

Richland School District Two
YOUR RIGHTS AS PARENTS REGARDING SPECIAL EDUCATION
(Full Explanation of Procedural Safeguards)

As a parent of a student who has been referred for special education services, or who is already receiving special education benefits, you and your child have certain rights that are protected by federal law (Individuals with Disabilities Education Improvement Act [referred to as IDEA '04], 20 U.S.C. § 1400, et seq. [2004]) and state regulations (Special Education, Education of Students with Disabilities, 24 S.C. Code Ann. Regs. 43-243, as amended effective December 31, 2008).

NOTICE

You have a right to:

- be notified a reasonable amount of time before, and to be present at, meetings before the school district initiates or changes (or refuses to initiate or change) the identification, evaluation, placement, or provision of a free appropriate public education (FAPE) to your child. The notice must indicate the purpose, time, and location of the meeting and who will be in attendance.
- have all notices in writing, at a level understandable to the general public, in the language you speak or understand best, or other principal mode of communication, unless it is clearly unfeasible to use that language.
- have all notices translated orally or by other means in your native language or other mode of communication if your native language or other mode of communication is not a written language.
- understand the content of notices and the right to written evidence that these requirements were met.
- a description of the action proposed or refused by the school district, an explanation of why the action is proposed or refused, a description of options considered, and an explanation of why those other options were rejected.
- a description of each evaluation procedure, test, record, or report the school district used as a reason for any action proposed by the school district or the reason for refusal. Procedures include broad areas of assessment—such as physical, language, social, behavioral, emotional, achievement, and intellectual abilities—and the types of professionals involved in administering the tests or collecting the information.
- a description of any other factors that are relevant to the school district's proposed action or reason for refusal.
- an annual notice that includes a full explanation of all the procedural safeguards or rights available to you.
- a notice that includes a full explanation of all the procedural safeguards or rights available to you:
 - upon initial referral or your request for evaluation,
 - upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year,
 - on the date on which the decision is made to make a removal that constitutes a change in placement of your child because of a violation of a code of student conduct, and
 - upon your request.
- be informed that you have protection under the procedural safeguards as provided for in the IDEA and how you can receive a copy of these safeguards or rights.
- be notified of sources to contact to obtain assistance in understanding the provisions of the IDEA (see page 23)
- elect to receive notices by an electronic mail communication, if the school district makes that option available.

RECORDS

"Personally identifiable" records means information that includes

- the name of the student and the student's parent or other family member,
- the address of the student,
- a personal identifier, such as the student's social security number or student number, or
- a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

You have a right to inspect and review all education records that are collected, maintained, or used by the State Department of Education (SDE), school districts, and other participating agencies with respect to

- the identification,
- the evaluation,
- the educational placement, and
- the provision of a FAPE to your child.

You have a right to

- receive a copy of the evaluation report and other documentation used to determine your child's eligibility for a program of special education;
- attend all meetings with respect to the identification, evaluation, educational placement, and provision of a FAPE;

- receive notice of and be present at all IEP meetings;
- receive a copy of your child's IEP, which is a written statement for each student with a disability that is developed, reviewed, and revised in a meeting and must include the following components:
 - the month, day, and year that the IEP will be initiated;
 - the anticipated month, day, and year that the IEP is to be completed;
 - the anticipated month, day, and year of the IEP annual review meeting;
 - the anticipated frequency, location, and duration of the services and modifications included in the IEP;
 - a statement of the student's present levels of educational performance with academic and functional performance, including how the student's disability affects his or her involvement and progress in the general curriculum (i.e., the same curriculum as for students without disabilities) or, for a preschool child as appropriate, how the disability affects his or her participation in appropriate activities;
 - a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum (i.e., the same curriculum as for students without disabilities) and meet each of the student's other educational needs that result from the child's disability;
 - a statement of benchmarks or short-term objectives if the student takes alternate assessments aligned to alternate achievement standards;
 - a statement explaining the methods by which the student's progress toward the annual goals will be measured and how the student's parents will be regularly informed (at least as often as the parents of students without disabilities are informed);
 - a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:
 - to advance appropriately toward attaining the annual goals;
 - to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
 - to be educated and participate with other children with disabilities and nondisabled children in these activities.
 - a statement to the extent, if any, to which the student will not participate with nondisabled children in the regular class and other activities;
 - a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments, and if the IEP team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why:
 - the student cannot participate in the regular assessment; and
 - the particular alternate assessment selected is appropriate for the student; and
 - the projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.
 - a statement of appropriate measurable post-secondary goals based upon age-appropriate transition assessments, related to training, education, employment, and, where appropriate, independent living skills; and the transition services (including course of study) needed to assist the child in reaching those goals, beginning not later than the first IEP to be in effect when the child turns 13, or younger if determined appropriate by the IEP team, and updated annually thereafter.
 - Such transition services are required at age 13 and are a coordinated set of activities that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement to facilitate the student's movement from school to post-school activities and is based on the individual child's needs, taking into account the child's strengths, preferences, and interests.
 - a description of the link between transition goals for post-school activities and the student's academic program;
 - a statement that the student has been informed of the rights that will transfer to him or her on reaching the age of majority;
 - a statement that the appropriateness of extended school year (ESY) services has been determined, including an addendum to the IEP if the ESY services are needed;
 - a statement as to whether the student will work toward a state-issued diploma or a certificate;
 - a statement that the student must participate in the regular statewide and district-wide testing programs or in an alternate assessment;
 - a statement as to whether the student requires promotion/retention standards that are different from those that nondisabled students must meet;
 - a statement of the decisions regarding related services, if appropriate, that were made during the IEP meeting;
 - a statement as to the extent (hours or periods per week) to which the student will participate in academic, nonacademic, and extracurricular activities in the general educational environment.
 - for a student whose eligibility terminates due to graduation from secondary school with a regular state high school diploma, or due to exceeding the age of eligibility for a FAPE, a summary of the student's academic

achievement and functional performance, which must include recommendations on how to assist the student in meeting his or her postsecondary goals;

- for a student transferring with an IEP from both in-state and out-of-state, consult with the school district/agency regarding the provision of services comparable to those described in the previous IEP, which must be in effect until the previous IEP is adopted or a new IEP is developed, adopted, and implemented;
- examine all records relating to your child, without unnecessary delay, after your request and before any meeting regarding an IEP or due process hearing and, in no case, more than forty-five calendar days after the request;
- have a representative appointed by you to inspect and review the records; and
- request that the school district provide copies of the records, if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the records.
- expect that the school district will presume that both parents have authority to inspect and review records relating to their child, unless the school district has been advised that a parent does not have the authority under applicable state law governing matters such as guardianship, separation, or divorce.

You have a right to

- inspect and review only the information relating to your child if any education record includes information on more than one student. If any educational record includes information on more than one student, that specific information must be deleted prior to disclosure;
- have the school district keep a record of parties obtaining access to education records collected, maintained, or used under the IDEA (except access by parents and authorized employees of the participating school district), including
 - the name of the party,
 - the date access was given, and
 - the purpose for which the party is authorized to use the records;
- receive, upon specific request, a list of the types and locations of education records collected, maintained, or used by the school district; and
- have the school district search for or retrieve information without charge.

