Louisiana's Educational Rights of Children with Disabilities

Special Education Processes + Procedural Safeguards

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DEPARTMENT of EDUCATION
Louisiana Believes

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Introduction and Purpose

This guide was developed by the Louisiana Department of Education to help parents navigate the complex system that oversees special education in Louisiana's public schools.

Each school year, local education agencies (LEAs) are required to provide parents a copy of the procedural safeguards. ***This handbook is your notice of procedural safeguards.*** These safeguards are used to inform parents of the supports, services and protections offered by your local public school district. A copy of the procedural safeguards should be given to you once a year, and:

- Upon initial referral or at your request for an evaluation
- When a decision is made to take disciplinary action that results in a change in placement
- The first time you file a state complaint in a school year
- The first time you request a due process hearing in a school year
- When you ask for a copy

Special Education and Related Services

What is special education and what are related services?

According to the Individuals with Disabilities Education Act (IDEA), the term "special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability.

The IDEA defines the term "related services" to mean transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education. Some other examples of related services are counseling services, interpreting services, physical and occupational therapy, and school health services.

In order to be eligible for special education and related services, students must be evaluated and found eligible for one or more of the following disabilities listed in the IDEA:

- Autism
- Deaf-Blindness
- Developmental Delay
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disabilities
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment

What does the special education process look like?

The special education process determines whether or not your child is eligible for special education and related services and if so, which of these are appropriate for your child.

In Louisiana, the special education process consists of:

- Referral
- Evaluation
- Eligibility
- Development of the Individualized Education Program (IEP)
- IEP review
- Reevaluation

Referral for Evaluation

According to the Individuals with Disabilities Education Act (IDEA), your child's Local Education Agency (LEA) has an obligation called Child Find. Child Find requires LEAs to ensure that all students with disabilities who may be in need of special education and related services are identified, located, and evaluated. Parents and guardians may also request an evaluation to determine if their child is a child with a disability. The LEA can refuse this request but must provide you with a written explanation of the reason the request was denied.

This first evaluation is called an initial evaluation and you, as the parent, must agree to the evaluation in order for your child to participate. If you agree, the evaluation must take place within 60 business days. This initial evaluation determines whether or not your child has a disability and needs special education and related services. It also determines the educational needs of your child. You can refuse the initial evaluation, but you should be aware that the LEA can seek to conduct an evaluation by following the legal procedures described in this guide.

Evaluation

There are specific procedures conducted for all evaluations. Your LEA will provide you with a notice that explains the LEA's evaluation procedures. Although the evaluation procedures may vary from LEA to LEA, each LEA must use a variety of assessment tools and strategies to gather information about your child's needs, including information from you that you think is important to share.

Additionally, the assessment used for evaluation must not be discriminatory and should be provided in your child's native language if at all possible. It should be administered by a trained and knowledgeable professional. The assessment should match the specific educational needs of your child, and it should have everything it needs to be able to identify all of your child's special education needs. You have the right to obtain an independent educational evaluation (IEE) for your child if you disagree with the evaluation of your child that was obtained by your LEA.

Eligibility

Once your child's evaluation has been completed, there will be a meeting for you to attend to discuss the results. In this meeting you will receive a copy of the evaluation results. Additionally, you and the evaluation team will discuss the evaluation results and other information about your child and determine whether your child is a child with a disability. During this time you will participate in the determination of the educational needs of your child. Your child's LEA must obtain your consent before providing special education and related services to your child.

Development of the Individualized Education Program (IEP)

After your child has been evaluated and found eligible, a meeting will be held to develop an Individualized Education Plan (IEP) for your child to provide special education and related services in the public school. An IEP is a document that is developed to meet the specific and unique needs of your child.

At the IEP meeting, you will work with school representatives to determine the special education supports and services that will meet the needs of your child.

The IEP team consists of the following people:

- You, as the child's parent or guardian
- Your child (when appropriate)
- A special education teacher or other special education provider
- A general education teacher (when appropriate)
- A representative of the LEA who is knowledgeable about specially designed instruction, curriculum, and LEA resources
- Other people whom you or the LEA wish to invite

You are a very important part of the IEP team. Your child's school will take steps to make sure you have the opportunity to participate in the creation of your child's IEP. You have the right to be notified of the meeting in advance and to have the meeting at a time and place that is convenient for you.

IEP meetings might seem overwhelming. There are often many people from your child's school there, the time goes by quickly, and you may feel rushed. Here are some ideas that may help to increase your participation and improve the IEP process.

- Communicate regularly with school staff.
- Prepare your thoughts before the meeting by writing down the important points you want to make about your child.
- Take someone with you to serve as your support system.
- Ask questions if you don't understand something or if you need more information.
- Participate in the academic goal setting process and request regular updates on your child's progress towards these goals.

Your child's IEP is designed to support your child and should include:

- Your child's present levels of academic and functional performance
  - » In this section of the IEP, you will see information about your child's strengths and needs, comments about how your child is doing in the classroom, results of any standardized tests, and any other areas of concern that have been identified.
- IEP Goals
  - » Goals are the specific skills that you and the rest of the IEP team want to see your child accomplish. Goals are based on your child's current levels of performance and should be measurable. Goals should help your child make progress in the general education curriculum and could be reasonably accomplished in one year. Goals can be academic, behavioral, and social and can address self-help or other educational needs.
  - » If your child is participating in an alternate assessment, there will be goals and objectives that support that assessment.
- A description of how the goals will be measured and how the school staff will track your child's progress
  - » The IEP should explain the tools you and your child's IEP team will use to determine whether or not your child is accomplishing his or her goals.
- The special education, related services, accommodations, and modifications your child will receive
  - » In this part of the IEP process, the team will determine how to put your child's IEP into action. The LEA must provide a free appropriate public education (FAPE) for your child in the least restrictive environment (LRE). This means that, to the maximum extent appropriate, the team should figure out ways for your child to participate with children who do not have disabilities in a general education setting.
  - » This part of the IEP also includes an explanation of the extent, if any, that your child will not participate in the general education class.
  - » The IEP will also include the date that your child's special education services will begin, where and how often they will be provided, and how long they will last.
- Other special factors to be considered:
  - » Supports and strategies for behavior management
  - » Language needs if your child has limited proficiency in English
  - » Braille needs if your child is blind or visually disabled
  - » Communication needs
  - » Health needs during the school day
  - » Assistive technology devices or services
  - » Transition services for your child before he or she reaches age sixteen
  - » Extended school year services (ESYS)

