever state, local, federal or private sources of financial support are available to pay for the costs of an IEE.

A parent/guardian is not required to notify the District prior to obtaining an IEE. However, if the parent(s)/guardian(s) request an IEE at public expense, the District will request that the parent/guardian provide a reason why he or she objects to the District's evaluation. In making that request, the District may not unreasonably delay either providing the requested IEE at public expense or initiating a due process hearing to defend the District's evaluation.

If a parent/guardian requests an IEE at public expense, the District will, without unnecessary delay:

1. Provide the parent(s)/guardian(s) with a copy of this policy and the District's IEE procedures; and
2. Provide the parent(s)/guardian(s) with information about where an IEE may be obtained within the parameters of this policy and the District's procedures; and
3. (a) ensure that an IEE is provided at public expense; or (b) initiate a due process hearing to show that the District's evaluation is appropriate or that the IEE obtained by the parent did not meet District criteria.

If the district initiates a hearing and the final decision supports the appropriateness of the District's evaluation, the parent(s)/guardian(s) still have the right to an IEE, but not at public expense.

If a parent(s)/guardian(s) obtain an IEE at private expense and presents that IEE to the District, the results of that evaluation must be considered by the District in any decision regarding the provision of a free appropriate public education to the student. In addition, any IEE obtained by the parent(s)/guardian(s) at private expense may be presented as evidence at a due process hearing regarding that parent/guardian.

Originally adopted: January 2011

**See Regulation 6255**

# Procedural Safeguards Notice

## Part B of the Individuals with Disabilities Education Act (IDEA).

*Note: All references to school district are applicable to the responsible public agency.*

### Table of Contents

---

General Information .....	1
Prior Written Notice .....	1
Native Language .....	2
Electronic Mail.....	2
Parental Consent - Definition.....	2
Parental Consent .....	3
Independent Educational Evaluations .....	5
Confidentiality of Information.....	6
Definitions .....	6
Personally Identifiable .....	7
Notice to Parents.....	7
Access Rights .....	7
Record of Access.....	8
Records on More Than One Child.....	8
List of Types and Locations of Information .....	8
Fees.....	8
Amendment of Records at Parent’s Request.....	9
Opportunity for a Hearing .....	9
Hearing Procedures .....	9
Result of Hearing .....	9
Consent For Disclosure of Personally Identifiable Information.....	10
Safeguards.....	10
Destruction of Information .....	10
State Complaint Procedures .....	11
Difference Between Due Process Hearing Complaint and State Complaint Procedures.....	11
Adoption of State Complaint Procedures.....	11
Minimum State Complaint Procedures .....	12
Filing a Complaint .....	13
Due Process Complaint Procedures .....	13
Filing a Due Process Complaint .....	13
Due Process Complaint.....	14
Model Forms .....	15



Mediation .....16  
Resolution Process .....17

Hearings on Due Process Complaints.....19  
    Impartial Due Process Hearing.....19  
    Hearing Rights .....20  
    Hearing Decisions .....21

Appeals.....22  
    Finality of Decision; Appeal; Impartial Review .....22  
    Timelines and Convenience of Hearings and Reviews .....22  
    Civil Actions, Including the Time Period in Which to File Those Actions .....22  
    The Child’s Placement While the Due Process Complaint and Hearing are  
        Pending.....23  
    Attorneys’ Fees .....24

**Procedures When Disciplining Children with Disabilities.....25**  
    Authority of School Personnel .....25  
    Change of Placement Because of Disciplinary Removals.....28  
    Determination of Setting .....28  
    Appeal.....29  
    Placement During Appeals .....30  
    Protections for Children Not Yet Eligible for Special Education and Related  
        Services .....30  
    Referral to and Action by Law Enforcement and Judicial Authorities .....31

Requirements for Unilateral Placement by Parents of Children in Private Schools at  
    Public Expense .....31  
    General .....31

## General Information

### PRIOR WRITTEN NOTICE

---

#### 34 CFR §300.503

##### Notice

Your school district must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

1. 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
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

##### Content of notice

The written notice must:

1. Describe the action that your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of the IDEA;
7. Describe any other choices that your child's individualized education program (IEP) Team considered and the reasons why those choices were rejected; and
8. Provide a description of other reasons why your school district proposed or refused the action.

##### Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; and
2. 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 school district must ensure that:

1. The notice is translated for you orally or by other means in your native language or other mode of communication;
2. You understand the content of the notice; and

3. There is written evidence that 1 and 2 have been met.

## NATIVE LANGUAGE

---

### 34 CFR §300.29

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

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

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

## ELECTRONIC MAIL

---

### 34 CFR §300.505

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

1. Prior written notice;
2. Procedural safeguards notice; **and**
3. Notices related to a due process complaint.

## PARENTAL CONSENT - DEFINITION

---

### 34 CFR §300.9

#### Consent

*Consent* means:

1. 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.
2. 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**
3. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it. In addition, the school district is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

## PARENTAL CONSENT

---

### 34 CFR §300.300

#### Consent for initial evaluation

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the 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 under the heading ***Prior Written Notice and Parental Consent***.

Your school district 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 school district to start providing special education and related services to your child.

If your child is enrolled in public school or you are seeking 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 school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the Act's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures (unless required to do so or prohibited from doing so under State law). Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances, unless State law requires it to pursue the evaluation.

#### Special rules for initial evaluation of wards of the State

If a child is a ward of the State and is not living with his/her parent —

The school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

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

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

1. A foster child;
2. Considered a ward of the State under State law; **or**
3. In the custody of a public child welfare agency.

There is one exception that you should know about. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a parent as used in IDEA.

#### Parental consent for services

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

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

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

revoke (cancel) your consent in writing, your school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the school district does not provide your child with the special education and related services for which it sought your consent, your school district:

1. 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**
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district may not continue to provide such services, but must provide you with prior written notice, as described under the heading **Prior Written Notice**, before discontinuing those services.

#### **Parental consent for reevaluations**

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

1. It took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. You did not respond.

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

#### **Documentation of reasonable efforts to obtain parental consent**

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

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

#### **Other consent requirements**

Your consent is not required before your school district may:

1. Review existing data as part of your child's evaluation or a reevaluation; **or**

2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

Your school district 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 your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may not use its dispute resolution procedures i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

## INDEPENDENT EDUCATIONAL EVALUATIONS

---

### 34 CFR §300.502

#### General

As described below, 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 obtained by your school district.

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

#### Definitions

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

*Public expense* means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B 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 the requirements of Part B of the Act.

#### Parent right to 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 obtained by your school district, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your school district must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.
2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.

3. If you request an independent educational evaluation of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school district conducts an evaluation of your child with which you disagree.

### Parent-initiated evaluations

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

1. Your school district must consider the results of the evaluation of your child, if it meets the school district'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**
2. You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

### 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.

### School district criteria

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

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

## Confidentiality of Information

### DEFINITIONS

#### 34 CFR §300.611

As used under the heading **Confidentiality of Information**:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

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

## PERSONALLY IDENTIFIABLE

---

### 34 CFR §300.32

*Personally identifiable* means information that has:

- (a) Your child's name, your name as the parent, or the name of another family member;
- (b) Your child's address;
- (c) A personal identifier, such as your child's social security number or student number; **or**
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

## NOTICE TO PARENTS

---

### 34 CFR §300.612

The State Educational Agency must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as "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 these activities.

## ACCESS RIGHTS

---

### 34 CFR §300.613

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under Part B of the IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a



resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The participating agency 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 State law governing such matters as guardianship, or separation and divorce.

## **RECORD OF ACCESS**

---

### **34 CFR §300.614**

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

## **RECORDS ON MORE THAN ONE CHILD**

---

### **34 CFR §300.615**

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.

## **LIST OF TYPES AND LOCATIONS OF INFORMATION**

---

### **34 CFR §300.616**

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

## **FEES**

---

### **34 CFR §300.617**

Each participating agency may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of the IDEA.

## AMENDMENT OF RECORDS AT PARENT'S REQUEST

---

### 34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency 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 participating agency 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 heading *Opportunity For a Hearing*.

## OPPORTUNITY FOR A HEARING

---

### 34 CFR §300.619

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

## HEARING PROCEDURES

---

### 34 CFR §300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

## RESULT OF HEARING

---

### 34 CFR §300.620

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

If, as a result of the hearing, the participating agency 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 participating agency.