You may be charged a fee for copies of records that are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records.

You have a right to

- have someone at your child's school explain or interpret any item in your child's records;
- to ask for an amendment of any record, if it is inaccurate, misleading, or violates the privacy or other rights of the student;
- be informed of the school district's decision within a reasonable amount of time, not to exceed forty-five calendar days after requesting that the school district amend the information;
- be informed of the school district's refusal to amend the record and right to a hearing if the school district refuses to make the requested amendment;
- be informed if the due process hearing officer decides in a hearing that the information is inaccurate, misleading, or violates your child's rights and the right to have the record amended;
- be informed that you may place a statement in the record commenting on information or stating your reasons for disagreeing with the school district decision, if it is decided in a hearing that the information need not be amended;
- have your explanation maintained in the record as long as that record is maintained; and
- have your explanation disclosed if that record is disclosed.

A hearing for the purposes in this section of the document must be conducted as indicated in the section of this document titled, "Impartial Due Process Hearings," which is in accordance with the procedures included in the Family Educational Rights and Privacy Act (FERPA).

CONFIDENTIALITY OF INFORMATION

The following definitions apply to the terms used in this section of the parents' rights document.

"Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information or that provides the information required under Part B of the IDEA.

"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 the Family Educational Rights and Privacy Act (FERPA) of 1974 and implementing regulations in the Code of Federal Regulations (34 C.F.R. Part 99).

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

You have a right to

- full and free access to information regarding your child that is collected and maintained by the SDE, school districts, and other participating agencies.
- inspect and review any education records relating to your child that are collected, maintained, or used by the school district.
- receive a response from the school district to reasonable requests for explanations or interpretations of information pertaining to your child. The school district must comply with this request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of your child and in no case more than forty-five calendar days after the request is made.
- request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your parental right to inspect and review the records.
- have your representative inspect and review records pertaining to your child, subject to their providing written authorization to the school district. (The provision of copies of records to representatives of parents is not mandatory unless failure to provide those copies would effectively prevent the parents from exercising their parental right to inspect and review the records.)

The following is information about hearings to challenge information in educational records:

- If you want a hearing you must submit a formal written request (or in certain cases a request in other modes of communication) to the district superintendent or his or her designee to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.
- Impartial due process hearing officers procured by the school district must conduct the hearings. Only persons trained by the SDE may conduct hearings for the school district when the disagreement involves the education records of a child with a disability under the IDEA. Persons who have formerly been employed by the school district are not eligible.
- You have the right during the hearing to present evidence relevant to the issues. You may, at your own expense, be assisted or represented by one or more individuals of your choice, including legal counsel.
- The decision must be made solely on the basis of the evidence and the testimony presented at the hearing.
- Within five calendar days after the hearing, the due process hearing officer must notify all parties in writing of the decision. The notification by the due process hearing officer must include a summary of the evidence and the reasons for the decision.
- When the decision of the due process hearing officer is that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, the appropriate amendments must be made and the school district must inform you in writing.
- When the decision of the due process hearing officer is that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, the school district must inform you of your right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons for your disagreeing with the decision of the hearing officer.
- The statement/explanation must be placed in the records of your child and maintained as long as the record or contested portion is maintained by the school district. Disclosure of the contested portion of the records to authorized persons must also include a copy of your statement.

The following is information about the release of records about your child:

- Parental permission is not required prior to the release of records and records will be transferred without parental permission to a school district/agency where the student will be attending, including a private school. However, if a child is enrolled, or is going to enroll in a private school that is not located in the school district of the parent’s residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the private school is located and officials in the school district of the parent’s residence.
- Records will also be released for a legitimate educational interest to a participating agency.
- If your school district requires parental consent prior to releasing records and you refuse consent for release of information for either purpose, the school district must request mediation or a due process hearing if negotiations with you fail in the attempt to gain consent.
- Records will be disclosed without consent to school officials with legitimate educational interests. A school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate

educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

The following is information about the destruction of records:

- The school district must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child and must apprise you of your right to have this information destroyed.
- Personally identifiable information maintained on your child may be retained permanently unless you request that it be destroyed.
- Personally identifiable information no longer needed must be destroyed at your request except that the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Forty-five calendar days prior to destruction of any personally identifiable information, you must be notified that you have the right to request and be provided a copy of the information that has been obtained or used for the specified purposes.

The following is information about your child's rights upon reaching the age of majority:

- All rights that you have as parents must be transferred to your child upon his or her reaching the age of majority (eighteen years old), unless your child has determined to be incompetent under State law.
- Prior to your child's reaching the age of majority, the school district must designate a person to explain orally to your child his or her rights under the IDEA at the IEP team meeting before your child turns eighteen.
- The school district must provide notice to you and your child regarding the transfer of rights. The school district must provide any notice required under the IDEA to both you and your child.
- All of your rights as parents, including rights to educational records, transfer to a student who is incarcerated in an adult or juvenile, state or local, correctional facility.

If your child is determined incompetent in accordance with state laws or if you obtain a power of attorney, the rights shall not be transferred. Your child may, however, revoke the power of attorney at any time.

If your child is determined incompetent in accordance with state laws and requires legal guardianship beyond his or her reaching the age of majority, the legal guardian shall maintain the rights to privacy. Parents who retain their rights under the IDEA through a power of attorney or by having the student sign a waiver must also continue to maintain the student's rights to privacy.

It shall not be the prerogative of your child aged eighteen or older to deny you access to his or her records if the child is dependent on you as defined in Section 152 of the Internal Revenue Code of 1954 (over half of his or her financial support during the calendar year is furnished by you).

The following is information about the inclusion of disciplinary information in your child's records:

- School districts must follow the procedures established by each school district regarding the inclusion in the records of a student with a disability a statement of any current or previous disciplinary action taken against the student with a disability.
- These records may only be transmitted to other school districts/agencies to the same extent that they are transmitted for students without disabilities. When records are transmitted, they may include a description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals involved with him or her.
- When the disciplinary records are transmitted, the transmission of the student's records must include the student's current IEP.

You have a right to file a complaint with the U.S. Department of Education Family Policy Compliance Office and the State Department of Education with any disagreement regarding your child's education records.

CONSENT

"Consent" means

- The parent has been fully informed, either in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought;
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists what records, if any, shall be released and to whom;
- The parent understands that granting consent is voluntary on the part of the parent and may be revoked at any time.

Informed parental consent must be obtained before

- An initial evaluation or reevaluation can be conducted.
- An initial provision of special education and related services to a student with a disability. While school districts may utilize mediation or due process to override a parent's refusal to consent to an evaluation or reevaluation, if a parent

refuses to consent to an initial placement and provision of special education and related services, the school district may not utilize mediation or a due process hearing to override a parent's refusal to initially place the child.

School districts/agencies must maintain documentation of reasonable efforts to obtain parental consent in order to meet reasonable efforts requirements.

Parental consent is not required before

- a review of existing data can be conducted as part of an evaluation or a reevaluation, and
- a test or other evaluation that is administered to all students, unless consent is required of the parents of all students before administration of that test or evaluation.