IEP Review

According to the Individuals with Disabilities Education Act (IDEA), an IEP meeting must be held annually. At this IEP meeting, the team will look at your child's goals and determine whether or not they are being achieved. The IEP will be changed or updated to include new goals, new evaluation information, and any other relevant information about your child. You may request an IEP review meeting at any time in order to revise your child's IEP. The LEA can refuse this request but must provide you with a written explanation of the reason the request was denied.

Reevaluations

Either you or a member of the LEA can request a reevaluation to review your child's educational and/or related service needs. The reevaluation will typically not occur more than once per year and should take place at least once every three years unless you and the LEA agree that a reevaluation is not necessary.

Definitions and Acronyms

If, at any time, you see or hear words or acronyms that you do not understand, ask school staff to explain them right away. As an equal partner in planning, you must understand all the information you read or hear so you can help decide what is best for your child. This guide includes some of the terms and acronyms you may hear throughout the special education process.

Accommodations: Changes made in how your child is taught or tested based on his or her disability needs. Accommodations do not change what your child is taught or what your child is expected to know. Highlighted textbooks, more time to complete work when your child reads or writes slowly, and seating close to the teacher are all common accommodations. These accommodations could include instructional materials to help your child access textbooks or other curriculum.

Adapted Physical Education (APE): Physical education which has been adapted or modified so that it is as appropriate for a child with a disability as it is for a child without a disability.

Advocate: An attorney or non-attorney with specialized knowledge or skill in helping parents and students resolve problems with schools. Parents are their child's first and often most effective advocates.

Alternative Education Placement (AEPs): Disciplinary programs operated by school districts for students who have committed a range of offenses listed in state law and/or in the LEA's Student Code of Conduct.

Assessment: Assessments are tests given to all students. Students with disabilities may need accommodations which will be written in the IEP. Certain students may need an alternate assessment when they can not participate in regular assessments, even with accommodations.

Assistive Technology (AT): Any items, pieces of equipment or products used to increase, maintain, or improve the way your child functions. Assistive technology devices for students with disabilities may be used to assist with seating and positioning, mobility, communication, computer access and instruction, and self-care.

Behavior Intervention Plan (BIP) or Behavior Support Plan (BSP): Lists supports and services the LEA will give your child to increase positive behavior and to reduce the impact of negative behavior on learning.

Child Find: A continuous process of public awareness activities, screening, and evaluation designed to locate, identify, and refer as early as possible all young children with disabilities and their families

Dispute Resolution: Parents and LEAs working together to resolve disagreements concerning special education in order to preserve the relationships necessary to student success. Dispute Resolution options include: IEP facilitation, mediation, informal and formal complaints, and due process hearings.

Early Childhood Special Education (ECSE): Children with disabilities, birth through five years of age, may qualify for special education services. Children age 0-2 receive early intervention services through the Department of Health and Hospitals. Children who are age 3-5 receive IEP services through the LEA.

Every Child Succeeds Act (ESSA): Federal legislation reauthorizing the 50-year old Elementary and Secondary Education Act and revising many provisions of what was known as No Child Left Behind (NCLB). The Elementary and Secondary Education Act is the United States' national education law and longstanding commitment to equal opportunity for all students.

Early Resolution Process (ERP): An opportunity for families and LEA staff to attempt to resolve disputes prior to the exercise of the LDOE's supervisory jurisdiction in addressing allegations that the LEA is violating a requirement of the IDEA.

Equitable Services: Special education services made available to parentally-placed private school students with disabilities.

Extended School Year Services (ESYS): Services provided in the summer to some students with disabilities that require services as a part of their free appropriate public education. ESYS services must be provided according to the IEP and at no cost to you.

Free Appropriate Public Education (FAPE): Special education and/or related services designed to meet the individual needs of each student at no cost to you, guaranteed to all eligible students with disabilities by the Individuals with Disabilities Education Act (IDEA).

Functional Behavior Assessment (FBA): A set of activities used to find out the cause of a child's behavior before deciding what to do to change the behavior (intervention).

Individual Education Program (IEP): An individualized plan developed by parents and school staff that describes the special education and related services to be given to a student who receives special education. It must be reviewed and, if needed, revised at least once each year.

Individuals with Disabilities Education Act (IDEA): Federal legislation designed to make sure school districts provide a free appropriate public education to students with disabilities that will prepare them for further education, employment, and independent living.

Least Restrictive Environment (LRE): To the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Local Education Agency (LEA): A public agency which supervises the provision of instruction or educational services to the community. People often use the term "school district" to refer to the LEA. LEAs may supervise multiple schools or, in the case of charter schools, may be comprised of only one school.

Louisiana Department of Education (LDOE): The state agency responsible for supervising the LEAs to ensure that students with disabilities enrolled in public schools get a free appropriate public education (FAPE).

Louisiana Student Standards: New academic standards based on research and developed by a collection of teachers, school leaders, and education experts. The Student Standards define what students need to learn in each grade to stay on track to a college degree or a professional career.