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

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; **and**
2. If the participating agency discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

## CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

---

### 34 CFR §300.622

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

## SAFEGUARDS

---

### 34 CFR §300.623

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency 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 regarding your State's policies and procedures regarding confidentiality under Part B of the IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each participating agency 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.

## DESTRUCTION OF INFORMATION

---

### 34 CFR §300.624

Your school district 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, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## State Complaint Procedures

### DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES

---

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the State Educational Agency, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The State Educational Agency must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading **Model Forms**.

### ADOPTION OF STATE COMPLAINT PROCEDURES

---

#### 34 CFR §300.151

##### General

Each State Educational Agency must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the State Educational Agency;
3. 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.

##### Remedies for denial of appropriate services

In resolving a State complaint in which the State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); **and**
2. Appropriate future provision of services for all children with disabilities.

## MINIMUM STATE COMPLAINT PROCEDURES

### 34 CFR §300.152

#### Time limit; minimum procedures

Each State Educational Agency must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the State Educational Agency determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of the IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for the State Educational Agency's final decision.

#### Time extension; final decision; implementation

The State Educational Agency's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) the parent and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
2. Include procedures for effective implementation of the State Educational Agency's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

#### 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 below under the heading **Filing a Due Process Complaint**, 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 an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the school district), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

## FILING A STATE COMPLAINT

### 34 CFR §300.153

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

The State complaint must include:

1. A statement that a school district or other public agency has violated a requirement of Part B of the IDEA or its implementing regulations in 34 CFR Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific child:
  - (a) The name of the child and address of the residence of the child;
  - (b) The name of the school the child is attending;
  - (c) 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;
  - (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
  - (e) 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.

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 heading ***Adoption of State Complaint Procedures***.

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

## Due Process Complaint Procedures

## FILING A DUE PROCESS COMPLAINT

### 34 CFR §300.507

#### General

You or the school district may file a due process complaint 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.

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

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

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**

2. The school district withheld information from you that it was required to provide you under Part B of the IDEA.

### **Information for parents**

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

## **DUE PROCESS COMPLAINT**

---

### **34 CFR §300.508**

#### **General**

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

You or the school district, whichever one filed the complaint, must also provide the State Educational Agency with a copy of the complaint.

#### **Content of the complaint**

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the school district) at the time.

#### **Notice required before a hearing on a due process complaint**

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney), files a due process complaint that includes the information listed above.

#### **Sufficiency of complaint**

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

Within five calendar days of receiving the notification the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due

process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

### Complaint amendment

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

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described under the heading **Resolution Process**; or
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

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

### Local educational agency (LEA) or school district response to a due process complaint

If the school district has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the school district proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; **and**
4. A description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

### Other party response to a due process complaint

Except as stated under the sub-heading immediately above, **Local educational agency (LEA) or school district response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

## MODEL FORMS

---

### 34 CFR §300.509

The State Educational Agency had developed model forms to help you file a due process complaint and to help you and other parties to file a State complaint. However, your State or the school district may not require the use of these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a State complaint. To obtain the model forms you can do the following:

1. Download from the web site – [http://www.dese.mo.gov/divspeced/Complaint\\_System/index.htm](http://www.dese.mo.gov/divspeced/Complaint_System/index.htm)



2. Call the Missouri Department of Elementary and Secondary Education at (573) 751-0602.

## MEDIATION

---

### 34 CFR §300.506

#### General

The State Educational Agency must make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading ***Filing a Due Process Complaint***.

#### Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the school district's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of the IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

To request mediation send a written request to:

Missouri Department of Elementary and Secondary Education  
Division of Special Education/Compliance Section  
PO Box 480  
Jefferson City, MO 65102-0480

The school district may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; **and**
2. Who would explain the benefits and encourage the use of the mediation process to you.

The State must have 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 State Educational Agency must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the cost of the mediation process, including the costs of meetings.

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 school district.

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

1. 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 (court case); **and**
2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

### **Impartiality of mediator**

The mediator:

1. May not be an employee of the State Educational Agency or the school district that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

## **RESOLUTION PROCESS**

---

### **34 CFR §300.510**

#### **Resolution meeting**

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

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

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

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the school district agree in writing to waive the meeting; **or**

2. You and the school district agree to use the mediation process, as described under the heading **Mediation**.

### **Resolution period**

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

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, **Hearing Decisions**, begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the school district 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 the meeting is held.