Prior parental consent for evaluation must be obtained when students are singled out to receive selective screening or evaluation instruments such as formal and standardized assessments beyond mass screening. Procedural safeguards requirements, including provision to parents of a listing of all parental rights, must be implemented at this time. Parental consent is not required for routine mass screening for vision, hearing, and speech, even when used for staffing decisions. Permission for the intervention process is not required, but parents must be given the opportunity to participate in the process. When the intent is that observations completed during the intervention process are to be used in evaluating a student for a program of special education, due process requirements under the IDEA must be implemented.

If the parents of a student with a disability refuse consent for initial evaluation or a reevaluation, the school district should determine on a case-by-case basis whether to pursue the evaluation by using the due process hearing procedures or the mediation procedures specified in this document, if appropriate. The school district does not violate its child find responsibilities if it declines to pursue the evaluation after making reasonable efforts to obtain parental consent. The school district does not violate its responsibilities to provide FAPE to the child if the parent chooses not to provide consent for the reevaluation and the school district chooses not to pursue the reevaluation by using the consent override provision.

If the parents of a student who is home schooled or parentally placed in a private school does not provide consent for the initial evaluation or reevaluation, the school district may not use mediation or a due process hearing to override the parents' refusal. The school district is not required to consider such child as eligible for services.

The school district may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the school district, except as stipulated in this document.

The school district must complete the initial evaluation within sixty calendar days of receiving parental consent for the evaluation, unless the parent repeatedly fails or refuses to produce the child for the evaluation; or the child enrolls in a school of another school district.

Parental Revocation of Consent for Special Education and Related Services

The parents of a child with an IEP may unilaterally revoke consent for special education placement and the continued provision of special education and related services. The parents must provide written notice to the school district revoking consent for their child to receive special education and related services. When the school district receives the parents' written revocation, the school district will provide the parents with a letter of Prior Written Notice explaining the implications of the parents' request and detailing the services and protections that the child will no longer receive. If, after receiving the Prior Written Notice, the parents wish to continue with the revocation of consent, services to the child will be discontinued on the date specified in the Prior Written Notice.

If consent is revoked for a child to receive special education:

- The child will not receive specialized instruction, related services or accommodations/modifications for academic and/or behavioral difficulties other than those provided for regular education students.
- The child will follow the disciplinary standards and disciplinary consequences as outlined in the School Handbook.
- The child will not be eligible to receive specialized testing accommodations or modifications on state or district assessments.
- The child will be expected to achieve grade level academic standards and will follow the same promotion and retention standards as regular education students.
- The school district will be deemed as not having knowledge of a disability in any future disciplinary procedure.

When the parent revokes consent for special education services then requests that the child be re-enrolled in special education, the parent must request that the child be evaluated. In such cases, the child must meet criteria for initial eligibility for special education. The IEP eligibility team, of which the parents are a member, could determine that the child is not eligible for special education services. The eligibility process will be completed within 60 days following the school district's receipt of the parental consent for evaluation. During this time, the student will follow regular education guidelines, including those related to discipline and grade promotion, until he/she is determined to be a student with a disability.

If the child displays significant educational and /or behavioral problems that suggest a disability, the school district can request permission from the parent to evaluate the child for special education services.

EVALUATION PROCEDURES

“Evaluation” means procedures to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs. This term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

A parent of a child, the State Department of Education, other state agency, or school district may initiate a request for an initial evaluation to determine if the child is a child with a disability.

The initial evaluation must be conducted within sixty days of receiving parental consent for the evaluation, unless the parent repeatedly fails or refuses to produce the child for the evaluation; or the child enrolls in a school of another school district after the sixty day evaluation period begins and before the child’s previous school district has determined whether the child is a child with a disability, and the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

You have a right to

- Have a full and individual evaluation of your child’s educational needs before the initial provision of special education and related services.
- Have the evaluation conducted and reviewed by a multidisciplinary team, including at least one specialist with knowledge in the area of the suspected disability.
- Have your child assessed in all areas related to the suspected disability, including, if appropriate, his or her health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- Have an evaluation of your child that will identify all of your child’s special education and related services needs, whether or not they are commonly linked to the category in which he or she is suspected of having a disability.
- Have appropriate tests administered by qualified examiners.
- Have tests and other evaluation materials selected and administered so as not to be discriminatory on a racial or cultural basis.
- Have more than one measure used in determining the appropriate educational program for your child.
- Have the evaluation conducted in your child’s native language or mode of communication, unless clearly not feasible to do so.
- Have materials and procedures used to assess a student with limited English proficiency selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student’s English language skills.
- If a student is being placed for the first time in a category of disability requiring an evaluation by a school psychologist, then a school psychologist/educational evaluator, a licensed school psychologist, or a licensed psycho-educational specialist must participate in the meeting.
- If a student is being placed for the first time in a category of disability not requiring an evaluation by a school psychologist (i.e., speech-language, hearing, vision, deaf-blind, orthopedically impaired, or other health impaired, unless a concomitant disability is present), then a person knowledgeable about the student’s disability must participate in the meeting.
- Be notified by the school district of the determination and the reasons for it, if the determination of the IEP team conducting a reevaluation review is that no additional data are needed.
- Be notified of your right to request an assessment to determine whether, for purposes of special education services, your child continues to have a disability. The school district is not required to conduct the assessment unless requested to do so by you in order to determine if the student continues to have a disability.
- A reevaluation by the school district of your child with a disability in accordance with Part B of the IDEA before determining that he or she can no longer be considered to have a disability. This reevaluation is not required before the termination of your child’s eligibility under Part B of the IDEA due to his or her having graduated with a regular high school diploma or having exceeded the age of eligibility for a FAPE under state law.
- A reevaluation of your child if conditions warrant it or if you or your child’s teacher requests a reevaluation. In any event, a review must be conducted at least once every three years.
- A written notice from the school district if they disagree that the reevaluation is needed. You would then have a right to request mediation or a due process hearing to resolve the issue.

INDEPENDENT EDUCATIONAL EVALUATION

If you do not agree with the evaluation provided by the school district you have the right to request an independent educational evaluation conducted at public expense.

“Independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student.

“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 the parent.

You have a right to

- an independent educational evaluation obtained at school district expense when a due process hearing officer during a due process hearing requests the evaluation; and
- be provided, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the school district’s criteria for independent educational evaluations, which must be consistent with your right to an independent educational evaluation under the IDEA.

Except for the school district’s criteria, which are used when it initiates an evaluation including the location of the evaluation and the qualifications of the examiner, a school district may not impose other conditions or timelines related to obtaining an independent educational evaluation at public expense.

If you request an independent educational evaluation at school district expense, the school district must, without unnecessary delay, either

- initiate an impartial due process hearing to show that its evaluation is appropriate or
- ensure that an independent educational evaluation is provided at school district expense, unless the school district demonstrates in the impartial due process hearing that the evaluation obtained by the parent did not meet school district criteria.

If the school district initiates a due process hearing and the final decision is that the school district’s evaluation is appropriate, you still have the right to an independent educational evaluation, but not at school district expense.