Manifestation Determination Review (MDR): A meeting to review the relationship between a child's disability and his or her behavior that needs disciplinary action.

Modifications: Modifications, unlike accommodations, change the level of instruction provided or tested. Modifications create a different standard for children who receive them. The most common modifications are those made to the general education curriculum for a child with a significant cognitive disability.

No Child Left Behind (NCLB): Federal legislation that ensures that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments.

Parent: A biological, or adoptive parent of a child; a foster parent; a guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student, but not the state if the student is a ward of the state; an individual acting in the place of a biological or adoptive parent with whom the student lives, or an individual who is legally responsible for the student's welfare; or a surrogate parent who has been appointed in accordance with law.

Partnership for Assessment of Readiness for College and Careers (PARCC): A series of assessments for English language arts and math developed to provide a meaningful measure of student achievement in the Common Core curriculum.

Procedural Safeguards: Protections designed to defend the rights of children with disabilities and their parents. Safeguards include the right to participate in IEP meetings, examine educational records, participate in complaint and due process procedures, and many other protections under the IDEA. Your procedural safeguards are included in this guide.

Response to Intervention (RtI): A process that provides intensive, high-quality instruction and interventions aimed at supporting the learning or behavioral needs of a student. The targeted interventions are generally provided before deciding that a student has a disability that requires special education services. The results of these interventions will be used to drive ongoing instruction whether a student is in special education or general education.

School Building Level Committee (SBLC): A group that meets regularly to discuss concerns from teachers, parents, or other professionals on individual students experiencing difficulty in school because of academic and/or behavior problems. The SBLC shall review and analyze data, including RtI results, to determine the most beneficial options for the student.

Section 504: The common name for the federal law that prohibits discrimination against students with disabilities. Section 504 (of Public Law 93-112, the Rehabilitation Act of 1973) applies to any agency, public or private, which receives federal funds. Services are typically provided in the form of accommodations.

State Board of Elementary and Secondary Education (BESE): The administrative body overseeing all Louisiana public elementary and secondary schools. BESE adopts regulations and enacts policies governing the operations of those schools under its jurisdiction and exercises budgetary oversight of their educational programs and services.

Supplementary Aids and Services: The term used in IDEA to describe those aids, services, and other supports given in general education classes, extracurricular activities, and non-academic settings, so that a child with a disability can be educated with students who do not have disabilities.

Universal Design for Learning (UDL): A way of designing instruction that allows equal access to content to be used by people with the widest possible range of abilities.

Further Information

If after reading this guide you would like more information about special education or you have questions about your child's education, you may contact your child's teacher, the school principal, or your LEA's Special Education Director.

In addition, you may call the Louisiana Department of Education's toll free number 1-877-453-2721 or email specialeducation@la.gov.

The Families Helping Families Regional Resource Centers are also available to assist you.

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Laws and Regulatory Bulletins

The following federal and state laws or regulations guarantee that a student with a disability has a full educational opportunity to benefit from a free appropriate public education (FAPE). State published regulatory bulletins are available to you through the local education agency and the Louisiana Department of Education (LDOE).

Federal Laws

- Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Chapter 33, amended by P.L. 105-1734 Code of Federal Regulations-Parts 300 and 301
- Section 504 of the Rehabilitation Act of 1973
- Family Education Rights and Privacy Act (FERPA)
- Americans with Disabilities Act of 1990 (ADA)

State Law

- R.S. 17:1941, et seq. (R.S. 17:1944.B (8, 11, & 20)

BESE Regulations and Bulletins

- Bulletin 1706: Regulations for Implementation of the Children with Exceptionalities Act
- Bulletin 1508: The Pupil Appraisal Handbook
- Bulletin 1573: Complaint Management Procedures

You can access these bulletins on the BESE website under the **Policies/Bulletins** tab.

Prior Written Notice

General Information

Prior written notice must be given to you whenever the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE).

The prior notice must include the following information:

1. Description of the action that your LEA proposes or refuses to take;
2. Explanation of why your LEA proposes or refuses to take the action;
3. Description of the evaluation procedure, assessment, record or report your LEA used as a basis for the proposed or refused action;
4. Description of any other choices that your child's IEP team considered and the reasons why those choices were rejected;
5. Description of other reasons why your LEA proposed or refused the action;
6. Statement explaining that you have protections under the procedural safeguards provisions; and
7. Identification of the employee or employees of your LEA who you may contact for assistance.

Notice in Understandable Language

Regarding the prior written notice language:

1. It must be written in language understandable to the general public and provided in the native language or other mode of communication you use most often, unless it is clearly not feasible to do so.
2. If your native language or other mode of communication is not a written language, your LEA shall take steps to ensure that:
   a. The notice is translated for you orally or by other means in your native language or other mode of communication;
   b. You understand the content of the notice; and
   c. There is written evidence that these requirements have been met.

Native Language

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

1. The language normally used by the person, or, in the case of a student, the language normally used by the student's parents; and
2. In all direct contact with a student (including evaluation of the student), the language normally used by the student 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 (E-Mail)

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

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

Parental Consent

General Information

Parental consent means:

1. You have been fully informed in your native language or other method of 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 any time. Your withdrawal of consent does not negate an action that occurred after you gave your consent and before you withdrew it.

Parental Consent for Initial Evaluation

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

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

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

If you refuse to provide consent or fail to respond to a request to provide consent for an initial evaluation, your LEA may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your LEA 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.

Special Consent Rules for Initial Evaluation of Wards of the State

Ward of the State 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 Louisiana state law; or
3. In the custody of a public child welfare agency.

Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent.

If a student is a ward of the state and is not living with his or her parent, the LEA does not need consent from the parent for an initial evaluation to determine if the student is a student with a disability if:

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

Parental Consent for Services

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

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

1. Is not in violation of the requirement to make a FAPE available to your child; and
2. Is not required to have an IEP meeting or develop an IEP for your child.