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

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

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

### **Adjustments to the 30-calendar-day resolution period**

If you and the school district agree in writing to waive the resolution meeting, then the 45-calendar-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-calendar-day resolution period, if you and the school district agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the school district agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school district withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

### **Written settlement agreement**

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

1. Signed by you and a representative of the school district who has the authority to bind the school district; **and**
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the State

Educational Agency, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

### Agreement review period

If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within 3 business days of the time that both you and the school district signed the agreement.

## Hearings on Due Process Complaints

### IMPARTIAL DUE PROCESS HEARING

---

#### 34 CFR §300.511

#### General

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

The written request for a due process hearing must be sent to the Missouri Department of Elementary and Secondary Education, and must be copied and sent to the agency you are initiating due process against.

The Department's mailing address is:

MODESE  
Attention: Compliance Section/Special Education  
PO Box 480  
Jefferson City, MO 65102  
Fax: (573) 526-4404

#### Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the State Educational Agency or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Each school district must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

**Subject matter of due process hearing**

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

**Timeline for requesting a hearing**

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint.

**Exceptions to the timeline**

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

1. The school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2. The school district withheld information from you that it was required to provide to you under Part B of the IDEA.

## HEARING RIGHTS

---

### 34 CFR §300.512

**General**

You have the right to represent yourself at a due process hearing. In addition, any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the due process hearing by an attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
6. Obtain written, or, at your option, electronic findings of fact and decisions.

**Additional disclosure of information**

At least five business days prior to a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district 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 recommendation at the hearing without the consent of the other party.

**Parental rights at hearings**

You must be given the right to:

1. Have your child present;
2. Open the hearing to the public; **and**

3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

## HEARING DECISIONS

---

### 34 CFR §300.513

#### Decision of hearing officer

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

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

#### Construction clause

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536).

#### Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

#### Findings and decision to advisory panel and general public

The State Educational Agency or the school district, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

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

## Appeals

### FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

---

#### 34 CFR §300.514

##### Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action, as described under the heading **Civil Actions, Including the Time Period in Which to File Those Actions**.

### TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

---

#### 34 CFR §300.515

The State Educational Agency must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described under the sub-heading **Adjustments to the 30-calendar-day resolution period**, not later than 45 calendar days after the expiration of the adjusted time period:

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

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party.

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

### CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS

---

#### 34 CFR §300.516

##### General

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

##### Time limitation

The party (you or the school district) bringing the action shall have 45 calendar days from the date of the decision of the hearing officer to file a civil action.

### Additional procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school district's request; **and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

### Jurisdiction of district courts

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

### Rule of construction

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

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

---

### 34 CFR §300.518

Except as provided below under the heading ***PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES***, once a due process complaint 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 school district agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint 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 such proceedings.

If the due process complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings,



the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

If a hearing officer in a due process hearing conducted by the State Educational Agency agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

## ATTORNEYS' FEES

### 34 CFR §300.517

---

#### General

In any action or proceeding brought under Part B of the 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 Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, 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 to unnecessarily increase the cost of the action or proceeding.

#### Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:
  - a. 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;
  - b. The offer is not accepted within 10 calendar days; **and**
  - c. 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.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.
3. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

A resolution meeting, as described under the 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 Part B of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. 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;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide to the school district the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

## Procedures When Disciplining Children with Disabilities

### AUTHORITY OF SCHOOL PERSONNEL

---

#### 34 CFR §300.530

##### 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.

##### General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, 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. School personnel may also impose additional removals of the child of not 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 (see **Change of Placement Because of Disciplinary Removals** for the definition, below).

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 school district must, during any subsequent days

of removal in that school year, provide services to the extent required below under the sub-heading **Services**.

### **Additional authority**

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see **Manifestation determination**, below) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services**. The child's IEP Team determines the interim alternative educational setting for such services.

### **Services**

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.

A school district is only required to provide services to a child with a disability who has been removed from his or her current placement for **10 school days or less** in that school year, if it provides services to a child without disabilities who has been similarly removed.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability (see subheading, **Manifestation determination**) or who is removed under special circumstances (see subheading, **Special circumstances**) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not happen again.