If you request an independent educational evaluation, the school district may ask for your reasons why you object to its evaluation. Your explanation may not be required, however, and the school district may not unreasonably delay either providing the independent educational evaluation at its expense or initiating a due process hearing to defend its evaluation.

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

If you obtain an independent educational evaluation at public expense or share with the school district an evaluation obtained at private expense, the results of the evaluation must be considered by the school district, if it meets school district criteria, in any decision made with respect to the provision of FAPE to the child, and may be presented by any party as evidence at a hearing on a due process complaint regarding that child.

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

LEAST RESTRICTIVE ENVIRONMENT (LRE)

“Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings to enable students with disabilities to be educated with students without disabilities to the maximum extent appropriate.

You have a right to

- Have supplementary services, such as resource room or itinerant instruction, considered for your child to make it possible for him or her to remain in a regular class placement.
- Have your child educated with students without disabilities to the maximum extent appropriate.
- Have available a variety of placements to meet the needs of students with disabilities for special education and related services.
- Have your child remain in a regular education environment, unless a special class or separate school or other removal is needed. (Removing a student from a regular class environment should be done only when the nature or severity of the disability is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.)

You have a right to

- have placement in the school your child would attend if nondisabled, unless his or her IEP requires some other arrangement; and

- have your child participate in nonacademic and extracurricular services and activities such as meals, recess, counseling, athletics and special interest groups, as appropriate.

In determining the educational placement of a student with a disability, each school district must ensure that the placement decision is made by a group of persons, including the parents, who are knowledgeable about the student and about the meaning of the evaluation data and the placement options and must ensure that the placement decision is made in conformity with the LRE provisions of the IDEA.

The IEP team must verify that the program option recommended for the student is determined annually, is based on the student's IEP, and that it is as close as possible to the student's home.

Unless the IEP of a student with a disability requires some other arrangement, the student must be educated in the school that he or she would attend if nondisabled.

A student with a disability must not be removed from age-appropriate general classrooms solely because of the modifications in the general curriculum that he or she needs.

In selecting the LRE, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs.

SURROGATE PARENTS

Each school district must ensure that the rights of a student are protected if

- no parent can be identified;
- the school district, after reasonable efforts, cannot discover the whereabouts of a parent; or
- the student is a ward of the state, which means that he or she is in the legal custody of the South Carolina Department of Social Services.

The school district must have a method for determining whether a student needs a surrogate parent and for assigning a surrogate parent to the student. The school district may select a surrogate parent as permitted by the State Department of Education Policies and Procedures.

In order to be selected by a school district as a surrogate parent, an individual must

- be an adult with no interest that conflicts with the interest of the student whom he or she represents;
- have knowledge and skills that ensure adequate representation of the student;
- be capable of becoming thoroughly acquainted with the student's educational needs;
- be capable of understanding the culture and linguistic background of the student; and
- not be an employee of the SDE, the school district, or any other agency (public or private) involved in the education or care of the student, such as an employee of the South Carolina Department of Disabilities and Special Needs or the South Carolina Department of Social Services.

An individual is not disqualified as a school district employee from appointment as a surrogate solely because he or she is paid by the school district to serve as a surrogate parent.

A school district may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the student and who meets the other standards for persons selected as surrogates.

The surrogate parent may represent the student in all matters relating to the:

- identification,
- evaluation,
- educational placement of the student, and
- the provision of a FAPE to the student.

When a student with a disability needs a surrogate parent, the student's school district is responsible for appointing the surrogate. When a student who is a ward of the State is placed in a foster home and is presented for placement in a program for students with disabilities in the school district in which the foster parent resides, the school district is responsible for appointing the surrogate parent. In order to determine if a student is a ward of the State, the school district must obtain a copy of the court order stating that the student is in the legal custody of the South Carolina Department of Social Services.

When a student who needs a surrogate parent is placed by a school district or the court for educational or noneducational reasons in a state-operated program having educational responsibility, the state-operated program is responsible for appointing a surrogate parent.

TRANSFER OF RIGHTS AT AGE OF MAJORITY

When your child reaches the age of majority (eighteen years of age), your rights under the IDEA shall transfer to your child. Prior to your child's reaching the age of majority, the school district must designate a person to explain orally to your child his or her rights under the IDEA at the IEP team meeting.

The school district shall provide notice to you and to your child regarding the transfer of rights.

The school district shall provide any notice required under the IDEA to both you and your child.

All rights of parents under the IDEA transfer to students age eighteen or older who are incarcerated in an adult or juvenile, state or local, correctional institution.

If your child is determined incompetent, in accordance with state laws, or if you obtain a power of attorney, rights will not be transferred. .

Your child who is eighteen years old or older cannot deny you the right of access to his or her records if you provide one-half or more of his or her financial support and your child qualifies as your dependent for tax purposes.

PRIVATE SCHOOL PLACEMENT

Students may attend private schools under a variety of circumstances. Depending on those circumstances, students with disabilities attending private schools have specific rights.

Students with Disabilities in Private Schools Placed or Referred by Public Agencies

The SDE ensures that a student with a disability who is placed in or referred to a private school or facility by a school district is provided special education and related services in conformance with an IEP that meets the requirements of the section of these regulations titled "Individualized Education Programs" and that there is no cost to the parents. These students must be provided an education that meets the standards that apply to education provided by the SDE and school districts and must have all of the rights of a student with a disability who is served by a school district.

When it is necessary to provide special education and related services in programs other than public schools, these placements must not occur until it has been determined that the student cannot be appropriately educated by another governmental agency of the State. After a determination is made that neither the public schools nor another governmental agency of the State can adequately provide special education and related services, then private programs within the State (the third alternative) must be considered. If these programs are still inadequate to meet the educational needs of the student, then out-of-state private programs may be approved.

When it is clearly unfeasible to provide a FAPE for a student with a disability in a public school program, the school district may contract with other agencies or organizations, public or private, within or outside of the State, provided that proper application has been made by the school district and approved by the SDE. Students placed in these programs by the SDE/school district/agency must have all of the rights they would have if served by the school district, and the agency or organization must meet all of the standards applicable to the SDE/school district/agency.

Upon the school district's submission of a properly completed application form and any supplemental information that may be required, the SDE shall examine the material for approval of the application. Approval shall be only for those applications where it is impractical and inappropriate to provide special education and related services in a public school setting consistent in accordance with an IEP.

When students with disabilities are placed in private schools by the SDE/school district/agency, the private schools must be in compliance with the standards of the SDE/school district/agency, including the requirement that the students' special education teacher(s) is/are highly qualified.

Students with Disabilities Enrolled by Their Parents in Private Schools When a FAPE Is at Issue

The school district is not required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility, if the school district made a FAPE available to the student and the parents elected to place the student in a private school or facility.

The school district will, however, include that student in child find efforts; including locating, identifying, and evaluating all private school and religious school students with disabilities residing in the jurisdiction of the school district.

If a parent disagrees with the school district regarding the availability of a program appropriate for the student and/or the question of financial responsibility, the parent may request a due process hearing.

If a student with a disability who previously received special education and related services from the school district is enrolled by his or her parents in a private school due to the parents' determining that the student is not receiving a FAPE, a court or hearing officer may require the school district to reimburse the parents for the cost of that enrollment, if the court or hearing officer finds that the school district had not made a FAPE available to the student in a timely manner prior to that enrollment and that the private placement is appropriate.