Parental Consent for Reevaluations

Your LEA must obtain your informed consent before it reevaluates your child, unless your LEA 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 LEA may, but is not required to, pursue your child's reevaluation. As with initial evaluations, your LEA does not violate its obligations under the IDEA if it declines to pursue the reevaluation.

Other Consent Requirements

Your consent is NOT required before your LEA 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 students unless, before the test or evaluation, consent is required from all parents of all students.

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

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide 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 LEA may not use measures such as mediation or due process hearing procedures and is not required to consider your child as eligible to receive equitable services.

Revocation of Parental Consent

If, at any time subsequent to the initial provision of special education and related services, you revoke consent in writing for the continued provision of special education and related services, the LEA may not continue to provide these services to the student, but must provide prior written notice before ceasing the services. The LEA may not use mediation or due process hearing procedures in order to obtain agreement or a ruling that the services may be provided to the student.

If you revoke your consent for the continued provision of special education and related services to your child, the LEA:

1. Will not be considered to be in violation of the requirement to make a FAPE available for its failure to provide the student with further special education and related services to your child; and
2. Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education and related services.

If you revoke consent in writing for your child's receipt of special education services after the student is initially provided special education and related services, the LEA is not required to amend your child's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

Transfer of Parental Rights

When a student with a disability reaches the age of majority, which is age eighteen in Louisiana (except for a student with a disability who has been determined, under applicable state laws, to lack the capacity to make educational decisions), the LEA must:

1. Provide any notice required to both you and your child;
2. Transfer all other rights accorded to you to your child; and
3. Transfer all rights accorded to you to your child who may be incarcerated in an adult or juvenile, state, or local correctional institution.

Independent Educational Evaluation (IEE)

General Information

You have the right to obtain an independent educational evaluation (IEE) for your child if you disagree with the evaluation of your child that was obtained by your LEA. If you request an IEE, the LEA must provide you with information about where you may obtain an IEE and about the LEA's criteria that apply to IEEs.

Definitions

1. Independent Educational Evaluation (IEE) means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of your child.
2. Public Expense means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

Parental Right to Evaluation at Public Expense

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

1. If you request an IEE of your child at public expense, your LEA 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 IEE at public expense, unless the LEA demonstrates in a hearing that the evaluation of your child that you obtained did not meet the LEA criteria.
2. If your LEA requests a due process hearing and the final decision is that your LEA's evaluation of your child is appropriate, you still have the right to an IEE, but not at public expense.
3. If you request an IEE of your child, the LEA may ask why you object to its evaluation. However, your LEA may not require an explanation and may not unreasonably delay either providing the IEE of your child at public expense or filing a due process complaint to request a due process hearing to defend the LEA's evaluation of your child.
4. You are entitled to only one IEE at public expense each time the LEA conducts an evaluation with which you disagree.

Parent-Initiated Evaluations

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

1. Your LEA must consider the results of the evaluation of your child, if the IEE meets the LEA's criteria for IEEs, in any decision made with respect to the provision of a FAPE to your child; and
2. You or your LEA 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 IEE of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

Local Education Agency Criteria

If an IEE 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 LEA uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE).

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

Confidentiality of Information

General Information

Policies and procedures are in effect to ensure that the LEA complies with protecting your child's personally identifiable information.

Definitions

1. Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
2. Education records means the type of records covered under the definition of ''education records'' in the regulations implementing the Family Educational Rights and Privacy Act (FERPA).
3. Participating agency means any LEA, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained.
4. 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

The LDOE must give adequate notice to fully inform you 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 students 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 the rights of parents and students regarding this information, including the rights under FERPA and its implementing regulations.

Before any major identification, location, or evaluation activity (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 the activity to locate, identify, and evaluate children in need of special education and related services.

Access Rights

Each LEA must permit you to inspect and review any educational records collected, maintained, or used by your LEA relating to your child with respect to identification, evaluation, educational placement, and the provision of a FAPE. The LEA must comply with your request without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing, and in no case more than 45 days after the request has been made.

The right to inspect and review educational records under this section includes your right to:

1. A response from the LEA to your reasonable requests for explanations and interpretations of the records;
2. Have your representative inspect and review the records; and
3. Request that the LEA provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies.

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

Record of Access

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

Records on More than One Child

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

Types and Location of Information

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

Fees

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

Amendment of Records at Parent's Request

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

The LEA must decide whether to change the information in accordance with the request within a reasonable period of time of receipt of this request.

If the LEA refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as set forth under IDEA and FERPA.

Consent

Your consent must be obtained before personally identifiable information is disclosed to parties other than officials of the LEA unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA.

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

Your consent, or the 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 the LEA 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 LEA you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the LEA where the private school is located and officials in the LEA where you reside.

Safeguards

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

One official at each LEA must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures concerning confidentiality under the IDEA and FERPA.

Each LEA must maintain, for public inspection, a current listing of the names and positions of those employees within the agency that may have access to personally identifiable information.

Destruction of Information

Your LEA must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child.

The information shall be destroyed at your request; however, a permanent record of your child's name, address, and telephone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Hearing Procedures

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

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA.

Result of Hearing

If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall amend the record accordingly and inform you of the amendment in writing.

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

Such an explanation placed in the records of your child:

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

Complaint and Dispute Resolution

General Information

Sometimes you may disagree with the LEA about your child's special education. The LDOE has developed dispute resolution processes for resolving the disagreement about your child's disability identification or eligibility, evaluation, the level of services or placement, the provision of FAPE, or payment for services that you have obtained. (See page 26 for the LDOE Dispute Resolution Comparison Chart.)

