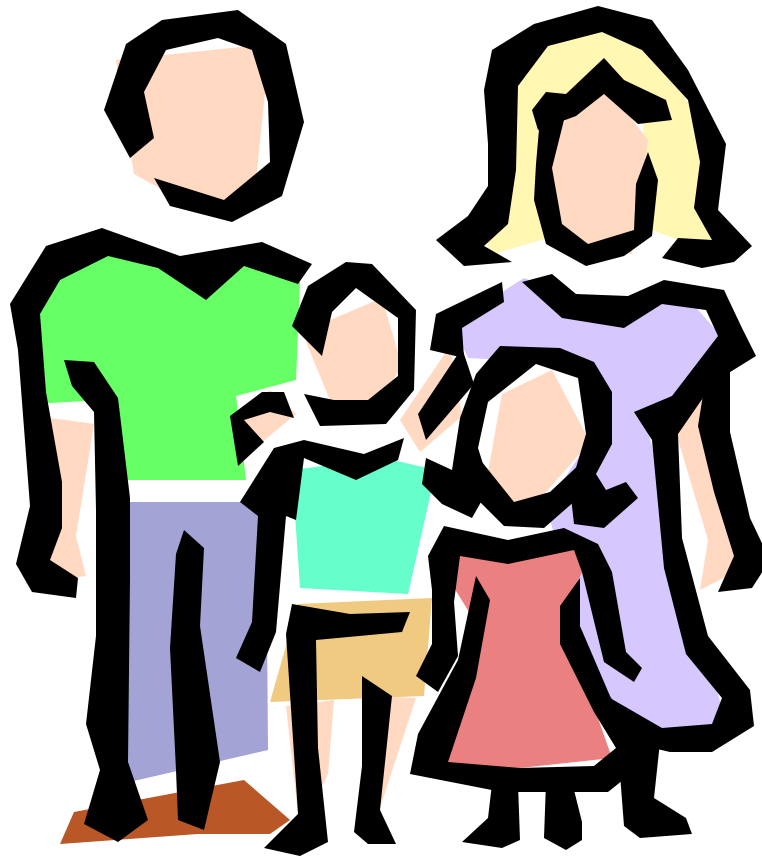


# Procedural Safeguards Parental Rights



Maryland State Department of Education  
Division of Special Education/Early Intervention Services  
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## PART I – PROCEDURAL SAFEGUARDS

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The protections included in this document are established by the Individuals with Disabilities Education Act of 1997 (IDEA), 20 U.S.C. § 1400 et seq., 34 CFR 300 and COMAR 13A.05.01.01-.16 that implement the IDEA. Each public agency shall establish, maintain, and implement procedural safeguards that meet the requirements of the IDEA. A copy of this document is to be provided to parents:

- Upon the initial referral of a child for evaluation;
- With each notice of a meeting to develop, review, or revise a child's Individualized Education Program (IEP);
- When a child is reevaluated; and
- When parents request mediation or a due process hearing.

The procedural safeguards must be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parents is not a written language, the public agency shall take steps to ensure that the procedural safeguards are translated orally or by other means in the parents native language or other mode of communication. There is written evidence that documents that the notice was translated and the parents understood the content of the procedural safeguards.

The parents of a student with a disability must be afforded an opportunity inspect and review all education records with respect to the identification, evaluation, educational placement of the child, and the provision of a free appropriate public education (FAPE). *Please refer to Part IX - Procedures Regarding Educational Records for more specific information.* The parents of a student with a disability must also be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement of the child, and the provision of FAPE to the child. *Please refer to Part VII - Individualized Education Program (IEP) for more specific information.* For additional copies of this document, please contact the child's school.

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## PART II – PRIOR NOTICE

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The public agency must give parents written notice each time it proposes or refuses to initiate or change the identification, evaluation, educational program, or educational placement of a child, or the provision of FAPE to a child. If the written notice relates to an action proposed by the public agency that also requires parental consent, the public agency may give written notice at the same time it requests parental consent. Written notice must include a:

- Description of the action(s) proposed or refused by the public agency;
- An explanation of why the public agency proposes or refuses to take the action(s);
- A description of any other options that the public agency considered and the reasons why those options were rejected;
- A description of each evaluation procedure, test, record, or report the public agency used as a basis for the proposed or refused action(s);
- A description of any other factors that are relevant to the public agency's proposal or refusal;
- A statement that the parents of a student with a disability have protections under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

The notice must be written in a language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parents is not a written language, the public agency shall take steps to ensure that:

- The notice is translated orally or by other means to the parents in his or her native language or other mode of communication;
- The parents understand the content of the notice; and
- There is written evidence that documents that the notice was translated and the parents understood the content of the notice.

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## PART III – CONSENT

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Consent means that the parents:

- Have been fully informed of all information relevant to the activity for which consent is sought, in the parents native language or other mode of communication;
- Understand and agree in writing to the carrying out of the activity for which their consent is sought and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- Understand that the granting of consent is voluntary on the part of the parents and may be revoked at anytime.