A parental placement may be found appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the school district.

The cost of any reimbursement by a hearing officer or court may be reduced or denied if:

- at the most recent IEP meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district to provide a FAPE to the student, including stating their concerns and their intent to enroll their child in private school at public expense;
- the parents did not, at least ten business days (including any holidays that occur on a business day) prior to removal of the student from the public school, give the school district written notice that they were rejecting the placement proposed by the school district to provide a FAPE to the student, including stating their concerns and their intent to enroll their child in private school at public expense;
- prior to the parents' removal of the student from the public school, the school district had notified the parents in writing of its intent to evaluate the student, with a statement of an appropriate and reasonable purpose of such evaluation, but the parents did not make the student available for the evaluation; or
- there is a judicial finding of unreasonableness with respect to actions taken by the parents.

Reimbursement must not be reduced or denied for failure of the parent to provide notice if:

- the school prevented the parent from providing the notice;
- the parent had not received notice of rights, which included all of the rights regarding private schools; or
- compliance with the limitation on reimbursement would likely result in physical harm to the student.

Reimbursement may, in the discretion of the court or hearing officer, not be reduced or denied for failure of the parent to provide notice if:

- the parent is illiterate and/or cannot write in English; or
- compliance with the limitation on reimbursement would result in serious harm to the student.

Students with Disabilities Enrolled by Their Parents in Private Schools or Home Schools

Each school district must locate, identify, and evaluate all private school and home-schooled students with disabilities, including students residing in the jurisdiction of the school district who attend religious schools. These students must be included in the school district's Child Find activities and are described in the Child Find procedures approved by the SDE. The activities undertaken to carry out this responsibility for private school and home-schooled students with disabilities must be comparable to those undertaken for students with disabilities in public schools.

No private school or home-schooled student with a disability has an individual right to receive some or any of the special education and related services that he or she would receive if enrolled in a public school. While a school district is required to spend a portion of its funds on private school students, not every student will receive services.

Private schools and home schools are advised of the availability of special education and related services and asked to provide input for the services to be provided. Although final decisions are made by the school district, the district shall consult throughout the school year with appropriate representatives of private school and home school children with disabilities—taking into consideration the funding requirement under 34 C.F.R. § 300.453, the number of private school and home school children with disabilities, the needs of private school and home school children with disabilities, and their location—to decide which children will receive services under 34 C.F.R. § 300.452, what services will be provided, how and where the services will be provided, and how the services provided will be evaluated. If services are received, they are provided through a services plan.

The state regulations include protections listed in the section entitled "Procedural Safeguards." The protections given there do not apply to complaints that a school district has failed to appropriately provide services as written on the student's services plan. If a school district disagrees with the views of private school or home school officials on the provision of services or the types of services, whether provided directly or through a contract, the school district must provide the private or home school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

School districts must obtain written affirmations signed by representatives of private schools or home schools verifying timely and meaningful consultation with the private schools' or home schools' representatives. If a private school or home school does not provide the affirmation within a reasonable period of time, the school district must forward documentation of the consultation to the SDE.

If a student is to receive services from the school district, the district must ensure that a representative of the religious or other private or home school attends each meeting. If the representative cannot attend, the school district must use other methods to ensure participation by the private or home school, including individual or conference telephone calls.

Private school officials have the right to submit complaints to the SDE that school districts did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of private school officials. The SDE then obtains a response from the school district and makes a final decision as to the complaint. A private school official who is dissatisfied with the SDE's decision may file a complaint with the United States Department of Education.

MEDIATION

You have a right to participate in mediation with the school district as a way to resolve disagreements between you and the district, whether or not you have filed a due process complaint to request a due process hearing. Mediation may be used to resolve disagreements relating to:

- identification,
- evaluation,
- educational placement, and
- provision of a FAPE.

Mediation:

- must be made available whenever a due process hearing is requested,
- is voluntary for both parties and is at no cost to you, and
- shall not be used to deny or delay your right to a due process hearing, or to deny of your other rights.

Mediation is conducted by a qualified and impartial mediator who has been trained by the SDE in effective mediation techniques. An individual who serves as a mediator:

- must not be an employee of any school district or any state agency providing educational programs to students with disabilities, and
- must not have a personal or professional conflict of interest.

A mediator is selected on a random, rotational or other impartial basis from the list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services, or both you and the school district will be involved in selecting the mediator and agree with the selection of the individual who will mediate.

Mediation shall be scheduled in a timely manner and shall be held in a location that is convenient to both you and the school district.

Mediation is confidential and discussions that occur during the mediation process may not be used as evidence in due process hearings or civil proceedings, and both you and the school district may be required to sign a confidentiality pledge prior to the commencement of the process.

An agreement reached by the parties to the dispute in the mediation process is signed by both you and the school district in a written legally binding agreement that is enforceable in any state or federal court.

The mediation agreement must include:

- a statement that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding,
- signatures by both the parent and a representative of the agency who has the authority to bind such agency, and
- a statement that the agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

The state shall bear the cost of the mediation process by directly paying for the training of all mediators and flowing through the IDEA, Part B funds that may be used for all aspects of the mediation process, including the cost of meetings to encourage mediation. Parents may obtain a copy of the mediation form from their school district. The form is also available on the South Carolina Department of Education's website, as follows:

- Go to www.ed.sc.gov.
- Find "offices" and click on "Exceptional Children."
- Click on "Forms and Applications."
- Select "Request for Mediation Form."

DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES

The regulations for Part B of IDEA sets 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 or the State Department of Education. 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 Department of Education 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, 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.

SYSTEM FOR INVESTIGATION OF COMPLAINTS RECEIVED FROM CONSTITUENTS RELATIVE TO A FREE APPROPRIATE PUBLIC EDUCATION

Any individual or organization may file a State complaint alleging a violation of any Part B requirement of the IDEA by a school district, the State Department of Education, or any other public agency.

The complaint must include:

- A statement that a school district or public agency has violated a requirement of Part B of the IDEA;
- The facts on which the statement is based;
- The signature and contact information for the complainant; and
- If alleging violations with respect to a specific child—
 - The name and address of the residence of the child;
 - The name of the school the child is attending;
 - In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
 - A description of the nature of the problem of the child, including facts relating to the problem; and
 - A proposed resolution of the problem to the extent known and available to the party at the time the 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.

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

Note: If an issue is more appropriately resolved through another avenue, the SDE will provide you with information regarding that avenue or regarding the more appropriate options.

This complaint should be submitted to the SDE for investigation. Please submit the complaint to the following address: Director, Office of Exceptional Children, South Carolina Department of Education, 1429 Senate Street, Columbia, South Carolina 29201-3799.