IEP Facilitation

IEP meeting facilitation is a non-adversarial dispute resolution method offered by the LDOE. This option is available to you and LEAs when they both agree that it would be valuable to have a neutral person — an IEP Facilitator — present at an IEP meeting to assist in discussing issues regarding your child's IEP. Typically, an IEP Facilitator is brought in when parents and local education agencies' staff are having difficulties communicating with one another regarding the needs of the student.

The IEP Facilitator assists in creating an atmosphere for fair communication and aids in the successful drafting of an IEP for the student. An IEP Facilitator does not make decisions; instead, he or she facilitates discussion and decision-making.

Either the parent or the LEA may request IEP facilitation. However, since the process is voluntary, both sides must agree to participate in a facilitated IEP meeting. The process can be initiated by making a request to the LDOE's Legal Division. The service is provided at no cost to you or the LEA. You may choose to use the form located on the department's website to request IEP facilitation.

Mediation

Mediation is available to resolve a disagreement between you and the LEA regarding the identification, evaluation, placement, services, or the provision of a FAPE to your child. Mediation is a way to discuss and resolve disagreements between you and the LEA with the help of an impartial third person who has been trained in effective dispute resolution techniques. Mediation is a voluntary process, and both you and the LEA must agree to participate in order for the mediation session to occur. The mediation sessions are scheduled in a timely manner and held in a location that is convenient to the parties in the dispute.

A mediator does not make decisions; instead, he/she facilitates discussion and decision-making. The discussions in a mediation session are confidential and may not be used as evidence in subsequent due process hearings or civil court proceedings. If the mediation process results in full or partial agreement, the mediator and the parties will prepare a written agreement to be signed by both you and the LEA's representative. In addition to describing the things you have agreed to, the mediation agreement will state that all discussions that occurred during the mediation are confidential and may not be used as evidence in a due process hearing or other civil court proceeding. The signed agreement is legally binding on both you and the LEA and is enforceable in court.

You may request mediation before, at the same time, or after requesting a due process hearing or complaint investigation. Requesting mediation will not prevent or delay a due process hearing or complaint investigation, nor will mediation impair any of your other rights under the IDEA or related state laws.

Requesting Mediation

In order to initiate the mediation process, you must make a request for mediation to the Legal Division. You may request mediation by calling (225) 342-3572; by sending written notice by fax to (225) 342-1197; or, by mailing written notice to the LDOE, P.O. Box 94064, Baton Rouge, Louisiana 70804-9064, Attention: Legal Division. A mediation request form can also be found on the department's website www.louisianabelieves.com.

The Legal Division will assign a mediator who will contact both you and the LEA to schedule a meeting at a convenient location. The Legal Division maintains a list of mediators who are trained, qualified, and knowledgeable about the laws and regulations relating to the provision of special education and related services. Mediators are assigned on a rotational basis.

No employee of the LDOE, LEA, or other public agency providing special education services is eligible to be a mediator. A mediator is not considered to be an employee solely because he/she is paid to provide this service. A mediator must not have any personal or professional conflict of interest. The LDOE bears the cost of the mediation process.

The LEA may establish procedures to offer you the opportunity to meet at a convenient time and location with someone from a parent training center or alternative dispute resolution entity to discuss the benefits of the meditation process when you have opted not to participate in mediation with the LEA. However, the procedures cannot be used to delay or deny your right to pursue other dispute resolution options if you decline to participate in such a meeting. The LDOE pays for the cost of these meetings.

Informal Complaints

It is the policy of the LDOE to encourage and support prompt and effective resolution of any complaint in the least adversarial manner possible. The implementation of the Early Resolution Process (ERP) by each school district draws on the traditional model of parents and school districts working cooperatively in the educational interest of your child to achieve their shared goals of meeting the educational needs of students with disabilities.

The informal complaint process is an opportunity for attempting to resolve disputes prior to the exercise of the LDOE's supervisory jurisdiction in addressing allegations that the LEA is violating a requirement of the IDEA.

Informal complaints must be addressed by the LEA within 15 days of receipt of the complaint. Informal complaints may be made directly with the LEA ERP representative either in-person or by telephone, mail, facsimile, e-mail or Telecommunications for the Deaf (TDD).

After participating in the informal complaint process, you and the LEA may sign a resolution agreement or an agreement to extend the resolution period. If no agreement is reached and no extension is requested, the LEA's ERP representative shall provide you with the LDOE's explanation of dispute resolution options. At any time during the ERP process, you may pursue the other dispute resolution options provided by the LDOE.

Formal Complaints

Formal administrative complaints are procedures developed under the supervisory jurisdiction of the LDOE to address allegations that a LEA is violating a requirement of the IDEA. A parent, adult student, individual, or organization may file a signed written complaint by U.S. mail, facsimile, email, or TDD with the LDOE.

The party filing the complaint shall forward a copy of the complaint to the LEA or public agency serving the student at the same time the party files the complaint with the LDOE. Formal complaints must be written and signed and must allege a violation that occurred not more than one year prior to the date that the complaint is received.

Unless the parties have already attempted informal resolution on the same issues, the LEA shall offer the complainant an opportunity to participate in local resolution efforts prior to the LDOE's investigation of the complaint allegations. Upon expiration of the ERP, the complaint is reviewed, and the LEA is notified and asked to provide specific information.

The LDOE will provide the LEA an opportunity to dispute the allegations made in the complaint or to offer a proposal to resolve the complaint. The party filing the complaint will also be given an opportunity to provide additional information during the investigation. Depending upon the nature of the complaint, an on-site visit may be made to the LEA by the LDOE. All relevant information is reviewed, and a determination is made as to whether the LEA has violated a requirement of applicable federal or state statues, regulations, or standards.

