SPECIAL EDUCATION
PROCEDURAL SAFEGUARDS
FOR STUDENTS WITH DISABILITIES AND THEIR FAMILIES
REQUIRED UNDER IDEA PART B

New Mexico Public Education Department
Special Education Division

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INTRODUCTION

A key element of the Individuals with Disabilities Education Act (IDEA) is a focus on and support of a parent's participation in their child's education. Your rights include the right to participate in meetings with school personnel to discuss and make decisions regarding the identification, evaluation, placement, or provision of a free appropriate public education to your child. This includes being part of an Eligibility Determination Team that decides whether your child is a "child with a disability" and meets eligibility criteria for special education and related services and being part of the team that develops, reviews, and revises the individualized education program (IEP) for your child and makes placement decisions for your child.

If you have a child with a disability or who you suspect has a disability, understanding your rights under federal and state special education law is important to decisions about your child's education. The more you know, the better you can advocate for your child to obtain an appropriate education and support your child's educational progress. You are encouraged to review and get to know these rights. If you need help understanding them, please reach out to the school district, the Public Education Department or others, including those listed at the end of this Notice, to help explain them. Also, please see the additional resources on the New Mexico Public Education Department website at https://webnew.ped.state.nm.us/bureaus/special-education/.

Not all students with disabilities are eligible for special education services under IDEA. Some students may have disabilities that affect major life activities but they do not meet the eligibility requirements for one of the categories of disability under the IDEA. These children may be protected by different federal laws, such as Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act (ADA). The rights of these children and their parents are similar, but not the same, as the procedural safeguards described in this booklet. For more information about these laws, contact the school district's Section 504 coordinator or see the information on the Public Education Department (PED) website at https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/section-504-resources/

Note: References in this Notice to "you" or "parent" and "your child" also apply to educational decision-makers, surrogate parents and adult students. References to the "school district" or "district" include charter schools, state educational service agencies, and state-supported education programs.

SPECIAL EDUCATION PROCEDURAL SAFEGUARDS HIGHLIGHTS

The following summary highlights procedural safeguards under the Individuals with Disabilities Education Act and New Mexico special education laws and rules. These are important rights for parents and students. For full information about the procedural safeguards, please refer to the more complete description in the sections below.

Parent Notice - Page 4

A parent or adult student (student age 18 or older to whom rights have transferred) has the right to be informed of actions, and for some actions, to give consent before the school district considers or makes changes to the student's education based on special needs. The school district must give the parent prior written notice (information in writing) before it takes any action to identify, test, or place the student in special education for the first time and before it makes any changes to the student's special education and related services or placement. When the parent has requested a change, and the district refuses, the parent also must be informed in writing of the basis for the action.

Parent Consent – Page 5

Parents have certain consent rights. The school district must get written parental consent before first evaluating a student and before providing special education services for the first time to a student. After the student is placed in special education, consent will be requested before reevaluations. The school district also is required to obtain consent for use of your public benefits and insurance or private insurance to pay for your child's special education services. Parents also have the right to revoke (withdraw) consent.

Transfer of Rights – Page 9

When a child with a disability turns 18, the rights under the IDEA transfer to the child unless a court has appointed a legal guardian for the child. The school district must provide notice to the parent of this transfer or educational rights at the annual IEP team meetings when your child is 14 and older.

Evaluation - Page 10

A parent who has concerns or suspects that their child is a child with a disability who may need special education can request an evaluation of their child at any time and your child can be evaluated, even while other interventions are taking place. The school district must respond to the parent's request for evaluation with a prior written notice. If the parent disagrees with the school district's response, the parent can use the special education processes designed to help resolve disagreements.

Independent Educational Evaluation – Page 10

A parent who disagrees with an evaluation completed by the school district has the right to request an Independent Educational Evaluation to have the student evaluated by someone who does not work for the district. If the evaluation meets certain conditions, the school district must pay for it, unless the district proves in a due process hearing its evaluation was appropriate.

Individualized Education Program (IEP) - Page 12

If your child is determined to be eligible for special education services, the school district is required to formulate, with your input, an IEP for your child within thirty (30) calendar days of the eligibility determination. The IEP must be implemented as soon as possible after it is completed. You have the right to be involved in all meetings regarding any decision related to the IEP or your child's special education needs and placement. You must be afforded reasonable notice of all IEP meetings and an opportunity to participate in all IEP meetings with the entire IEP team. Parents also have the right to include other individuals with special knowledge or expertise regarding the child in the IEP team meeting.

Disciplinary Actions for Students with Disabilities – Page 13
School personnel may remove a student with a disability from class or school for a violation of the student code of conduct used for all students for ten days in a school year. When the removal is for more than ten days in a school year, your child should continue to receive educational services, and special rules for functional behavior assessment, behavior plans and continued services apply. If the removal is for more than ten days in a row or otherwise is a change of placement, an IEP team must decide whether the behavior was caused by the student's disability (manifestation determination). The manifestation determination must be conducted prior to any disciplinary hearing for long-term suspension or expulsion. A parent may file an appeal if he or she disagrees with the district's manifestation determination or change of placement decision.

Protections for Children Not Yet Eligible for Special Education – Page 17
The rights in this Notice related to discipline and removal apply when your child has not yet been determined to be eligible for special education and the school district had knowledge that your child may or is a child with a disability before the behavior that brought about the disciplinary action occurred. Whether the school district is considered to have knowledge requires certain factors set out in the IDEA.

Referrals and Actions for Crimes Committed by Students with Disabilities – Page 18
A school district may report a crime committed by a child with a disability to appropriate authorities, but they must provide the authorities with copies of the child's special education and disciplinary records for consideration. Nothing in the IDEA prevents law enforcement or judicial authorities from exercising their responsibility to apply federal and state laws to those crimes.

Unilateral Parental Placement of Students with Disabilities in Private Schools – Page 18
Reimbursement for parental placement of students with disabilities in private schools is available if the school district has not offered or implemented a plan that provides a student with a free appropriate public education. There are requirements for parents to provide notice to the school district before seeking payment for private school services.

Resolving Disagreements – Page 19
When a concern arises about a student's education, parents are encouraged to discuss it with teachers, the principal and the district special education director. Many issues may be resolved through informal conferences or IEP team meetings. When these steps do not resolve the issue, the IDEA provides a parent with options to assist with resolving disagreements and the parent should consider contacting the PED Special Education Division or the other resources at the end of this Notice for information about these options.

Confidentiality (Privacy) of Information - Page 30
Parents (and adult students) have privacy rights related to personally identifiable information in a child's educational records and the right to expect that those records will not be open to anyone except certain people who need the information for reasons related to the student's education. Parents must give written consent before records may be released, except in certain circumstances.

Educational Records: Access and Amendment and Destruction of Information – Page 31
Parents have the right to access their child's educational records under the IDEA. This includes the right to obtain copies of records if you cannot effectively inspect and review them unless you receive copies and the right to have your representative inspect and review records. If a parent believes the student's records are incorrect or violate privacy, an amendment of the record may be requested. When personally identifiable information collected by the school district is no longer needed for the student's education, the parent (adult student) has the right to request destruction of the information.