Upon receipt of the complaint, the SDE will begin investigation procedures, which include the following:

- The complaint investigation shall be completed in sixty calendar days from receipt by the SDE with an allowable extension of the time limit should exceptional circumstances exist with respect to a particular complaint, or if the parent and the school district involved agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available.
- In resolving a complaint in which a failure to provide appropriate services was found, the SDE will address:
 - how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student; and
 - appropriate future provision of services for all students with disabilities.
- An independent on-site investigation will be conducted, if necessary.
- The complainant will be given an opportunity to submit additional information, either orally or in writing about the allegations in the complaint.
- The school district will be given the opportunity to respond to the complaint, including, at a minimum, a proposal to resolve the complaint at the option of the agency and an opportunity for a parent who has filed a complaint and the school district to voluntarily engage in mediation.
- The SDE will review all relevant information and make an independent determination as to whether the school district is violating a requirement of federal or state regulations.

- The SDE will provide copies of written correspondence sent to a school district.
- The SDE will issue a written decision to the complainant that addresses each allegation in the complaint and contains:
 - findings of fact and conclusions; and
 - the reasons for the final decision.

If a written complaint is received that is also the subject of a due process hearing relating to either the school district's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student, the provision of a FAPE to the student, or the disciplinary procedures under Part B of the IDEA—or if the written complaint contains multiple issues, of which one or more are a part of that hearing—the state must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. Any issue in the complaint, however, that is not a part of the due process action must be resolved using the procedures described in the regulations.

If an issue is raised in a complaint filed under this section that was previously decided in a due process hearing involving the same parties (you and the school district), the hearing officer's decision is binding and the SDE must inform the individual or organization filing the complaint to that effect.

Technical assistance activities, negotiations, and corrective actions, as warranted to achieve compliance, will be undertaken by the SDE to ensure effective implementation of the final decision.

A complaint alleging a school district's failure to implement a due process decision must be resolved by the SDE.

IMPARTIAL DUE PROCESS HEARINGS

Due Process Complaint

You or the school district has the right to submit written due process complaints requesting impartial due process hearings with respect to matters relating to a proposal or a refusal to initiate or change the:

- identification,
- evaluation,
- educational placement of your child, or
- provision of a 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, however, if you could not file a due process complaint within the timeline because the school district specifically misrepresented that it had resolved the issues identified in the complaint, or if the school district withheld information from you that it was required to provide to you under Part B of the IDEA.

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 files a due process complaint.

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 and the party filing a due process complaint must forward a copy of the due process complaint to the State Department of Education.

The request from you or the attorney representing your child must include:

- the name of your child,
- the address where your child lives,
- the name of the school your child is attending,
- available contact information for the child and the name of the school the child is attending in the case of a homeless child or youth; and
- a description of the problem(s) you are having with the school district, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to you at the time.

A form for this purpose may be obtained from the school district. The form is also available on the South Carolina Department of Education's website, as follows:

- Go to www.ed.sc.gov.
- Find "offices" and click on "Exceptional Children."
- Click on "Forms and Applications."
- Select "Request for Due Process Hearing Form."

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 sufficient due process complaint.

The due process complaint will be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements. Within five days of receipt of notification, the hearing officer must make a determination on the fact of the due process complaint of whether the complaint is sufficient, and must immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting, or if the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins. If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve begin again with the filing of the amended due process complaint.

If the school district has not sent a prior written notice to you regarding the subject matter contained in your due process complaint, the school district must, within 10 days of receiving the due process complaint, send to you a response that includes:

- An explanation of why the school district proposed or refused to take the action raised in the due process complaint;
- A description of other options the IEP team considered and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- A description of the other factors that are relevant to the agency's proposed or refused action.

A response by a school district does not prevent the school district from asserting that your due process complaint was insufficient, where appropriate.

If you must respond to a due process complaint initiated by a school district, you must, within 10 days of receiving the due process complaint, send to the school district a response that specifically addresses the issues raised in the due process complaint.

Resolution Session

Prior to the opportunity for a due process hearing, the school district must convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the request for the due process hearing:

- within fifteen days of receiving notice of the parents' complaint,
- which shall include a representative of the school district who has decision-making authority on behalf of the school district,
- which may not include an attorney of the school district unless the parent is accompanied by an attorney, and
- where the parents of the student discuss their request for the due process hearing, the facts that form the basis of the request, and the school district is provided the opportunity to resolve the issues involved in the request, and
- unless waived in writing by the parents and school district or the parties agree to use mediation.

If the school district has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

The timeline for issuing a final decision begins at the expiration of the 30 day period.

Except where the parties have jointly waived, in writing, the resolution process or to use mediation, the failure of the parents to participate in the resolution meeting will delay the timelines for the resolution process and the due process hearing until the meeting is held.

If the school district has been unable to obtain the parents participation in the resolution meeting after reasonable efforts have been made and documented (including the attempts to reach a mutually agreed on time and place for the meeting), the school district at the conclusion of the 30 day period may request that the hearing officer dismiss the due process complaint.

If the school district fails to hold the resolution meeting within 15 days or fails to participate, the parent may seek the intervention of the hearing officer to begin the due process hearing timeline.

The 45 day due process hearing timeline starts the day after either: both parties waive, in writing, the resolution meeting, the 30 day resolution period has expired with no resolution reached, the mediation/resolution starts but the parties agree, in writing, that no agreement is possible before the expiration of the 30 day period or the parties agree to continue to mediate after the 30 day period but one party withdraws from the mediation process.

If a resolution to the dispute is reached at the meeting, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the school district and is enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the State Department of Education, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements.

If the parties execute such an agreement, a party may void the agreement within 3 business days of the agreement's execution.

A resolution session is not required when the school district files a due process complaint. In that situation, the 45 day timeline for issuing a due process hearing decision begins the day after the school district's due process complaint is received by you and the State Department of Education. However, if you and the school district elect to use mediation, the 30 day resolution process is still applicable.

Impartial Due Process Hearing

Whenever a due process complaint is received, the parents or the school district involved in the dispute must have an opportunity for an impartial due process hearing, which must be conducted by the school district that is directly responsible for the education of the student.

You have a right to:

- be informed of the availability of mediation when you request an impartial due process hearing.
- be told of any free or low cost legal and other relevant services available, if you request the information, or if you or the school district initiates a due process hearing.
- have the hearing conducted by a hearing officer who is not employed by a school district or public agency involved in the education or care of your child or who otherwise has a personal or professional interest that would conflict with his or her objectivity in the hearing. (The hearing officer is not an employee of the school district solely because he or she is paid by the school district to serve as a hearing officer.)
- have the hearing conducted by a person trained by the SDE to conduct hearings for the school district. This person cannot be someone who has formerly been employed by the school district, is a current or former officer, agency, or school board official of a school district or an employee of the State educational agency involved in the education or care of the student. The hearing officer must possess knowledge of, and the ability to understand, the provisions of the IDEA '04, federal and state regulations pertaining to the IDEA '04, and legal interpretations of the IDEA '04 by federal and state courts. The hearing officer must also possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
- be notified by certified mail, return receipt requested, on the same day that you submit the request for the hearing to an impartial due process hearing officer. This notification shall include:
 - a list of agencies/organizations in the community where free/low cost legal and other relevant services may be available to parents who request the information or at any time when either the parents or the school district initiates a due process hearing,
 - a copy of the original notice requesting permission for the proposed action, as well as a statement as to the reason that the hearing is being requested,
 - a statement that school files, reports, and records pertaining to the student must be made available for inspection and copying, consistent with the school district's procedures concerning confidentiality,
 - a detailed description of all the rights regarding procedures at the due process hearing,
 - a statement of the parents' right to appeal the decision resulting from the due process hearing, and
 - the statement that "In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party" .
- at the hearing for you or the school district to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities, except that whether parties have the right to be represented by nonattorneys at due process hearings is determined under State law;
- have your child present.
- have the hearing open to the public.
- have a hearing and/or review set at a time and place reasonably convenient to you and your child when the hearing and/or review involves oral arguments.
- be notified of the time, date, and location of the hearing within five calendar days of the receipt of the request for the hearing.