The LDOE has 60 days from receipt of the complaint or 45 days from the end of the ERP to issue a written decision to all parties on each of the allegations of the complaint. The timeline for completion of the investigation and issuance of a written decision may be extended for extenuating circumstances or, with the consent of both parties, to allow additional time for the parties to participate in mediation or other local resolution efforts.

The LDOE has developed forms to help you file complaints. These forms are located on the LDOE's website www.louisianabelieves.com. You may choose not to use these forms to file a complaint; however, requests for complaint investigations must include all of the information required by law.

Due Process Hearings

A due process hearing is a formal, court-like proceeding in which evidence is presented to an independent hearing officer in order to resolve a dispute between you and the LEA regarding your child's disability identification, evaluation, eligibility, placement, services, or reimbursement of services you have obtained privately. Only you, your attorney representing your child, or the LEA may request a due process hearing regarding a student with a disability.

Due Process Hearing Request Procedures

To request a due process hearing, you must send a signed, written request with the required information to the LDOE, Attention: Legal Division, P.O. Box 94064, Baton Rouge, Louisiana 70804-9064, and to the LEA. The written request must include your name, address, and telephone number; the student's name and address (if different); the name of the LEA you are making allegations against and, if different, the LEA the student attends; a statement of the reason for the hearing request, including a description of the LEA problem and a statement of the facts relating to the problem; and a proposal for resolution to the problem, to the extent known to you. You may choose to use the Due Process Hearing Request form located on the LDOE's website. You will not be able to have a due process hearing unless your written request for a hearing conforms to all of the requirements listed above.

A request for a due process hearing must be made within one year of the date you knew or should have known about the alleged action forming the basis of your dispute with the LEA. This one-year limit does not apply if you were prevented from requesting the hearing because the LEA specifically misrepresented that it had resolved the problem you complained about or if the LEA withheld pertinent information from you that it was required to provide you under the IDEA.

Legal Services

Upon your request, the agency must provide you with information on free or low-cost legal and other relevant services in your area if you or the LEA files a request for a due process hearing.

Sufficiency of Due Process Hearing Request

If the LEA believes your letter requesting a due process hearing does not contain all of the required information listed above, it may send a letter to you and the hearing officer indicating that your request does not comply with the requirements. If the LEA is going to send this letter, it must do so within 15 days of receiving your request for a due process hearing. The hearing officer then has five (5) days to determine if your request is sufficient and will immediately inform both you and the LEA in writing of the decision. If the hearing officer agrees with the LEA, you must resubmit the request for a due process hearing that meets all of the requirements. If the LEA does not challenge the contents of your request for a due process hearing, it is considered to meet all of the requirements.

Local Educational Agency Response to a Due Process Hearing Request

The LEA must abide by certain requirements within specific time periods after it receives your request for a due process hearing. Within 10 days of receiving your request for a due process hearing, the LEA must do two things:

1. Send you written notice regarding the subject matter of your request for a due process hearing including:
   a. An explanation of why the LEA proposed or refused to take the action that is the subject of the due process hearing;
   b. A description of the options the IEP team considered and the reasons they were rejected;
   c. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for its decision; and
   d. A description of the factors the LEA believes is relevant to its proposal or refusal.
2. Send you a written response that specifically addresses the issues you raise in your request for a due process hearing.

NOTE: The LEA is not required to send you this written notice after it received your request for a due process hearing if the LEA previously sent you prior written notice on the same matter.

Resolution Process

Within 15 days of receipt of a request for a due process hearing, the LEA shall convene a meeting called a "resolution meeting." The meeting must include a representative from the LEA with decision-making authority and relevant members of the IEP team, as determined by the parent and the LEA, who have information about the facts alleged in the hearing request. Unless you bring your attorney to this meeting, the LEA may not have an attorney at the meeting. In this meeting you will discuss the facts that formed the basis of your request and give the LEA an opportunity to resolve the issues you raised in your request. You can agree with the LEA to use an alternative means to hold the resolution meeting (e.g., via video conference or conference telephone call).

The resolution period ends 30 days after the filing of the due process hearing request if the parties have failed to reach an agreement. The resolution period may end sooner if:

1. The parties fail to reach agreement and inform the hearing officer that they are no longer interested in pursuing a settlement agreement; or
2. One of the parties fails to participate in a resolution meeting within 15 days of the filing of the due process hearing request and the other party requests that the hearing officer move forward with the hearing timeline.

Written Settlement Agreement

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

1. Signed by you and a representative of the LEA who has the authority to bind the agency; 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.

Agreement Review Period

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

Independent Hearing Officer

An independent hearing officer conducts the due process hearing. The LDOE maintains a list of individuals who serve as independent hearing officers, along with a list of each individual's qualifications. Individuals who serve as independent hearing officers cannot be employees of the LDOE or the LEA that is involved in the student's care or education, and they cannot have any professional or personal interest that would conflict with his or her objectivity in conducting the hearing. In addition, the hearing officer must possess knowledge of the federal statutes and regulations governing special education services, as well as "legal interpretations" made by federal and state courts; possess the knowledge and ability to conduct hearings in accordance with standard legal practice; and be able to render and write decisions in accordance with standard legal practice. An individual who otherwise qualifies to conduct a hearing is not an employee of the LEA or state agency solely because he or she is paid by the state agency to serve as the independent hearing officer.

Before the hearing occurs, the independent hearing officer will contact you and the LEA to make arrangements for a pre-hearing conference. One of the things you will decide at the pre-hearing conference is when the hearing will occur. The hearing will be held at a time and place reasonably convenient to you and the LEA. The independent hearing officer will send you written notice concerning the time and the place of the hearing and other procedural matters.

Subject Matter of the Due Process Hearing

You will not be able to raise issues at the hearing that did not include in your hearing request, unless the LEA agrees otherwise.