PROCEDURAL SAFEGUARDS NOTICE

You have the right to a copy of this Notice of Procedural Safeguards once a year and at certain other times.

The IDEA requires that schools provide you with a notice containing a full explanation of the procedural safeguards available under the IDEA and the IDEA regulations. Procedural safeguards are some of the rights that you and your child have under the IDEA. A copy of the Procedural Safeguards Notice must be given to you one time each year and also when the following occurs:

1. The first time you or the school district asks for an evaluation.
2. You ask for a copy of these procedural safeguards.
3. The first time in a school year you request a due process hearing or file a state complaint.
4. A decision is made to take disciplinary action against your child that is a change in placement.

PRIOR WRITTEN NOTICE

The School District must provide certain information to you in writing whenever it proposes or refuses actions that will affect special education services.

The school district must provide you with information in writing about important decisions that affect your child's special education program. This document is called a Prior Written Notice (PWN). It is a document that reflects decisions that were made about your child's special education program. The district is required to send you a Prior Written Notice after a decision has been made, but before the decision has been implemented.

Notice

The school district must give you Prior Written Notice (i.e., provide you certain information in writing), whenever it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education to your child; **or**
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child or the provision of free appropriate public education (FAPE) to your child.

Content of Notice

A Prior Written Notice must:

1. Describe the action that the school district is proposing or refusing to take;
2. Explain why the school district is proposing or refusing to take the action;
3. Describe any other options considered by the IEP team and the reasons why those options were rejected;
4. Describe each evaluation procedure, assessment, record, or report the school district used in deciding to propose or refuse the action;
5. Describe any other factors relevant to the action;
6. Include a statement that you have protections under the procedural safeguards of Part B of the IDEA;
7. Include a copy of this Notice of Procedural Safeguards, or if you have already received this Notice during the current school year and the action proposed or refused is not an initial referral for evaluation, provide information about how to obtain another copy of this Notice; **and**
8. Provide resources you can contact to get help in understanding Part B of the IDEA.

Notice in understandable language

The Prior Written Notice must be:

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

If your native language or other mode of communication is not a written language, the school district must ensure that:

1. The notice is translated for you orally in your native language or other mode of communication;

2. You understand the content of the notice; **and**
3. There is written evidence that 1 and 2 above have been met.

NATIVE LANGUAGE

You have the right to have information in a language you normally use.

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

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

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

ELECTRONIC MAIL

If offered by the school district, you have the right to choose to get information by email.

If the school district offers parents the choice of receiving documents by email, you may choose to receive the following by email:

1. Prior Written Notice
2. Procedural Safeguards Notice; **and**
3. Notices related to a due process complaint.

CONSENT

You have certain consent rights under the IDEA. The school district must get your written consent before evaluating your child and before providing special education services for the first time to your child. There are some exceptions to consent for evaluation.

Your written consent is required before the school district may take certain steps related to evaluating your student for special education or providing special education services. Giving your consent is voluntary. The district may not use your refusal to consent to one service or activity as a reason to deny you or your student any other service, benefit, or activity.

Definition of Consent

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information relevant to the action for which you are giving consent;
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
3. You understand that the consent is voluntary on your part and you may revoke your consent at any time.

Revoking Consent

You may revoke your consent at any time, but if you wish to revoke consent, you must do so in writing. Revoking your consent will only apply to future action by the district. Your revocation of consent does not change an action that has already happened after you gave consent but before you revoked consent. In addition, the school district is not required to change your child's education records to remove any references that your child received special education and related services after you revoke your consent.

Authority to Give Consent

The IDEA requires that every child who is below the legal age of adulthood (age 18 in New Mexico) have an adult available to make educational decisions and protect the child's legal rights. This is the person who can give consent. Usually that person is a biological or adoptive parent. If more than one person is qualified to act as a parent, and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent under the IDEA. If a biological or adoptive parent is not

available or no longer has legal authority to make educational decisions, the adult decision-maker for IDEA purposes may be any of the following:

1. A person acting in the place of a biological or adoptive parent with whom a child lives, such as a grandparent, stepparent or other relative;
2. A stepparent, or other relative who lives with the child;
3. A legal guardian (but not the State if the child is a ward of the state);
4. An individual appointed by a court to serve as the child's educational decision-maker; **or**
5. A surrogate parent for a child whose parent cannot be located, including for a child who is homeless.

In New Mexico, children are legally considered to be adults at age 18 and all of the decision-making rights under the IDEA transfer to the adult student, unless a court has appointed a legal guardian for the student as described under *Transfer of Rights* below.

Ward of the State

For the purposes of IDEA, *Ward of the State* in New Mexico means a child who is temporarily or permanently in the custody of, or committed to, the Children, Youth and Families Department (CYFD) through the action of the Children's Court or juvenile court and who otherwise has no designated educational decision-maker or surrogate parent. This can include a foster child without a foster parent designated as the child's educational decision-maker.

If a child is a ward of the state in the custody of CYFD, the State District Court Judge is required to appoint an educational decision-maker for the child. In New Mexico, these rules apply to the appointment of the educational decision-maker:

1. The educational decision-maker should be the child's parent, unless the court determines that appointing the parent would be contrary to the best interest of the child.
2. If the parent's rights have been terminated or the parent is unable or unwilling to fulfill the role of educational decision-maker, the Court must appoint another person as the educational decision maker for the child.
3. The Court may appoint the child's foster parent, or other individual, including a person designated by the child.

The appointed person, including a foster parent, must be (1) willing to make the educational decisions for the child under the IDEA, (2) have no interest that would conflict with the interests of the child, **and** (3) not be an employee of the PED, the school district, or CYFD. A foster parent is not precluded from appointment as a child's educational decision-maker solely because they are paid by CYFD to foster the child.

CYFD is **never** the parent or educational decision-maker for your child for the purposes of the IDEA.

Special Rules for Initial Evaluation of Wards of the State

If a child is a ward of the state and is not living with any biological or adoptive parent, the school district does not need consent from a biological or adoptive parent for an initial evaluation to determine if the child is a child with a disability if:

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

Surrogate Parent

If a child's parents cannot be located, including for homeless youth, the school district must assign a surrogate parent who can make parental decisions for the child. The school must make reasonable efforts to ensure the assignment of a surrogate parent

not more than 30 days after the school determines that a student needs a surrogate parent.

The surrogate parent (1) must not be an employee of the PED, the school district or any other agency involved in the education or care of the child, (2) must not have any personal or professional interest that conflicts with the interest of the child, **and** (3) must have knowledge and skills that ensure adequate representation of the child.