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint, unless the other party agrees otherwise.

A parent or agency must request an impartial hearing on their due process complaint within two year of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

You or the school district have the right to present evidence and confront, cross-examine and compel the attendance of witnesses. You or the school district has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five calendar days before the hearing.

At least five business days prior to an impartial due process hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

A hearing officer may bar any party who fails to comply with this provision from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

You or the school district have the right to have a written transcript or, at your option, an electronic, verbatim record of the hearing. This must be at no cost to you.

You or the school district have the right to obtain written, or at your option, electronic findings of fact and a written decision.

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefit.

During the proceedings you have a right to have your child remain in his or her present educational placement until completion of all hearing proceedings, unless you and the school district agree otherwise.

If the due process hearing involves an application for initial admission to the school district, the student, with the consent of the parents, shall be placed in the school district until the completion of the hearing.

If the decision of a hearing officer in a due process hearing conducted by a reviewing official in a state level appeal agrees with you that a change of placement is appropriate, that placement shall be treated as an agreement between you and the school district.

The SDE, after deleting any personally identifiable information, shall transmit the findings and decisions to the State Advisory Council on the Education of Individuals with Disabilities and make those findings and decisions available to the public.

The school district must ensure that not later than 45 days after the expiration of the 30 day resolution period, a final decision is reached in the hearing, and a copy of the decision is mailed to each of the parties.

The school district must ensure that not later than 30 days after the receipt of a request for a review, a final decision is reached in the review, and a copy of the decision is mailed to each of the parties.

A hearing or reviewing officer may grant specific extensions of time beyond the time periods set out in this document at the request of either party.

DUE PROCESS ISSUES RELATED TO DISCIPLINARY PROCEEDINGS

(See also the section of this document titled "Interim Alternative Educational Setting")

If you disagree with any decision regarding change in placement of your child after a violation of the student code of conduct, or if you disagree with the manifestation determination, or if the school district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, the decision may be appealed by requesting an expedited due process hearing.

The hearing is requested by filing a due process complaint. A hearing officer hears and makes a determination regarding such an appeal. In making the determination, the hearing officer may return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was in violation of school personnel's authority or the hearing officer may order a change of placement of the 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 the child is substantially likely to result in injury to the child or to others.

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

Whenever a hearing is requested as described above, the parents or the school district involved in the dispute must have an opportunity for an impartial due process hearing. The SDE or the school district is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

Unless the parents and the LEA agree in writing to waive the resolution meeting, or agree to use the mediation process, a resolution meeting must occur within seven days of receiving notice of the due process complaint, and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

The decisions on expedited due process hearings are appealable in the same manner as non expedited due process hearing decisions.

When an appeal has been made by either the parent or the school district, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g) of the IDEA regulations, whichever occurs first, unless the parent and the SDE or school district agree otherwise.

If the decision of the due process hearing officer in an expedited due process hearing or the decision of a review official in an administrative appeal agrees with the school district that a change of placement is appropriate, that placement must be treated as an agreement between the school district and you and your child must be placed in an interim alternative educational setting.

If the decision of the due process hearing officer in an expedited due process hearing or the decision of a review official in an administrative appeal is in favor of the parent, however, your child shall remain in the present educational placement unless all parties agree otherwise.

APPEALS

A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision.

If the hearing is conducted by a public agency other than the SDE, then any party aggrieved by the findings and decision in the hearing may appeal to the SDE.

If there is an appeal, the SDE must conduct an impartial review of the findings and decision appealed. The official conducting the review must:

- Examine the entire hearing record,
- Ensure that the procedures at the hearing were consistent with the requirements of due process,
- Seek additional evidence if necessary,
- Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official,
- Make an independent decision on completion of the review, and
- Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

The SDE, after deleting any personally identifiable information, must:

- Transmit the findings and decisions to the State advisory panel, and
- Make those findings available to the public.

The decision made by the reviewing official is final unless a party brings a civil action.

CIVIL ACTION

You have the right to bring a civil action if you disagree with the results of the state level administrative review.

The action may be brought in any state court of competent jurisdiction or in district courts of the United States without regard to the amount in controversy.

The party bringing the action in a federal court shall have 90 days from the date of the decision of the State review official to file a civil action. The party bringing the action in a state court shall have 30 days from the date of the decision of State review official to file a civil action.

In any action, the court:

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- shall receive the records of the administrative proceedings,
- shall hear additional evidence at the request of a party, and
- basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Nothing in this part 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, and other federal laws protecting the rights of students with disabilities. Before a party files a civil action under these laws seeking relief that is also available under section 615 of Part B of the IDEA, the procedures for due process hearings and appeals under both the state and federal regulations regarding the school district's proposal/refusal to initiate or change the identification, evaluation, or educational placement of the student, the provision of a FAPE to the student, or the disciplinary procedures must be exhausted to the same extent as would be required had the action been brought under Section 615 of Part B of the IDEA.

ATTORNEYS' FEES

In any action or proceeding brought under Section 615 of Part B of the IDEA (procedural safeguards), the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a student with a disability who are the prevailing parties. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under Section 615 of Part B of the IDEA.

A court awards reasonable attorneys' fees under Section 615(i)(3) of Part B of the IDEA consistent with the following.

- Fees awarded under the IDEA 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 this subsection.
- Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if all of the following occur:
 - the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins.
 - the offer is not accepted within ten days.
 - the court or administrative due process hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
- According to Section 615 of Part B of the IDEA, attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial process.
- Notwithstanding the paragraph on prohibition of attorneys' fees in this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
- Except as provided in this section, the court reduces accordingly the amount of the attorneys' fees awarded if the court finds that any of the following occur.
 - The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy.
 - 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 comparable skill, reputation, and experience.
 - The time spent and legal services furnished were excessive considering the nature of the action or proceeding.
 - The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with this section.
- The provisions regarding reduction of amount of attorneys' fees do not apply in any action or proceeding if the court finds that the State or school district unreasonably protracted the final resolution of the action or proceeding or if there was a violation of Section 615 Part B of the IDEA.

INTERIM ALTERNATIVE EDUCATIONAL SETTING; DISCIPLINARY REMOVALS OR SUSPENSIONS

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct.

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive days (to the extent those alternatives are applied to children 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).

For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if:

- the removal is for more than ten consecutive days, or
- your child is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removal, and there are factors such as:
 - the length of each removal,
 - the total amount of time your child is 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.

If a student is removed or suspended for more than ten consecutive school days for a single offense, the removal is also a violation of state law (S.C. Code Ann. 59-63-220 (2004)).