Due Process Hearing Rights

You and the LEA have the right to:

1. Be accompanied and advised by legal counsel and by individuals with knowledge and training with respect to special education or the problems of students with disabilities;
2. Present evidence, confront, cross-examine, and compel the attendance of any witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) business days prior to the hearing; separate the witnesses so that they do not hear other witnesses' testimony; and
4. Be provided with an interpreter, if appropriate.

As a parent, you also have the right to:

1. Decide whether your child (who is the subject of the hearing) will attend the hearing;
2. Have the hearing opened or closed to the public; and
3. Obtain a written or an electronic verbatim transcript of the proceedings and a written or electronic copy of the independent hearing officer's written decision, including findings of fact, conclusions, and orders without cost to you.

Additional Disclosure of Information

Before the hearing, you are entitled to a copy of your child's educational record, including all tests and reports upon which the school's proposed or refused action is based. At least five (5) business days before the date of the hearing, you and the LEA must disclose to each other the evaluations each intends to use in the hearing, and copies of all evaluations and recommendations based on those evaluations must be exchanged by that deadline. If either party fails to make these disclosures on time, the hearing officer may bar the evidence from the hearing. If an evaluation is underway and has not been completed, it is necessary to inform each other and the independent hearing officer.

Student's Placement during Due Process Proceedings

Except when your child has violated a LEA rule or has done something that presents a risk of harm to your child or others as described in the section entitled Procedures when Disciplining Children with Disabilities, your child shall remain in the current educational placement during any due process or court proceedings unless you and the LEA agree to another placement. If the hearing involves an application for initial admission to the LEA, your child, with your consent, must be placed in public school until the proceedings are finished.

Due Process Hearing Timeline

The independent hearing officer must conduct the hearing and mail you and the LEA a written decision within 45 calendar days of the expiration of the resolution period as discussed above. A hearing officer may grant specific extensions of time beyond the 45 calendar day time period at the request of either party.

Hearing Decisions

The decision of the hearing officer is made on substantive grounds based on a determination of whether the school provided your child with a free appropriate public education (FAPE). If your request for a hearing includes or is based on alleged procedural violations, the hearing officer may find that your child did not receive a FAPE only if he or she finds that the procedural violations occurred and that those procedural violations:

1. Impeded your child's right to a FAPE;
2. Significantly impeded your opportunity to participate in the decision-making process regarding the provision of FAPE; or
3. Deprived your child of educational benefits.

As part of his or her decision and order, the hearing officer may order the LEA to comply with the procedural requirements.

Civil Action

If you disagree with the hearing officer's written decision, you have the right to bring civil action in state or federal court. You may be entitled to file a lawsuit under other state or federal laws. However, if you are seeking a remedy that is also available under the IDEA, you must pursue your claims through a due process hearing before bringing a civil action.

In any civil action, the court:

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

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.

Nothing in 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 students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under 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 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.

Attorney's Fees

You may be eligible for an award of reasonable attorney's fees if an attorney represents you during a due process hearing (including an appeal and subsequent civil action) and you ultimately prevail. The LEA may negotiate with you or your attorney regarding the amount of reimbursement and, if necessary, about who prevailed.

The LEA may seek attorney's fees against you if you request a hearing or file a subsequent cause of action that is frivolous, unreasonable, or without foundation or if you continued to litigate after the litigation was obviously frivolous, unreasonable, or without foundation. The LEA or the LDOE may also seek attorney's fees from you if your hearing request was presented for any improper purpose, such as to harass, to unnecessarily delay, or to needlessly increase cost of litigation.

Mediation is not available to resolve a disagreement on attorney's fees. An action for attorney fees must be filed in the appropriate state or federal court within 30 calendar days of a final decision that is not appealed. Any fees awarded 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 under the IDEA of state law.

Procedures When Disciplining Children with Disabilities

General Information

School personnel may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

If a student with a disability has been removed from his or her current placement for a total of 10 cumulative school days in the same school year, then the LEA shall provide services to the extent required during any subsequent days of removal.

Case-by-Case Determination

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

Additional Authority

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school personnel may apply the same disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities provided that all required educational and related services continue. The student's IEP team determines the interim alternative educational setting for such services.

Services

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

The LEA is only required to provide services to a student with a disability who has been removed from his or her current placement for 10 consecutive school days or less in that school year if it provides services to a student without disabilities who has been similarly removed.

After a student with a disability has been removed from his or her placement for 10 consecutive school days in that same school year, and if the current removal is for 10 consecutive school days or less, and if the removal is not a change of placement, then school personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

If the removal is a change of placement, the student's IEP team determines the appropriate services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

Manifestation Determination

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of the code of student conduct, the LEA, you, and relevant members of the IEP team shall review all relevant information in the student's file to determine:

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

If the LEA, you, and relevant members of the student's IEP team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the student's disability.

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

Determination that Behavior was a Manifestation of the Child's Disability

If it is determined that the conduct was a manifestation of the student's disability, the IEP team shall:

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

Except as described below under Special Circumstances, the LEA must return the student to the placement from which he or she was removed, unless you and the LEA agree to a change of placement as part of the modification of the BIP.

Special Circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. Carries or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of the LDOE or the LEA;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the LDOE or a LEA; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the LDOE or a LEA.

Definitions

1. ***Controlled Substance*** means a drug or other substance identified under schedules I, II, III, IV, or V of the Controlled Substances Act.
2. ***Illegal Drug*** means a controlled substance, but does not include a substance that is legally possessed, or used, under the supervision of a licensed health-care professional, or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.
3. ***Serious Bodily Injury*** means a bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or faculty.
4. ***Weapon*** has the meaning given the term "dangerous weapon" in Section 930 of Title 18, United States Code.