Consent for Initial Evaluation

In order for the school district to conduct an initial evaluation of your child to determine eligibility under Part B of the IDEA to receive special education and related services, it must first provide you with prior written notice of the proposed action and obtain your consent as described under ***Prior Written Notice*** and ***Consent*** *above.*

The school district must make reasonable efforts to obtain your consent for an initial evaluation to decide whether your child is a child with a disability. Your consent for initial evaluation does not mean that you have also given your consent for the district to start providing special education and related services to your child.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused consent or have not responded to a request to provide consent for an initial evaluation, the school district may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process hearing procedures. The school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Parental Consent for Services

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

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke your consent in writing, the district may **not** use IDEA's mediation or due process hearing procedures to obtain agreement or a ruling that the special education and related services may be provided to your child without your consent.

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

1. Is not in violation of the requirement to make a free appropriate public education available to your child for its failure to provide those services to your child; **and**
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

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

Parental Consent for Reevaluations

The school district must get your consent before it reevaluates your child, unless the district can demonstrate that:

1. It took reasonable steps to get your consent for the reevaluation; **and**
2. You did not respond.

If you refuse to consent to a reevaluation, the school district may, but is not required to, pursue the reevaluation by using IDEA's mediation or due process hearing procedures to override your refusal to consent to the reevaluation. As with initial evaluations, the district does not violate its obligations under the IDEA if it does not pursue the reevaluation in this manner.

Consent for the Use of Public Benefits and Insurance

Before the school district may access your public benefits or insurance for the first time, it must provide written notification to you and obtain your written consent. This consent must specify:

1. the personally identifiable information that may be disclosed (e.g., records of information about the services that may be provided);
2. the purpose of the disclosure (e.g., billing for services);
3. the agency to which the disclosure may be made; **and**
4. the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services.

Once the district obtains your written consent, it is not required to obtain parental consent before it accesses the public benefits or insurance in the future even if there is a change in the type or amount of services to be provided or a change in the cost of services to be charged to the public benefit or insurance program. However, the district must provide written notification to you annually after consent to use public benefits is obtained.

You cannot be required by the school district to sign up for or enroll in public benefits or insurance programs in order for your child to receive a free appropriate public education. The school district cannot require you to incur an out-of-pocket expense such as payment of a deductible or co-pay for services provided as part of your child's special education program. If you agree to use your child's public benefits or insurance, the district should pay the cost of the deductible or copay so that you do not incur any out-of-pocket costs.

The school district cannot use your child's benefits under a public benefits program or insurance program if that use would -

1. Decrease available lifetime coverage or any other insured benefit;
2. Result in your family paying for services that otherwise would be covered by the public benefits or insurance program and that are required for your child's time outside of school;
4. Increase premiums or lead to the discontinuation of benefits or insurance; **or**
5. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

Consent for the Use of Private Insurance

The school district must obtain your informed written consent for each proposed use of your private insurance benefits and must inform you that your refusal to permit use of your private insurance will not excuse the district of the responsibility to provide required services to your child at no cost to you. The school district cannot require you to incur an out-of-pocket expense such as payment of a deductible or co-pay for services provided as part of your child's special education program. If you agree to use your private insurance, the district should pay the cost of the deductible or copay so that you do not incur any out-of-pocket costs.

Documentation of Reasonable Efforts to Obtain Consent

The school district must keep records of reasonable efforts to obtain consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents or educational decision-makers of wards of the state for initial evaluations. The documentation must include a record of the school district's attempts in these areas, such as:

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

Other Consent Requirements

Your consent is not required before the school district may:

1. Review existing data as part of your child's evaluation or a reevaluation;
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children;
3. Conduct evaluations, tests, procedures, or instruments that are identified on a child's IEP as a measure for determining progress toward IEP goals; **or**
4. The district may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may **not** use its consent override procedures (i.e., mediation, due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

TRANSFER OF RIGHTS

When your child turns 18, the rights described in this Notice transfer to your adult child.

Age of Majority

Under New Mexico law, persons reach the "age of majority" and become legal adults when they reach their 18th birthday, marry, or are legally emancipated. At age 18, a person is no longer under the legal guardianship of their parent or other adult unless a court has established adult guardianship. Students who have reached the age of majority are responsible for making decisions about their own education.

Transfer of Special Education Rights

The special education procedural safeguards in this booklet transfer to the student at the age of majority unless the court has appointed a legal guardian to act on their behalf. This means that the student will have the right to participate as the decision-maker in eligibility, IEP, and placement meetings, to consent or refuse consent for evaluation or reevaluation, and to exercise other special education rights.

Request for Parent or Others to Support Decision-making

The student can also indicate in writing that he or she wants to support decision-making with a parent or wants a parent to continue to have authority to make decisions about his or her educational program. The school district must honor these written requests, a valid power of attorney, or a supported decision-making agreement.

Notice of Transfer of Rights

The school district must inform the parent and student of the laws and options regarding this transfer of rights to educational decision-making under the IDEA at the beginning of each annual IEP review for a child who is age 14 or older. At least one year before your child's 18th birthday, the district will notify you and your child that the procedural safeguards will transfer at the age of majority. The student will also get a written notice at age 18 that rights have transferred.

Once these rights transfer, parents (except for parents of incarcerated students) continue to receive notices of meetings and prior written

notices of district actions. However, the parent may not attend meetings unless specifically invited by the student or the school district.

More Information on Transfer of Rights

If you have concerns about the ability of your child to make decisions or questions about guardianship, you may want to consult with an attorney or contact one of the resources at the end of this booklet. You may request more information about transfer of rights from the school district or the Special Education Division at the PED.

EVALUATIONS

You have the right to request an evaluation of your child at any time, and the school district must respond to this request with a prior written notice. An evaluation can be conducted simultaneously with other interventions.

A student must receive a complete and comprehensive evaluation to determine if the student has a disability and is eligible for special education and, if eligible, to assist in determining appropriate special education and related services that may be necessary. The evaluation must be completed within 60 days of when you provide consent for the evaluation.

Parents who have a concern about their child's development or have a suspicion about a possible disability should talk to school personnel. Although the school may suggest that interventions be tried to address your concerns, you may refer your child and request an initial evaluation at any time. A parent's request for evaluation can be made orally or in writing. Special words need not be used in making a referral for an initial evaluation. Parents should keep a record of when they made their request for evaluation, who they made the request to, and how they made their request.

When a parent makes a parental request for an initial evaluation, the school district must either accept or reject the parent's request for evaluation within a reasonable time. In either case, the district must give the parent Prior Written Notice documenting and explaining its decision about the evaluation request. If the district accepts your request for evaluation, it must immediately seek your consent to conduct an evaluation and complete the evaluation within 60 days of when consent is provided.

The school district should provide you with information concerning other supports like Response to Intervention (RTI), Multi-layered System of Supports (MLSS), and the Student Assistance Team (SAT). However, the school district may not refuse or delay obtaining your consent for the evaluation or conducting the evaluation on the basis of RTI, MLSS or SAT processes. The RTI, SAT and MLSS processes and the evaluations can occur during the same time.

The evaluator must present tests and procedures in your child's language and/or mode of communication that will yield accurate information about what your child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. The school district cannot rely upon a single procedure as the sole criterion for determining an appropriate educational program for your child.