After a 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 (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see the heading, **Change of Placement Because of Disciplinary Removals**), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

### **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 (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district, you, and other relevant members of the IEP Team (as determined by you and the school district) must review

all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was the direct result of the school district's failure to implement the child's IEP.

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

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

### **Determination that behavior was a manifestation of the child's disability**

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

1. Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading ***Special circumstances***, the school district must return the child to the placement from which the child was removed, unless you and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

### **Special circumstances**

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

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district; or
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district.

### **Definitions**

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

*Illegal drug* means a controlled substance; but does not include a 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* has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

*Weapon* has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### Notification

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the school district must notify you of that decision, and provide you with a procedural safeguards notice.

## CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

---

### 34 CFR §300.536

A removal of your child with a disability from your child's current educational placement is a **change of placement** if:

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

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

## DETERMINATION OF SETTING

---

### 34 CFR § 300.531

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings ***Additional authority*** and ***Special circumstances***.

## APPEAL

### 34 CFR § 300.532

---

#### General

You may file a due process complaint (see the heading **Due Process Complaint Procedures**) to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; **or**
2. The manifestation determination described above.

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

#### Authority of hearing officer

A hearing officer that 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:

1. 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 heading **Authority of School Personnel**, or that your child's behavior was a manifestation of your child's disability; **or**
2. Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

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

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

1. The State Educational Agency or school district must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless you and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.
3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the school district may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see **Appeals**, above).

## PLACEMENT DURING APPEALS

---

### 34 CFR §300.533

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

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

---

### 34 CFR §300.534

#### General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district 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 your child may assert any of the protections described in this notice.

#### Basis of knowledge for disciplinary matters

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

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

#### Exception

A school district would not be deemed to have such knowledge if:

1. You have not allowed an evaluation of the child or refused special education services; **or**
2. Your child has been evaluated and determined to not be a child with a disability under Part B of the IDEA.

#### Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child 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 your child 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 school district, and information provided by you, the school district must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

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

### 34 CFR §300.535

Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

#### Transmittal of records

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

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

## Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense

### GENERAL

#### 34 CFR §300.148

Part B of the IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR 300.131 through 300.144.



**Reimbursement for private school placement**

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or a hearing officer 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 the State Educational Agency and school districts.

**Limitation on reimbursement**

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

1. If: (a) At the most recent individualized education program (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 school district 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 (b) 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 school district of that information;
2. If, prior to your removal of your child from the public school, the school district provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

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

Additional information about your procedural safeguards can be obtained from the following:

**Missouri Department of Elementary and Secondary Education****Compliance Section**

Phone: 573-751-0699

Fax: 573-751-3910

TDD: 1-800-735-2966

**Missouri Parents Act (MPACT)**

Phone: 816-531-7070

Fax: 816-531-4777

TDD/Voice: 1-800-743-7634

August 2009

**Missouri Department of Elementary and Secondary Education**

*The Department of Elementary and Secondary Education does not discriminate on the basis of race, color, religion, gender, national origin, age, or disability in its programs and activities. Inquiries related to Department programs and to the location of services, activities, and facilities that are accessible by persons with disabilities may be directed to the Jefferson State Office Building, Office of the General Counsel, Coordinator – Civil Rights Compliance (Title VI/Title IX/504/ADA/Age Act), 6<sup>th</sup> Floor, 205 Jefferson Street, P.O. Box 480, Jefferson City, MO 65102-0480; telephone number 573-526-4757 or TTY 800-735-2966; fax number 573-522-4883; email [civilrights@dese.mo.gov](mailto:civilrights@dese.mo.gov).*



Book	FHSD REGULATIONS
Section	6000 INSTRUCTIONAL SERVICES/ 6200 Instruction
Title	Instruction for Students with Disabilities
Code	6250
Status	Active
Adopted	May 1, 2010
Last Revised	March 15, 2018

The District will observe the following guidelines in providing special education and related services to identified students with disabilities. The District will adhere to the Individuals with Disabilities Education Act (IDEA), its implementing regulations, and the Missouri State Plan for Special Education.

#### **Determination of Eligibility for Children Ages 3 through 5**

To determine whether children ages three (3) to five (5) (not kindergarten-age eligible) are children with a disability under the IDEA, the District will identify all such children using any IDEA disability category including Young Child with a Developmental Delay.