If parents revoke consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

## General

A public agency must obtain parental consent before conducting an initial evaluation or reevaluation and before the initial provision of special education and related services to a student with a disability. Consent for initial evaluation may not be construed as consent for initial placement for the initial provision of special education and related services to a student with a disability. Parental consent is not required before reviewing existing data, as part of an evaluation or reevaluation, or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

## Parental Refusal

If parents refuse to give consent for the initial assessments or reassessments, the public agency has the right to request mediation or a due process hearing and is required to notify the parents of the public agency's request for a due process hearing and the availability of mediation. *Please refer to Part XIV – Resolving Disagreements for more specific information.*

## Failure to Respond to Request for Reevaluation

The public agency must attempt to obtain informed parental consent before reassessing the child. Informed parental consent need not be obtained for reassessment if the public agency can demonstrate that it has taken reasonable measures to obtain parental consent, and the child's parents have failed to respond. If parents fail to respond to the public agency's written notice of their proposal to reassess the child, and the public agency can demonstrate that they have taken reasonable measures to obtain parental consent, the public agency may proceed with the reassessment without parental consent. To demonstrate reasonable measures, the public agency must maintain a record of the agency's attempts to obtain parental consent, such as:

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

## Limitation

A public agency may not use the parent's refusal to consent to one service or activity, such as initial evaluation, reevaluation, or initial provision of special education and related services, to deny the parents or the child of any other service, benefit, or activity of the public agency except as required by the IDEA.

# PART IV – EDUCATIONAL EVALUATION PROCESS

## Assessments

Assessments are procedures that are individualized for each student. A public agency may use a variety of assessment tools and strategies to gather sufficient relevant functional and development information for the IEP team to determine if the child is a student with a disability and the content of the child's IEP. Assessments include printed tests, observations, information from parents, and other sources of information that are:

- Selected and administered in a way that is not racially or culturally discriminatory;
- Administered in the child's native language or other mode of communication unless it is not feasible to do so;
- Used to measure the extent to which the child has a disability and needs special education services;
- Valid for the specific purpose for which they are used and are administered by trained and knowledgeable personnel according to the instructions provided by the producer of the test;
- Tailored to identify specific areas of educational need, not merely to provide a single general intelligence quotient;
- Measures of the extent to which a child with limited English is a student with a disability, rather than the child's English language skills; and
- Selected to reflect a child's aptitude or achievement accurately, rather than reflect the impaired sensory, manual, or speaking skills, except where these skills are the factors that the test is to measure.

Each report of assessment procedures shall include:

- A description of the child's performance in each area of suspected disability;
- Relevant functional, cognitive, developmental, behavioral, and physical information;
- Instructional implications for the child's participation in the general curriculum or, for a preschool child, participation in appropriate activities; and
- For any assessments not administered under standard conditions, a description of how it varied from standard administration procedures.

## Evaluation

An individual who suspects that a child may have a disability that requires the provision of special education and related services may refer the child, in writing, to the IEP team at the child's school. The public agency has 90 days from the date the agency receives the written referral to complete the initial evaluation. The public agency will provide parents with a copy of the IEP team evaluation decision.

Evaluation means procedures used in accordance with federal and State regulations concerning procedures for evaluation and determination of eligibility, to determine whether a child has a disability and the nature and extent of the special education and related services the child needs. A full and individualized evaluation is conducted before the initial provision of special education and related services to a student with a disability under the IDEA. An evaluation occurs at a meeting of the IEP team and other qualified professionals, as appropriate, to review:

- Existing data and assessment results;
- Evaluations and information provided by parents;
- Current classroom-based assessments, including State and district-wide assessments and observations, and
- Observations by related services personnel to determine:
  - Whether the child is a student with a disability;
  - The child's present levels of performance and educational needs;
  - The child's special education and related service needs whether or not commonly linked to the disability category in which the child has been classified; and
  - Any additions or modifications needed for the child to meet the goals of the IEP and to participate, if appropriate, in the general curriculum.

The initial evaluation shall be comprehensive enough to ensure a child is assessed in all areas related to the suspected disability, including, if appropriate:

- Academic performance;
  - Communication;
  - General intelligence;
  - Health, including hearing and vision;
  - Motor abilities; and
  - Social, emotional, and behavioral status.
- No single procedure is used to determine if a child is a student with a disability and to determine an appropriate educational program for the child.
  - A child may not be identified as a student with a disability in need of special education and related services if the primary reason for the eligibility determination is lack of instruction in reading or math, or because the child has limited English proficiency.
  - If at the initial evaluation, the IEP team determines that the child has a disability and needs special education and related services, the IEP team must meet within 30 days of the initial evaluation to develop the child's IEP.

## Reevaluation

A reevaluation will be conducted at least once every three years or more frequently if conditions warrant a reevaluation, or if parents or the child's teacher requests a reevaluation. The IEP team will review existing evaluation data, including information from parents, classroom-based assessments, State and district-wide assessments, and observations to decide if any additional data are needed to determine:

- Whether the child continues to have a disability that requires the provision of special education and related services;
- The child's present levels of performance and educational needs; and
- Whether there any additions or modifications needed for the child to meet the goals of the IEP and to participate, if appropriate, in the general curriculum.