INDEPENDENT EDUCATIONAL EVALUATIONS

You have the right to have your child evaluated by someone who does not work for the school district if you disagree with an evaluation completed by the district. An Independent Educational Evaluation is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your student. You have the right to get an independent educational evaluation if you disagree with the evaluation of your child by the school district. If you request an independent educational evaluation at public expense, the district must provide you with information about where you

may obtain an independent educational evaluation and about the school district's criteria that applies to independent educational evaluations.

Definitions

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

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

Parent Right to Independent Educational Evaluation at Public Expense

You have the right to an independent educational evaluation at public expense if you disagree with an evaluation obtained by the school district, subject to the following conditions:

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

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

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

Parent-initiated Evaluations

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

1. The school district must consider the results of the evaluation of your child, if it meets the district's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education to your child; **and**
2. You or the school district may present the evaluation as evidence at a due process hearing regarding your child.

Requests for Evaluations by Due Process Hearing Officer

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

School District Criteria

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

Except for the criteria described above, the school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. The school district must provide you, on request, with an opportunity to demonstrate that unique circumstances justify an independent educational evaluation that does not meet the district's criteria.

INDIVIDUALIZED EDUCATION PROGRAM

You have the right to participate in meetings and decision making regarding your child's individualized special education needs and placement.

Decisions about your child's special education needs and services are made at IEP team meetings. As the parent of a child with a disability, you have the right to participate in meetings regarding the identification of your child as a child with a disability, the evaluation of your child's special education needs, the determination of whether your child requires special education services, the development, review, or revision of your child's IEP, and the educational placement of your child.

Individual Education Program (IEP)

An IEP is a written plan describing how your child's special education program and related services will be provided within a certain educational placement or setting. The school district must convene an IEP team meeting to develop your child's IEP within thirty (30) calendar days of the eligibility determination finding that your child needs special education and related services. Once developed, the IEP must be implemented as soon as possible, and reviewed at least once a year at an IEP team meeting. You or the school district can have IEP meetings for your child more than once annually if needed or requested. The school district must provide a copy of your child's IEP to you at no cost.

Your child's IEP must contain a description of your child's current levels of academic and functional performance, specific instructional needs, services, supports, and accommodations, as well as an explanation of the amount of time your child will not be participating in regular education classes. The IEP must also contain measurable, annual goals.

The school district must ensure your child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other person responsible for implementing the IEP. Each of your child's teachers must be informed of his or her specific responsibilities related to implementing your child's IEP, and the specific accommodations, modifications, and supports to be provided to your child.

IEP team Meetings

An IEP team is a group of qualified persons who periodically meet at IEP team meetings to make determinations about your child's IEP. The IEP team includes:

1. The parents or adult student;
2. At least one of your child's regular education teachers;
3. At least one of your child's special education teachers;
4. A school representative who has the authority to commit school resources and ensure services in your child's IEP are provided;
5. An individual with expertise to interpret your child's evaluation results; **and**
6. The child, when appropriate

You may invite other individuals with knowledge or special expertise regarding your child to participate in an IEP team meeting. You may also request the presence of any teacher, related service provider, paraprofessional, and additional staff at an IEP team meeting.

IEP Meeting Notice

The school district must take steps to ensure you are present at each IEP team meeting for your child and afforded an opportunity to participate. The school district must schedule the meeting on a mutually agreeable date and time, and send you written notice of the IEP team meeting early enough to ensure you will

have an opportunity to attend. The notice must:

1. State the purpose, time, and location of the meeting, and who will be in attendance;
2. Inform you of the right to invite to the meeting other individuals who have knowledge or special expertise about your child; **and**
3. For a child that is 14 years of age or older or attending eighth grade or higher, indicate a purpose of the meeting will be the consideration of postsecondary goals and transition services for the child, and that the child must be invited to the meeting in writing.

Attendance at Meetings

If you cannot participate in an IEP team meeting in person, the school district must use other methods to ensure your participation, such as using individual or conference telephone calls, or video conferencing. The school district must provide an interpreter, translator, or sign language interpreter for these meetings, if necessary.

The school district can hold an IEP team meeting if you are unable to attend, but only if the school can demonstrate it made efforts to arrange a mutually agreed upon time and place for the meeting and was unable to convince you to attend. The school district's records must include detailed records of telephone calls made, and the results of the calls, copies of correspondence sent and responses received, detailed records of visits made to the parent's home or place of employment, and the results of the visits.

All other required members of the IEP team must attend all meetings of the IEP team, unless you provide written consent to excuse a required member of the IEP team. The school may request your consent to excuse a member of the IEP team from a meeting if:

1. A required IEP team member's area is not being discussed or modified at the meeting; **or**
2. A required IEP team member's area is being discussed or modified at the meeting but the excused team member provides written input into the development of the IEP to the parent and the IEP team.

If you refuse to provide written consent, the IEP team member must attend the meeting or the meeting must be rescheduled.

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

You have the right to specific procedures and protections if the school takes certain disciplinary actions towards your child, including the right for your child to receive educational services when removed for more than 10 school days and to be returned to his placement under certain circumstances.

Authority of School Personnel Case by Case Determination

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

General

To the extent that the school district takes disciplinary action for children without disabilities, school personnel may, for not more than 10 school days in a row, remove a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting (which must be determined by the child's IEP team), another setting, or suspension.

School personnel may also require additional removals of the child of not more than 10 school days in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement as described in ***Change in Placement Because of Disciplinary Removals.***

Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same year, the school district must, during any additional days of removal in that school year, provide services as described under ***Services*** *below.*

Services

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

A school district is **not** required to provide services to a child with a disability who has been removed from his or her current placement for **less** than 10 school days in that school year, unless it provides services to a child without disabilities who has been removed less than 10 school days.

A child with a disability who is removed from the child's current placement for **more** than 10 school days must:

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

After a child with a disability has been removed from his or her current placement for 10 school days in that same school year, and if the current removal is for 10 school days in a row or less and if the removal is **not** a change of placement (see **Change in Placement Because of Disciplinary Removals** below), then school personnel must consult with at least one of the child's teachers and determine which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

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

Manifestation Determination

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (*see* ***Change in Placement Because of Disciplinary Removals*** below), the school district, the parent, and relevant members of the IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
2. If the conduct in question was the direct result of the school district not implementing the child's IEP.

If the school district, the parent, and relevant members of the child's IEP team determine that either of those conditions was met, the conduct must be found to be a manifestation of the child's disability. Also, if the school district, the parent, and relevant members of the child's IEP team determine that the conduct in question was the direct result of the school district not implementing the IEP, the district must take immediate action to remedy those deficiencies.

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

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

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

Except as described under **Special Circumstances** below, 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.

Determination that Behavior was not a Manifestation of the Child's Disability

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

The school district must conduct the manifestation determination for a student with a disability before taking any regular school disciplinary action like a hearing to consider long-term suspension or expulsion.

Special Circumstances

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

1. Carries a weapon to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the PED or the school district;
2. 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 PED or the school district; **or**
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the PED or the school district.