#### **Transition Services**

Beginning not later than the first IEP to be in effect when the child is sixteen (16), and updated annually thereafter, the District will implement appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals.

In addition, when a student with a disability reaches age eighteen (18), the District will provide to parent(s)/guardian(s) of eligible students under the IDEA a statement that the student has been informed of their rights under Part B of IDEA and that those rights will transfer to the student upon reaching the age of majority.

#### **Extended School Year (ESY)**

The IEP team will determine on an annual basis whether the student requires extended school year (ESY) services. If appropriate, the notice of the IEP meeting will include that the team will consider ESY services.

In determining whether the student requires ESY services, the IEP team may consider, among other factors, whether the student will suffer regression to such a marked degree that the recoupment of the student's skills may not be accomplished in a reasonable time at the inception of the subsequent school year, the degree of impairment and the ability of the student's parent(s)/guardian(s) to provide educational structure at home, the student's rate of progress, the student's behavioral and physical problems, the availability of alternative resources, the ability of the student to interact with students without disabilities, the areas of the student's curriculum that need continuous attention, or the student's vocational needs.

If an IEP team determines that a student requires ESY services, decisions regarding the type of special education and related services and their frequency, intensity and duration shall also be determined on an individualized basis and by the student's IEP team.

#### **Placement of Students Voluntarily Enrolled in Private Schools by Their Parent(s)/Guardian(s)**

The District's activities regarding the location, identification, and evaluation of private school students with disabilities will be comparable to the activities undertaken for students in public schools. However, a student with a disability voluntarily enrolled in a private school by their parent(s)/guardian(s) does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school.

However, a student with a disability voluntarily enrolled in a private school by his/her parents/guardians does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Students with disabilities voluntarily enrolled in private schools by their parents/guardians are not entitled to a free appropriate public education.

In order to meet its obligations under the IDEA to students with disabilities voluntarily enrolled by their parent(s)/guardian(s) in private schools, the District will spend, for children ages five (5) through twenty-one (21), an amount that is the same proportion of the District's K-12 entitlement under Part B of the IDEA as the number of private school children with disabilities ages five (5) through twenty-one (21) residing in the District is to the total number of children with disabilities ages five (5) through twenty-one (21) residing in the District. For children ages three (3) through five (5), the District will spend an amount that is the same proportion of the District's Preschool entitlement under part B of the IDEA as the number of private school children with disabilities ages three (3) through five (5) residing in the District is to the total number of children with disabilities ages three (3) through five (5) residing in the District. Expenditures for child find activities will not be considered when determining whether the District has met its obligation.

The District will consult with representatives of private school students with disabilities to decide which students will receive services, what services will be provided, how and where the services will be provided, and how the services provided will be evaluated. The District will make the final decisions regarding the services to be provided private school students with disabilities.

For each private school student that is designated to receive services, the District will prepare a service plan that describes the specific special education and related services that the District will provide to the student. The District will ensure that a representative of the private school attends meetings to develop, review, and revise a services plan, or, if the representative cannot attend, will use other methods to ensure participation by the private school. To the extent appropriate, the services plan will be developed in a manner consistent with the requirements for an IEP.

Missouri case law and the Missouri Constitution prohibit the provision of personnel, services, materials, and equipment on the premises of a student's private school unless they are provided in a neutral site. The private school may be considered a neutral site if the setting of the services is secular and void of ideological items. The District will determine how and where services will be provided to students with disabilities attending private or parochial schools.

Due process rights for students with disabilities voluntarily enrolled in private schools and their parent(s)/guardian(s) are limited. Only issues related to child find, including evaluations, can be raised in a due process complaint. There is no due process right to challenge the services that a student receives. The District is responsible for child find and the provision of services for disabled students *attending* private schools within the District but NOT for resident students whose parent(s)/guardian(s) choose to enroll the student in a private school in a different school district.