Notification

On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the LEA shall notify you of that decision and provide you with the procedural safeguards notice.

Referral to and Action by Law Enforcement and Judicial Authorities

Nothing in these regulations prohibits the LEA from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state laws to crimes committed by a student with a disability.

Transmittal of Records

If the LEA reports a crime committed by a student with a disability, the LEA shall ensure that copies of the student's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime only to the extent permitted by FERPA.

Change of Placement Due to Disciplinary Removals

A removal of a student with a disability from his or her current educational placement is a change of placement if:

1. The removal is for more than 10 consecutive school days; or
2. The student has been subjected to a series of removals that constitute a pattern because:

a. The series of removals total more than 10 consecutive school days in a school year;
b. The student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
c. Of such additional factors as the length of each removal, the total amount of time the student 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 LEA, and, if challenged, is subject to review through due process and judicial proceedings.

Appeals

If you disagree with any decision regarding placement or the manifestation determination, you may appeal the decision by requesting a due process hearing.

Authority of State Due Process Hearing Officer

A state due process hearing officer that meets the requirements shall conduct the due process hearing and make a determination. The hearing officer may:

1. Return the student with a disability to the placement from which he or she was removed if the hearing officer determines that the removal was a violation of the requirements or that the student's behavior was a manifestation of his or her disability; or

2. Order a change of placement for the student to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the student or to others.

These hearing procedures may be repeated and additional 45 day assignments may be made if the LEA believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

Whenever a hearing is requested, you, or the LEA involved in the dispute, shall have an opportunity for an impartial due process hearing consistent with the requirements under the Due Process Complaint and Dispute Resolution Procedures except as follows:

1. The LDOE or LEA shall arrange for the expedited due process hearing, which shall occur within 20 school days of the date the request for due process hearing is filed. The hearing officer shall make a determination within 10 school days after the hearing.
2. Unless you and the LEA agree in writing to waive the meeting, or agree to use mediation, a resolution meeting shall occur within seven (7) days of receiving the notice of the request for due process hearing. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the request for due process hearing.
3. The LDOE requires the exclusion of evidence not disclosed to the other party three (3) business days before the hearing, unless the parties agree otherwise.

Placement during Appeals

When an expedited hearing has been requested by either you or the LEA, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified whichever occurs first, unless you and the LDOE or LEA agrees otherwise.

Protections for Children not yet Eligible for Special Education and Related Services

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

Basis of Knowledge of Disciplinary Matters

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

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

Exception

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

1. You did not allow an evaluation of your child or refused special education services; or signed off on an official revocation of consent form; or
2. Your child has been evaluated and determined not to be a student with a disability under the IDEA.

Conditions that apply if there is No Basis of Knowledge

If prior to taking disciplinary measures against a student, the LEA does not have knowledge that the student is a student with a disability, the student may be subjected to the disciplinary measures that are applied to students without disabilities who engaged in comparable behaviors.

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

Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by you, the LEA shall provide special education and related services in accordance with the IDEA.

Requirements for Unilateral Placement by Parents of Children in Private Schools at Public ExpenseGeneral Information

Parentally-placed private school students with disabilities mean students with disabilities enrolled by their parents in private schools, including religious schools or facilities that meet the definition of elementary and secondary school.

The IDEA does not require the LEA to pay for the cost of the education, including special education and related services, of a child with a disability at a private school or facility if the LEA made a FAPE available to the child and you choose to place the child in a private school or facility. However, the LEA where the private school is located must include the child in the population whose needs are addressed under the IDEA provisions regarding children who have been placed by their parents in a private school.

Reimbursement for Private School Placement

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

Limitation of Reimbursement

The cost of reimbursement for private school placement may be reduced or denied if:

1. At the most recent IEP meeting that you attended prior to the removal of your child from the LEA, you did not inform the IEP team that you were rejecting the placement proposed by the LEA to provide a FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or
2. At least 10 business days (including any holidays that occur on a business day) prior to the removal of your child from the LEA, you did not give written notice to the LEA of the information; or
3. Prior to the removal of your child from the public school, the LEA informed you of its intent to evaluate your child, but you did not make your child available for such evaluation; or
4. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

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

Louisiana Department of Education Dispute Resolution Comparison Chart

Questions	IEP Facilitation	Mediation	Informal Complaint/ERP	Formal Complaint	Due Process Hearing
Who can initiate the process?	Parent or LEA or Public Agency, but must be voluntary for both	Parent or LEA or Public Agency, but must be voluntary for both	Parent or LEA or Public Agency, but must be voluntary for both	Any individual or organization, including those from out of state	Parent or local education agency or Public Agency
What is the time limit for filing?	None specified	None specified	One year of when the party knew or should have known of the problem	One year of when the party knew or should have known of the problem	One year from date of the alleged violation
What issues can be resolved?	The contents of an IEP	Same as due process complaint, including matters arising prior to the filing of a due process complaint	Alleged violations of IDEA and state and federal implementing regulations	Alleged violations of IDEA and state and federal implementing regulations	Any matter related to the identification, evaluation, or educational placement or provision of FAPE
What is the timeline for resolving the issues?	None specified	None specified	15 days from receipt of Informal complaint unless extension granted upon joint request of both parties	45 days from end of the ERP unless a specific extension is granted	45 days from the end of the resolution period unless specific extensions to the timeline are granted
Who resolves the issues?	IEP team (Decisions are made by consensus.) The neutral IEP facilitator does not participate in any way in decisions.	Parent and LEA or Public Agency with a mediator. The process is voluntary and both parties must agree to any resolution.	Parent and LEA or Public Agency by agreement. If not, parent may proceed directly to formal complaint or due process.	LDOE Complaint Investigator	Hearing Officer

Contact Information

Name/Title	Phone Number	Email

Notes