Definitions

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

Illegal drug means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

Serious bodily injury means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted physical or mental loss or impairment.

Weapon means something that is used for, or is readily capable of, causing death or serious bodily injury, but does not include a pocket knife with a blade of less than 2 ½ inches.

Notification

On the date the school district makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents with the Procedural Safeguards Notice.

Change of Placement Because of Disciplinary Removal

A removal of a child with a disability from the child's current educational placement is a

change of placement if:

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

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

Determination of Setting

The IEP team must determine the interim alternative educational setting for removals that are changes of placement and for removals under ***Additional Authority*** **and** ***Special Circumstances*** *above*.

Appeal

The parent of a child with a disability may request a due process hearing if he or she disagrees with:

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

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

Expedited Due Process Hearing

Whenever a parent or the school district requests a due process hearing to appeal a decision regarding placement made under these discipline provision or a manifestation determination, a hearing must be held that meets the requirements described under ***Due Process Hearing Procedures*** below*,* except as follows:

1. PED must arrange for an expedited due process hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing.
2. Unless the parents and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within 7 calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.

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

Authority of Due Process Hearing Officer

An impartial Hearing Officer must conduct the due process hearing and make a decision.

The Hearing Officer may:

1. Return the child with a disability to the placement from which the child was removed if the Hearing Officer determines that the removal was a violation of the requirements described under ***Authority of School Personnel*** above or that the child's behavior was a manifestation of the child's disability; **or**
2. 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 hearing procedures may be repeated if the school district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Placement during Appeals

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

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

Your child may have the protections in this notice if the school district had knowledge that your child was a child with a disability even if your child had not yet been determined eligible for special education and related services.

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

Basis of Knowledge for Disciplinary Matters

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

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

Exception

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

1. The child's parent has not allowed an evaluation of the child or refused special education services; **or**
2. The child has been evaluated and found to not be a child with a disability under the IDEA.

Conditions that Apply if There is no Basis of Knowledge

If before taking disciplinary measures against the child, the school district does not have knowledge that a child is a child with a disability (as described above), the child may be given the disciplinary measures that are applied to children without disabilities who engaged in the same type of behaviors.

However, if a request is made for an evaluation of a child during the time period in which the child is given disciplinary measures, the evaluation must be conducted in an expedited (more quickly than otherwise) manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by the parents, the school district must provide special education and related services in accordance with the IDEA, including the disciplinary requirements.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

The IDEA does not prevent your school district from reporting a crime committed by a student with a disability to appropriate authorities, but requires that the district provides copies of your child's special education and disciplinary records to the authorities.

The IDEA does not:

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

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

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

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

You have the right to request reimbursement for your child's private school placement if the school district has not offered or made a free appropriate public education available to your child; however, you must follow specific procedures to present that request to the IEP team.

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

Reimbursement for Private School Placement

If you choose to enroll your child in a private elementary or secondary school without the consent of or referral by the school district, a court or a Hearing Officer may require the agency to reimburse you for the cost of that enrollment if the court or Hearing Officer finds that the agency had not made a free appropriate public education available to your child in a timely manner before that enrollment and that the private placement is appropriate. A Hearing Officer or court may find your placement to be appropriate, even if the placement does not meet the state standards that apply to education provided by PED and school districts.

Limitation on Reimbursement

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

1. If: (a) At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the school district to provide free appropriate public education to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; **or** (b) At least 10 business days (including any holidays that occur on a business day) before your removal of your child from the public school, you did not give written notice to the school district of that information:

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

However, the cost of reimbursement:

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

SPECIAL EDUCATION DISPUTE RESOLUTION PROCEDURES

You have the right to use dispute resolution procedures that include Facilitated IEP Meetings, Mediation, State Complaints and Due Process Hearings to resolve your disagreements with the school district.

State and federal special education laws provide many opportunities for parents to be involved in educational planning for their student who has a disability. You and the school district are encouraged to work together to try to resolve disagreements that affect your child's special education program.

If a disagreement arises between you and the school district over your child's IEP or educational program, either you or the district may convene a new IEP meeting at any time to attempt to resolve their differences.

When you and the school district are not able to resolve disagreements, there are more formal dispute resolution options available. These options are mediation, Facilitated IEP meetings, state complaints, and impartial due process hearings. Each of these options have different requirements, which are described below.

FACILITATED IEP MEETING (FIEP)

A Facilitated IEP meeting is an IEP team meeting that includes an impartial facilitator who promotes effective communication and assists an IEP team in developing an IEP based on the student's needs. A Facilitated IEP Meeting can be useful when there is a history of communication challenges or a meeting is expected to be particularly complex or controversial. The facilitator helps to keep the team focused on the appropriate development of the IEP while working through conflicts that arise and ensuring the participation of each IEP team member. The facilitated IEP meeting includes all of the required team members. A Facilitated IEP team Meeting is an optional process that is not required by the IDEA

IEP Facilitation is designed to:

- Keep the meeting focused on the needs of the student
- Ensure everyone at the table has a voice
- Encourage active listening by all participants
- Keep the group from getting stuck on just one goal (or one part) of the IEP
- Help team members stay on task and on time
- Help teams develop mutually acceptable IEPs
- Be used for any IEP team meeting including: initial, annual, re-evaluation, review, and revision
- Use an impartial facilitator who doesn't take sides, place blame or impose decisions on teams

*IEP Facilitation is **not**:*

- An advocate representing one side or the other
- A mediation that results in a confidential mediated agreement
- Due process
- A third party to determine a winner and loser

The PED makes Facilitated IEP Meetings available as an Alternative Dispute Resolution option **after** the filing of a formal state complaint or due process hearing request. If an FIEP is done through PED, there is no cost to the parent or school district.

Your school district also can, but is not required to, provide a Facilitated IEP Meeting **before** you file a formal state complaint or due process hearing request or at any other time. The school district will be responsible for the cost of the facilitator in these instances.

Impartial Facilitators

The PED provides independent, state-approved, trained facilitators who know the laws and regulations relating to the provision of special education and related services, and who are trained in the facilitation process. The PED selects facilitators on a rotating, impartial basis. If IEP Facilitation is provided by the school district, the district is responsible for providing the facilitator who may or may not be on the PED list. The school district sets its own criteria for these IEP Facilitations and the selection of facilitators. .

Requesting a Facilitated IEP Meeting from the School District

You should request a copy of any school district policies or requirements for FIEPs if you are considering making a request for an FIEP before filing a state complaint or due process hearing request. You may request that the school district arrange a Facilitated IEP meeting by contacting the school district's Special Education Director.