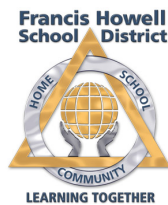
May 2010

January 2011

July 2011

Reviewed March 2014

Revised March 2018



Book	FHSD REGULATIONS
Section	6000 INSTRUCTIONAL SERVICES/ 6200 Instruction
Title	Independent Educational Evaluation Procedures for Students with Disabilities under the Individuals with Disabilities Act (IDEA)
Code	6255
Status	Active
Adopted	January 1, 2011
Last Revised	July 1, 2011
Last Reviewed	March 1, 2014

### **Independent Educational Evaluations**

If the parent(s)/guardian(s) of a student with a disability disagrees with an evaluation performed by the District, pursuant to the Individuals with Disabilities Education Act (IDEA) or any component of an evaluation, they have the right to request an independent educational evaluation (IEE) at public expense. A request for the IEE may include a request for reimbursement of a previously obtained evaluation.

### **Procedures for Independent Educational Evaluation (IEE)**

The criteria for obtaining an IEE at public expense are the same as for an evaluation obtained by the District. The following procedures apply to obtaining such an evaluation:

1. The parent/guardian of the student with a disability must present their request for an independent educational evaluation in writing to the District. That request will be forwarded to the Director of Alternative Learning.
2. When parent(s)/guardian(s) requests an IEE, the Director of Alternative Learning will be notified. The District will request, but not require, that the parent(s)/guardian(s) review the District's evaluation with the District to identify areas of disagreement and the reasons for the disagreement with the District's evaluation. The District will decide whether to initiate due process proceedings to establish the appropriateness of its evaluation or proceed with procuring an IEE.
3. Upon request for an IEE, the District will provide to the parent(s)/guardian(s) information about where an IEE may be obtained and the District's criteria for IEEs within ten (10) business days. Referral sources for independent evaluations may be obtained from the Director of Alternative Learning.
4. When the District receives a request from the parent(s)/guardian(s) for an independent educational evaluation, the District will, without unreasonable delay and within fifteen (15) business days from the receipt of the request, inform the parent(s)/guardian(s) that (1) the District will pay for the requested evaluation subject to the requirements of this policy; or (2) will initiate due process to defend the District's evaluation.
5. If the District decides to initiate due process proceedings, it will notify the parent(s)/guardian(s) of its decision and will provide a notice of action denying the request for an IEE. If the District's evaluation is found to be appropriate, the District will not pay for an IEE. The parent(s)/guardian(s) may obtain an independent evaluation at private expense and the District will consider the results of the evaluation if the evaluation meets the District's criteria for evaluations.
6. If the District decides to proceed with procuring an IEE, an evaluation plan will be developed which specifies those areas to be evaluated and who will conduct each assessment.

The assessments to be completed will comply with the standards for minimum qualifications for evaluators, geographic locations of evaluators, and cost limitations as specified in this regulation. Notice of intent to evaluate will be provided, and the District will arrange for the completion of the IEE.

7. Parent(s)/guardian(s) may request only one IEE at public expense for each evaluation performed by the District.

8. As part of the IEE, independent evaluators must agree to release their assessment information and results to the District prior to receipt of payment for services. The results of the independent evaluation will be considered if the evaluation meets the District's criteria for evaluations.

9. If the parent(s)/guardian(s) obtain an independent evaluation without the District's assistance and seek payment for the evaluation by the District, the evaluation must comply with the standards for minimum qualifications for evaluators, geographic locations of evaluators and cost limitations as specified in this regulation. Before the District will consider payment for independent evaluations obtained by the parent(s)/guardian(s) in this manner, independent evaluators must agree to release their assessment information and results to the District prior to receipt of payment for services. The results of the independent evaluation will be considered if the evaluation meets the District's criteria for evaluations.

### **Limitations on Location of Evaluators**

Independent evaluators will be located within St. Charles County, or St. Louis City or County. Independent evaluators located outside of this area will be approved only on an exception basis provided the parent(s)/guardian(s) can demonstrate the necessity of using personnel outside this area based on the child's unique needs or other unique circumstances.

### **Qualifications for Evaluators**

Evaluators with credentials other than those listed below will not be approved unless the parent(s)/guardian(s) can demonstrate the appropriateness of using evaluators with other qualifications.