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services.

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 child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.

A child with a disability who is removed from the child's current placement must continue to receive educational services as to enable the child to continue to participate in the general educational curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP, and 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 recur.

The services may be provided in an interim alternative educational setting.

A public agency is only required to provide services during periods of removal 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 is similarly removed.

After a child with a disability has been removed from his or her current placement for 10 school days in the same year, if the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, so as 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, the child's IEP team determines appropriate services.

Manifestation Determination

Within 10 school days of any decision to change the placement of your child because of a violation of a code of student conduct, the school district, you, and relevant members of your child's IEP team (as determined by you and the school district) must review all relevant information in your child's file, including your child's IEP, any teacher observations, and any relevant information provided by you to determine:

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

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

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

Determination that Behavior Was a Manifestation

If the school district, you, and relevant members of your child's IEP team make the determination that the conduct was a manifestation of your child's disability, the IEP team must either:

- 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
- If a behavioral intervention plan has already been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- 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 the parent 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 your child's disability, school personnel may remove your child to an interim alternative educational setting (determined by your child's IEP team) for up to 45 school days, if your child:

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

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

Definitions: The federal definitions for controlled substance, illegal drug, weapon, and serious bodily injury are used, as follows.

- The term "controlled substance" means a drug or other substance identified under schedules I, II, III, IV, and V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- The term "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 and used under any other authority under the Controlled Substances Act or under any other provision of federal law.
- The term "weapon" has the definition of "dangerous weapon" in Section 930(g)(2) of Title 18 of the U.S. Code: "The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than two and one-half inches in length."
- The term "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: "The term "serious bodily injury" means bodily injury which 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 mental faculty."

Determination of Setting

The child's IEP team determines the interim alternative educational setting for services.

PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

A student who has not been determined eligible for special education and related services under the IDEA and who has engaged in behavior that violated any rule or code of conduct of the school district, including any behavior described in the previous section of this document, may assert any of the protections provided for in this document, if the school district had knowledge, (as determined below), that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

A school district must be deemed to have knowledge that your child is a student with a disability if:

- you have expressed concern in writing (or orally if you do not know how to write or you have a disability that prevents a written statement) to personnel of the appropriate educational agency that your child is in need of special education and related services.
- the behavior or performance of your child demonstrates the need for these services in accordance with the definition of "student with a disability." This term means a student who has been evaluated in accordance with the standards set forth in the *Criteria for Entry into Programs of Special Education for Students with Disabilities*, and in

State Board Regulation 43-243.1, and Part B of the IDEA as having one of the thirteen categories of disabilities and who, by reason thereof, needs special education and related services.

- you have requested an evaluation of your child to determine if he or she is a student with a disability.
- the teacher of your child, or other personnel of the school district, has expressed concern about the behavior or performance of your child to the director of special education of the agency or to other personnel in accordance with the school district's established Child Find or special education referral system.

A school district would not be deemed to have knowledge under this section if, as a result of its receiving the information noted in the previous paragraph, the school district:

- conducted an evaluation under the procedures specified in the *Criteria for Entry into Programs of Special Education for Students with Disabilities*, and in State Board Regulation 43-243.1, and determined that your child did not meet the criteria for having a disability or
- determined that an evaluation was not necessary and provided notice to you of its determination in accordance with the procedures in the section titled "Notice."
- previously provided special education services to the child as a student with a disability and the parents revoked their consent for special education and related services.

If a school district does not have knowledge that your child is a student with a disability in accordance with the above, prior to taking disciplinary measures against your child, he or she may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with the following.

- If a request is made for an evaluation of your child during the time period in which he or she is subjected to disciplinary measures, as described above, the evaluation must be conducted in an expedited manner. An "expedited evaluation" means that timelines will be utilized that result in completion of the evaluation within twenty-five calendar days after you have given permission to evaluate.
- Until the evaluation is completed, your child is subject to the standard discipline procedures and will remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to have a disability, the school district must provide special education and related services in accordance with state and federal regulations.

MEDICAL HOMEBOUND PLACEMENTS

If your child's placement will be changed as a result of medical homebound placement, the IEP team must determine the educational services to be provided to the child. The student must be provided an opportunity to participate in nonacademic and extracurricular activities with his or her nondisabled peers to the maximum extent appropriate. Your child must be provided the opportunity to access and progress in the general curriculum, advance toward the goals in his or her IEP, and earn Carnegie units, if applicable.

HOME-BASED PLACEMENTS

If your child's placement will be changed as a result of a home-based placement, the IEP team must determine the educational services to be provided to the child. If the placement is made because of disciplinary purposes, the student may not be entitled to the same access to nonacademic and extracurricular activities. If the placement is made as part of the continuum of services in the least restrictive environment, your child must be provided the opportunity to access and progress in the general curriculum, advance toward the goals in his or her IEP, and earn Carnegie units, if applicable.

CHARTER SCHOOLS

Parents of students with disabilities enrolled in charter schools must be accorded the same rights as parents of students with disabilities enrolled in any other school in the school district.

ALTERNATIVE SCHOOLS

Parents of students with disabilities enrolled in alternative schools must be accorded the same rights as parents of students with disabilities enrolled in any other school in the school district.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

Part B of the IDEA does not prohibit a school district from reporting a crime committed by a child with a disability to appropriate authorities or 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.

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

- Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the school district reports the crime; and
- 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).

AGENCIES THAT PROVIDE FREE/LOW COST LEGAL SERVICES

The following is a list of agencies that provide free/low cost legal services:

Protection & Advocacy for People with Disabilities, Inc.
3710 Landmark Drive, Suite 208
Columbia, South Carolina 29204
Columbia Numbers:
803-782-0639 or toll free 1-866-275-7273 (voice) or toll free 866-232-4525 (TTY)
<http://www.protectionandadvocacy-sc.org>

CONCLUSION

As parents of a student with a disability, you and your child have many rights. With these rights, there are certain responsibilities. The school district is responsible for protecting your rights. You, in turn, should attempt to keep the school district informed of things that affect your child's education. You also are urged to assist the school by attending the IEP meetings and by keeping the lines of communication open at all times. When you have concerns about your child's education, it is important to tell your child's teacher, school principal, coordinator of special education, or other school administrators. You may contact the South Carolina Department of Education, Office of Exceptional Children, at 803-734-8224. If you need further assistance, there are advocacy and/or parent groups listed below from whom you may obtain help.

If you would like a further explanation of any of these rights, you may contact John Hogan at 803-738-3256, or you may contact these agencies or organizations for assistance:

PRO-Parents
652 Bush River Road, Suite 218
Columbia, South Carolina 29210
1-800-759-4776
803-772-5688 (Columbia)

Family Connection of South Carolina, Inc.
2712 Middleburg Drive, Suite 103 B
Columbia, South Carolina 29204
803-252-0914

Protection & Advocacy for People with Disabilities, Inc.
3710 Landmark Drive, Suite 208
Columbia, South Carolina 29204
Columbia Numbers:
803-782-0639 or toll free 1-866-275-7273 (Voice) or
toll free 866-232-4525 (TTY)
<http://www.protectionandadvocacy-sc.org>