Requesting a Facilitated IEP Meeting from the PED

If you want to try to resolve your complaint with a Facilitated IEP Meeting, you will need to submit a written request for a Facilitated IEP Meeting to the PED after filing state your complaint or due process hearing request. The PED has a model form for requesting a Facilitated IEP meeting that is available on the PED website. You are not required to use this model form and can submit request in any form, as long as it includes the information required on PED's model form.
To request a Facilitated IEP meeting, you will need to mail or fax the written request to the PED Special Education Division at 120 South Federal Place, Room 206, Santa Fe, NM 87501, (505) 954-0001 (Fax). If you need assistance obtaining a model form or have questions about Facilitated IEP Meetings, please contact the Special Education Division at (505) 827-1457 or spedfeedback@state.nm.us.

Both parties will need to agree to a Facilitated IEP Meeting before PED will assign a facilitator.

MEDIATION

Mediation is a procedure in which the parties discuss their dispute with the assistance of a trained impartial third person who assists them in reaching an agreement about their dispute. Mediation is available through PED to allow you and the school district to resolve disagreements involving any matter under the IDEA. Mediation is offered by the PED at no cost to you or the school district.

Mediation is available to resolve disputes under the IDEA at any time. Mediation can be requested before you file a formal state complaint or due process hearing request. Mediation also is an alternative dispute resolution option provided to you after you have filed a formal state complaint or due process hearing request.

The IDEA requires that mediation:

1. Is voluntary on your part and the school district's part;
2. May not be used to deny or delay your right to a due process hearing, or to deny any other rights you have under the IDEA; **and**

3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district. PED has rules that require that mediation be completed within 14 days from the assignment of the mediator.

If you and the school district reach an agreement in mediation, the agreement must be documented in a binding mediated agreement that is enforceable. The mediated agreement must state that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any later due process hearing or court proceeding. The agreement must be signed by you and a representative of the school district who has the authority to hold the district to the agreement.

A written, signed mediation agreement is enforceable in any state court that has the authority under state law to hear this type of case or in a federal district court.

Impartiality of mediator

The IDEA has specific requirements for mediators. The mediator may not be an employee of PED or the school district that is involved in the education or care of your child. The mediator also must not have a personal or professional interest which conflicts with the mediator's objectivity. A person who otherwise qualifies as a mediator is not an employee of PED solely because the person is paid by PED to serve as a mediator.

The PED has a list of qualified mediators who know the laws and regulations relating to the provision of special education and related services. The PED selects mediators on a rotating, impartial basis.

Requesting Mediation

You must submit a written request for Mediation. The PED has a model form for requesting mediation on the PED website. You are not required to use this model form and can submit your request in any form, as long as it includes the information required on PED's model form.

To request Mediation, you will need to mail or fax the written request to the PED Special Education Division at 120 South Federal Place, Room 206, Santa Fe, NM 87501, (505) 954-0001 (Fax). If you need assistance obtaining a model form or have questions about Mediation, please contact the Special Education Division at (505) 827-1457 or spedfeedback@state.nm.us.

Both parties will need to consent to Mediation IEP before PED will assign a mediator.

DIFFERENCES BETWEEN A STATE COMPLAINT AND DUE PROCESS HEARING

In addition to Facilitated IEP Meetings and Mediation, you have the right to use the state complain process or request a due process hearing to resolve disagreements with the school district. The IDEA regulations have separate procedures for state complaints and for due process hearings. As described above, any individual or organization may file a state complaint alleging a violation of any IDEA requirement by the school district, the PED, or any other public agency. Only you or the school district may file a due process hearing request 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 to the child.

State complaints are limited to alleged violations of the IDEA that occurred within one year from the date of filing of the complaint. Due process hearing requests may include alleged violations of the IDEA that occurred within two years of the filing of the due process hearing request and, in some limited circumstances as described above, can extend further back than two years.

PED must resolve a state complaint within a 60-calendar-day timeline, unless the timeline is properly extended. An impartial due process hearing officer must conduct a due process

hearing (if not resolved through a resolution meeting or 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.

STATE COMPLAINT

The state complaint process is another way to resolve disagreements or concerns involving any matter under the IDEA. A state complaint is a process which requires that the PED investigates alleged violations of Part B of the IDEA, identify violations of the law, issue a written complaint resolution report, and require corrective action by the school if appropriate. If the PED finds a failure to provide appropriate services, the PED must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child, and the appropriate future provision of services for all children with disabilities.

The state complaint process is provided by the PED at no cost to you or the school district. The PED has written procedures for the filing and resolution of any special education complaint, including a complaint filed by an organization or individual from another state. The PED widely distributes the state complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Complaint Requirements

An organization or individual may file a complaint under the state complaint procedures. The individual filing the complaint does not need to be a parent. The complaint can be about a specific child, or can be about a special education issue that may affect more than one student.

A complaint must include the following information:

1. A statement that the school district or other public agency has violated a requirement of the IDEA or its regulations;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and
4. If alleging violations regarding a specific child:
   a. The name of the child and address of the residence of the child;
   b. The name of the school the child is attending;
   c. In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
   d. A description of the nature of the problem of the child, including facts relating to the problem; **and**
   e. A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

A state complaint must allege a violation of the IDEA that occurred not more than one year before the date that the complaint is received by the PED.

Filing a State Complaint

You must submit a written complaint form to the PED Special Education Division. The PED has a model form for state complaints on the PED website. You are not required to use this model form and can submit your request in any form, as long as it includes the information required on PED's model form.

To file a complaint, you will need to mail or fax the written complaint to the PED Special Education Division at 120 South Federal Place, Room 206, Santa Fe, NM 87501, (505) 954-0001
(Fax). If you need assistance obtaining a model form or questions about state complaints, please contact the Special Education Division at (505) 827-1457 or spedfeedback@state.nm.us.

Alternative Dispute Resolution

After you file a state complaint, you still have an opportunity for alternative dispute resolution. You have the choice of requesting Alternative Dispute Resolution options of Mediation or a Facilitated IEP Meeting to try to resolve your conflict with the school district. The PED will ask both parties if they would like to participate in Alternative Dispute Resolution options. The decision to participate in Alternative Dispute Resolution options is voluntary.

Complaint Investigation Procedure and Time Limit

The PED is required to complete the complaint procedures and issue a decision within 60 calendar days after receipt of your complaint.
During this time, PED will assign an investigator who will:

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

There can be an extension of time permitted for completion of the complaint process, but only in limited circumstances. The PED can permit an extension of the 60-calendar-day time limit if exceptional circumstances exist with respect to a particular State complaint that would justify an extension. The PED also can permit an extension of the 60-day calendar-day time limit if you and the school district voluntarily agree to extend the time to try mediation or a Facilitated IEP Meeting to resolve the dispute.

Implementation of the Complaint Resolution Corrective Action Plan

The PED has procedures for effective implementation of a Corrective Action Plan from a Complaint. The PED has a Corrective Action Plan monitor who oversees the implementation of the Plan, including ensuring that any required corrective actions are completed. If you have questions about a Corrective Action Plan issued by PED in response to your complaint, you can contact the Special Education Division at 505-827-1457 or at spedfeedback@state.nm.us.