Type of Assessment	Qualifications
Cognition	Licensed Psychologist, Certified School Psychological Examiner, or School Psychologist
Adaptive Behavior	Licensed Psychologist, Certified Special Education Teacher (Master's Degree), School Psychological Examiner, or School Psychologist
Achievement	Certified Special Education Teacher (Master's Degree), School Psychological Examiner, Licensed Psychologist, or School Psychologist
Speech/Language	Certified or Licensed Speech/Language Specialist
Social/Emotional/Behavioral	Certified Special Education Teacher (Master's Degree), School Psychological Examiner, School Psychologist, Social Worker, Licensed Psychiatrist, or Licensed Psychologist
Vision	Licensed Ophthalmologist or Licensed Optometrist
Functional Vision	Certified Teacher of the Visually Impaired
Visual Perception	Certified Special Education Teacher (Master's Degree), School Psychological Examiner, or Licensed Psychologist
Auditory Acuity	Licensed or Certified Audiologist

[Assistive Technology, Auditory Perception, Health, Motor, Transition and other areas of assessments may be included as determined by the District.]

### **Cost Limitations for Evaluations**

An independent educational evaluation will be limited to a total cost of \$1,200.00. Payment for single evaluations will be subject to the limits set forth in the following cost schedule:

#### **Single Disciplinary Cost Schedule**

Cognition: up to \$400

Adaptive Behavior: up to \$200

Achievement: up to \$400

Speech/Language: up to \$400

Social/Emotional Behavior: up to \$400

Vision: up to \$150

Functional Vision: up to \$150

Visual Perception: up to \$150

Auditory Perception (CAP): up to \$150

Health: up to \$100

Neurological: up to \$700

Motor: up to \$250

Sensory - Motor Integration: up to \$300

Costs above these maximum amounts will not be approved unless a higher rate is necessary in light of the child's unique circumstances. If the cost of the IEE exceeds these maximum amounts, the District will (1) initiate a due process hearing to show that its evaluation was appropriate, (2) pay the full cost of the IEE, or (3) pay that portion of the cost that is within the allowable limits if the District determines that an evaluation could have been obtained within the limits and informs the parent(s)/guardian(s) of that determination.

Independent evaluators must agree to release their assessment information and results to the District prior to payment for services. The results of the independent evaluation will be considered in the diagnosis and placement of the student with disabilities, as required by law.

Originally Adopted: January 2011

July 2011

Reviewed March 2014

# Parents' Bill of Rights

**As a parent of a child with a disability, you have the right to:**

1. Attend individualized education program (IEP) meetings and represent your child's interests.
2. Have an advocate or expert present at IEP meetings.
3. Receive a copy of your child's evaluation, disagree with it, and request one independent educational evaluation (IEE) at public expense.
4. Provide a written report from outside sources as part of the evaluation process.
5. Examine all education records pertaining to your child and be provided with a copy of the IEP.
6. Disagree with IEP team decisions and pursue dispute resolution procedures, including: requesting a facilitated IEP meeting, filing a child complaint with the Department of Elementary and Secondary Education, requesting state-paid mediation, having an impartial due process hearing, and appealing the due process decision to the court.
7. Participate in reviews of the IEPs and in any decision to change any aspects of the IEP, as well as receive Prior Written Notice for a change in your child's educational placement or the provision of a free and appropriate public education.
8. Have your child placed in the least restrictive environment and in a general education classroom to the greatest extent appropriate.
9. Request an accommodation to provide effective communications if you have limited English language proficiency.
10. A free appropriate public education for your child with an IEP designed to meet your child's unique needs, which may include, but not limited to, special education and related services, such as assistive technology devices and services; transportation; speech pathology services; audiology services; interpreting services; psychological services, including behavioral interventions; physical therapy; occupational therapy; recreation, including therapeutic recreation; counseling services, including rehabilitation counseling; orientation and mobility services; school health services; school nurse services; social work services; parent counseling and training; and, medical services for diagnostic or evaluation purposes.
11. Audio record any meeting under the federal Individuals with Disabilities Education Act (IDEA) or Section 504 of the federal Rehabilitation Act of 1973.

*This document does not confer any right or rights beyond those conferred by federal or state law and is intended for informational purposes only. For additional information, contact the Department of Elementary and Secondary Education, Office of Special Education at 573-751-0699 or [webrephspeco@dese.mo.us](mailto:webrephspeco@dese.mo.us).*

*January 1, 2010, rev. December 29, 2021*