State Complaints and Due Process Hearings on Same Issues

If a written state complaint is received that is also the subject of a due process hearing request, or the complaint has multiple issues of which one or more are part of a hearing request, the PED must set aside the complaint, or any part of the complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties (the parent and the school district), then the due process hearing decision is binding on that issue and PED must inform the complainant that the decision is binding.

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

DUE PROCESS HEARING

A due process hearing is another way to resolve disputes with the school district. A due process hearing is an administrative hearing before an impartial due process hearing officer. You and the school district would present testimony and documentary evidence to the hearing officer who will decide the case and issue a written decision.

You or the school district may request a due process hearing on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education to your child.

Hearing Request Requirements

The due process hearing request must include:

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

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) file a due process hearing request that includes this information.

The due process hearing request 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. This two year timeline does not apply to you if you could not file a due process hearing request within the timeline if:

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The school district withheld information from you that it was required to provide you under the IDEA.

Requesting a Due Process Hearing

To request a hearing, you must send a due process hearing request to the school district's superintendent by fax or mail. The hearing request must contain all of the content listed above and must be kept confidential.

You must also mail or fax the due process hearing request to the PED Special Education Division at New Mexico Public Education Department, Special Education Division, 120 South Federal Place, Room 206, Santa Fe, NM 87501, or (505) 954-0001 (Fax). The PED has a model form for requesting a due process hearing on the PED website. You are not required to use this model form and can submit your request in any form, as long as it includes the information required on PED's model form. If you need assistance obtaining a model form or have questions about a Due Process Hearing Request, please contact the Special Education Division at (505) 827-1457 or spedfeedback@state.nm.us.

Sufficiency of Hearing Request

For a due process hearing request to go forward, it must be sufficient (meet the content requirements above). The hearing request will be considered sufficient unless the party receiving the hearing request (you or the school district) notifies the Hearing Officer and the other party in writing that the receiving party believes that the hearing request does not meet the requirements listed above.

A notice challenging the sufficiency of the hearing request must be filed by the receiving party with the Hearing Officer within 15 days of receiving the request. The Hearing Officer must decide if the due process hearing request is sufficient within 5 days of receiving the notice. The Hearing Officer must notify you and the school district in writing immediately.

Amendment of Hearing Request

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

1. The other party approves of the changes in writing and is given the chance to resolve the due process hearing request through a resolution meeting; **or**
2. By no later than 5 days before the due process hearing begins, the Hearing Officer grants permission for the changes.

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

School District Response to a Due Process Complaint

If the school district has not given you a prior written notice regarding the subject matter in your due process hearing request, the school district must, within 10 calendar days of receiving the due process hearing request, send you a response that includes:

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

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

Other Party Response to a Due Process Complaint

The party receiving a due process request (parent or school district) must send the other party a response that specifically addresses the issues in the hearing request within 10 calendar days of receiving the hearing request.

Your Child's Placement While the Due Process Hearing is Pending

Except as provided above under ***Procedures When Disciplining Children with Disabilities*** *above,* once a due process hearing request is sent to the other party, during the resolution period and while waiting for the decision of any impartial due process hearing or court proceeding, your child must remain in his or her current educational placement unless (1) you or the school district agree otherwise **or** (2) the Hearing Officer has issued an order changing the current educational placement.

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

Resolution Meeting

The purpose of the resolution meeting is for you to discuss your due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute. Within 15 calendar days of receiving your due process hearing request, and before the due process hearing begins, the school district must hold a resolution meeting. A resolution meeting is not required if:

1. You and the district agree in writing to waive the meeting; **or**
2. You and the district agree to try mediation. The resolution meeting should include you and the relevant member or members of the IEP team who have specific knowledge of the facts identified in your due process hearing request. You and the school district determine the relevant members

of the IEP team to attend the meeting. The resolution meeting must include a representative of the school district who has decision-making authority on behalf of the district. The meeting may **not** include an attorney for the school district unless you bring an attorney.

Resolution Period

The resolution period for a due process hearing request is 30 calendar days from when the request was received. If the due process hearing request is not resolved during the 30-calendar-day resolution period, the due process hearing may occur. The Hearing Officer has 45 days after the end of the 30-calendar-day resolution period to conduct a hearing and issue a final written decision.

Adjustments to the 30-calendar-day Resolution Period

The 45-calendar-day timeline for issuing a final decision begins at the end of the 30-calendar-day resolution period, unless one of the following circumstances applies. Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a resolution meeting.

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

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

If the school district does not hold the resolution meeting within 15 calendar days of receiving notice of your due process hearing request **or** does not participate in the resolution meeting, you may ask the Hearing Officer to order that the 45-calendar-day due process hearing timeline begin. If you and the school district agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school district agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day. If you and the school district agree to try mediation at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation process until an agreement is reached. However, if either you or the school district withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written Settlement Agreement

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

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

Agreement Review Period

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

that both you and the school district signed in the agreement. You should notify the school district if you have decided that you wish to void the agreement.

Alternative Dispute Resolution

After you file a due process hearing request, you still have an opportunity for alternative dispute resolution. You have the choice of requesting Alternative Dispute Resolution options of Mediation or a Facilitated IEP Meeting to try to resolve your conflict with the school district. The PED will ask both parties if they would like to participate in Alternative Dispute Resolution options. The decision to participate in Alternative Dispute Resolution options is voluntary.

IMPARTIAL DUE PROCESS HEARING

Whenever a due process hearing is requested, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing.

Impartial Due Process Hearing Officer

At a minimum, a Hearing Officer:

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

The PED keeps a list of those persons who serve as Hearing Officers and a statement of the qualifications for each one. The list is available on the PED website or contacting the Special Education Division at 505-827-1457 or spedfeedback@state.nm.us.

Rights at Hearings

Parents must be given the right to:

1. Have your child present;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

Any party to a due process hearing (including a hearing relating to IDEA disciplinary procedures) has the right to:

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

Timelines and Convenience of Hearings

PED ensures that not later than 45 calendar days after the end of the 30-calendar-day period for resolution meetings or, as described under ***Adjustments to the 30-calendar-day Resolution Period*** *above,* not later than 45 calendar days after the end of the adjusted time period:

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

A Hearing Officer may grant specific extensions of time beyond the 45-calendar-day time period at the request of either party.

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

Subject Matter of Due Process Hearing

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

Additional Disclosure of Information

At least 5 business days before a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the district intend to use at the hearing. A Hearing Officer may prevent any party that does not comply with this requirement from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

Decision of Due Process Hearing Officer

A Hearing Officer's decision on whether your child received a free appropriate public education must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that your child did not receive a free appropriate public education only if the following procedural inadequacies:

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

This rule does not prevent a Hearing Officer from ordering the school district to comply with the requirements in the procedural safeguards section of the IDEA.

Separate Request for a Due Process Hearing

Nothing in the procedural safeguards section of the federal regulations under Part B of the IDEA prevents you from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

Findings and Decision to Advisory Panel and General Public

The PED, after deleting any personally identifiable information:

1. Provides the findings and decisions in the due process hearing to the New Mexico IDEA Advisory Panel; **and**
2. Makes those findings and decisions available to the public on the PED web site.

Finality of Hearing Decision

A decision made in a due process hearing (including a hearing relating to IDEA disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action in court, as described below.

CIVIL ACTIONS, INCLUDING THE TIME PERIOD TO FILE

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

Time Limitation

The party (you or the school district) bringing the action has 30 calendar days of receipt of the Hearing Officer's decision to file a civil action.

Additional Procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school district's request; **and**

3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Special Rule

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

ATTORNEYS' FEES
General

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

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the PED or the school district as a prevailing party, to be paid by your attorney, if the attorney:

1. filed a due process hearing request or court case that the court finds is frivolous, unreasonable, or without foundation; **or**
2. continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**
3. in any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the PED or the school district as a prevailing party, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

Award of Fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:
   a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than 10 calendar days before the proceeding begins;
   b. The offer is not accepted within 10 calendar days; **and**
   c. The court finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

Fees May Not Be Awarded Relating to:

1. Any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action;

2. Mediation, unless the mediation occurred after the filing of a due process hearing request and before the due process hearing; **or**
3. A resolution meeting.

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

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
4. The attorney representing you did not provide to the school district the appropriate information in the due process hearing request.

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

CONFIDENTIALITY OF INFORMATION

You have the right to the protection of personally identifiable information in your child's education records.

Definitions

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

1. *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
2. *Education records* means the type of records covered under the definition of ''education records'' in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g.
3. *Participating agency* means any school PED agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.
4. *Personally identifiable* means information that includes:
   a. Your child's name, your name as the parent, or the name of another family member;
   b. Your child's address;
   c. A personal identifier, such as your child's social security number or student number; **or**
   d. A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Consent for Disclosure of Personally Identifiable Information

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of the school district.

Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of the IDEA.

The exceptions to this rule are:

1. Your consent, or consent of an eligible child who has reached the age of majority under New Mexico, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. For example, if the New Mexico Division of Vocational Rehabilitation is going to

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

SAFEGUARDS

You have the right to expect that your school district will keep your child's educational records confidential.

Each school district must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at the school district must assume responsibility for ensuring the confidentiality of any personally identifiable information.
All persons collecting or using personally identifiable information must receive training or instruction regarding New Mexico's policies and procedures regarding confidentiality under the IDEA and the Family Educational Rights and Privacy Act (FERPA). The school district must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Notice to Parents

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

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

Notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state before any major activity to locate, identify, and evaluate children in need of special education and related services (also known as "child find").

EDUCATIONAL RECORDS: ACCESS, AMENDMENT AND DESTRUCTION OF INFORMATION

You have the right to review your child's educational records under the IDEA, to ask that your child's records be corrected if you think the records are not correct or violate your privacy, and to ask the school district to destroy your child's educational information when it is no longer needed.

Access to Records

The school district must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the district under the IDEA. The school district must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

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

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

Record of Access
Each school district must 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 agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Record on More than One Child
If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

List of Types and Locations of Information
On request, the school district must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

Fees for Records
The school district may charge a fee for copies of records that are made for you under the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records. The district may not charge a fee to allow you to inspect your child's records or to search for or to retrieve information under the IDEA.

Amendment of Educational Records
If you believe that information in the education records regarding your child collected, maintained, or used under the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the school district that maintains the information to change the information. The school district must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request. If the district refuses to change the information as you requested, it must inform you of the refusal and your right to a hearing.

Opportunity and Procedures for a Hearing about Education Records
The school district, on request, must provide you with an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

Results of Hearing about Education Records
If, as a result of the FERPA hearing described above, the school district decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information and inform you in writing.

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

Your explanation must:
1. Be maintained by the school district as part of the records of your child as long

as the record or contested portion is maintained by the district; **and**

2. If the school district discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

Destruction of Information

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. The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Correction-Request Process for Typos/Clerical Errors in Student Educational Records

Parents of APS students receiving special education may request APS amend their child's educational records containing incorrect information pursuant to the District's procedure in place to make corrections to electronic educational records that have been finalized. Should the need arise to correct a typo/clerical error in a document made at a MET/IEP meeting, Parents should ask special education administration at their child's school for information on the correction process.

This Procedural Safeguards Notice is published by the New Mexico Public Education Department. The content contained in the following section entitled "Correction Request Process for Typos/Clerical Errors Student Educational Records" is an addition to the NMPED Procedural Safeguards Notice by Albuquerque Public Schools.

APS Procedural Safeguards - as it is in NMAC 6.31.2.12. D EDUCATIONAL SERVICES FOR GIFTED CHILDREN

D. Applicability of rules to gifted children.

(1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:

(a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC;

(b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;

(c) the requirements of 34 CFR Secs. 300.530 NMAC NMAC-300.536 NMAC NMAC, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and

(d) the requirements of 34 CFR Secs. 300.43 NMAC NMAC, 300.320 NMAC NMAC(b) and 6.31.2.11 NMAC(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMAC NMAC NMSA 1978, which is the next step plan for students without disabilities.

(2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.

(3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria.

RESOURCES

These organizations may be able to help you understand these procedural safeguards and other provisions of the IDEA.

Your local school district.

New Mexico Public Education Department Special Education Division Parent Liaison: Phone 1-505-827-1457, Email spedfeedback@state.nm.us; Web site https://webnew.ped.state.nm.us/bureaus/special-education/

New Mexico Parent Advocacy and Support Groups
Parents Reaching Out (PRO): Phone 1-505-247-0192 and 1-800-524-5176, Online contact https://parentsreachingout.org/contact-us/, Web site https://parentsreachingout.org/

Education for Parents of Indian Children with Special Needs (EPICS): Phone 1-888- 499-2070, Email contact https://www.epicsnm.org/contact, Web site https://www.epicsnm.org/

Families ASAP: Phone 1-855-484-0144, Online Contact https://epicsnm.org/contact, **Web site** https://familiesasap.org/

Free or Low Cost Legal Services

Disability Rights New Mexico (DRNM) Phone 1-505-256-3100 or 1-800-432-4682, Email contact info@drnm.org, Web site https://www.drnm.org/

Native American Disability Law Center (NADLC): Phone 1-505-566-5880 and 1-800 862-7271, Web site https://nativedisabilitylaw.org/

New Mexico Legal Aid Society: 1-833-LGL-HELP (1-833-545-4357), Online Form https://www.newmexicolegalaid.org/node/230/apply-online-solicite-en-l%C3%ADnea, Web site https://www.newmexicolegalaid.org/

Pegasus Legal Services for Children: Phone 1-505-244-1101,Online Contact Form https://pegasuslaw.org/contact/, Web site https://pegasuslaw.org/

The New Mexico Individuals with Disabilities Education Act Advisory Panel (IDEA Panel) meets four times each school year. Each meeting is open to the public and includes a time for public comment. The meeting schedule and information about the IDEA Panel is available from PED by calling 1-505-827-1457 or on the PED website at https://webnew.ped.state.nm.us/bureaus/special-education/idea-panel/