If the IEP team determines that additional data are needed, those assessments will be conducted after parents are notified and parental consent has been requested. The team will review the results of assessments within 90 days of the IEP team meeting where the IEP team determined the need for additional data and use the results, as appropriate, to revise the child's IEP.

If the IEP team determines that no additional data is needed, the public agency will notify the parents of that fact, and the reasons for that determination. The public agency is not required to conduct assessments, unless requested to do so by the child's parents.

## Termination of Services

A public agency must evaluate a student with a disability in accordance with federal and State regulations for evaluation before determining that the child is no longer a student with a disability. This evaluation is not required before the termination of a child's eligibility under Part B of the IDEA due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law.

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## PART V – INDEPENDENT EDUCATIONAL EVALUATION

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### Definitions

- Independent Educational Evaluation means tests and assessment procedures conducted by appropriately qualified personnel not employed by the public agency responsible for the education of the child.
- Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents.

Parents of a student with a disability have the right to obtain an independent educational evaluation of the child under the IDEA subject to the procedures provided below. The public agency shall provide parents, upon their request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the agency criteria applicable for an independent educational evaluation.

### Public Agency Criteria

When an independent educational evaluation is at public expense, the criteria under which the independent educational evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that a public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria described above, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

### A Parent's Right to Evaluation at Public Expense

Parents have the right to an independent educational evaluation at public expense if the parents disagree with an evaluation obtained by the public agency. If parents request an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either:

- Initiate a due process hearing to show that its evaluation is appropriate; or
- Ensure an independent educational evaluation is provided at public expense, unless the public agency demonstrates in a due process hearing that the evaluation obtained by the parents did not meet the public agency criteria.

If the public agency initiates a hearing and the final decision is that the agency evaluation is appropriate, parents still have the right to an independent educational evaluation, but not at public expense. If parents request an independent educational evaluation, a public agency may ask parents for the reason why the parents object to the public evaluation. However, the parent's explanation is not required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating the due process hearing to defend the public agency's evaluation.

### Parent-Initiated Evaluation

Parents always have the right to obtain an independent educational evaluation from qualified professionals of their choice, at their own expense. The IEP team must consider the information from parent-initiated evaluation at private expense, if it meets public agency criteria, when making any decisions with respect to the provision of FAPE to the child. The results of parent-initiated private evaluation may also be presented as evidence at a due process hearing regarding the child.

### Request for an Evaluation by a Hearing Officer

If an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH) requests an independent educational evaluation as a part of a due process hearing, the cost of the evaluation must be at public expense.

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## PART VI – INDIVIDUALIZED EDUCATION PROGRAM (IEP)

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### IEP Team Meetings

The public agency uses a team approach to decide whether a child is a student with a disability as defined by the IDEA and the educational needs of the child. Each public agency is responsible for initiating and conducting meetings for the purposes of developing, reviewing, and revising the IEP of a student with a disability, and determining the child's educational placement. The

parents of each student with a disability must be notified and afforded the opportunity to participate in any IEP team meeting conducted for their child. Parents are members of the IEP team that makes decisions regarding their child's educational placement. The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is not English.

Once the IEP team determines the child requires special education and related services, the IEP team must meet within 30 days to develop the child's IEP. As a member of the IEP team, parents have the right to request a review of their child's IEP at any time.

### **Parent Participation in Meetings**

Each public agency shall take steps to ensure that one or both of the parents of a student with a disability are present at each IEP team meeting, or are afforded the opportunity to participate. Parents are to be notified of meetings early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. The notice must indicate the purpose, time, location of the meeting, and who will be in attendance. The notice must also inform parents that at the discretion of the parents or the public agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate on the IEP team. The determination of the knowledge or special expertise of any individual shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student and that the agency will invite the student. For a student with a disability beginning at age 16, or younger, if appropriate, the notice must indicate that a purpose of the meeting is the consideration of needed transition services for the student, that the agency will invite the student, and identify any other agency that will be invited to send a representative.

Notice of any IEP team meeting to develop, review, or revise a child's IEP, including the determination of a child's educational placement must be given at least ten (10) calendar days before the meeting unless an expedited meeting is held to:

- Address disciplinary issues;
- Determine the placement of the child, if the child is a student with a disability and is not currently receiving educational services; or
- Meet other urgent needs of the child to ensure the provision of FAPE.

If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. The IEP team may make a placement decision without the involvement of the parents, if the public agency is unable to obtain the parental participation in the decision. In this case, the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.

A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent's proposal that will be discussed at a later meeting.

### **The IEP Team**

The IEP team includes:

- The child's parents, guardian, or parent surrogate;
- At least one of the child's general education teachers, if the child is or may be participating in the general education environment. If the child does not have a general education teacher or is younger than school age, an individual qualified to teach a child of that age;
- The child's special education teacher, or if appropriate, a service provider of the child;
- A representative of the public agency who is qualified to provide, or supervise the provision of specially designed instruction to meet the needs of students with disabilities and who knows the general curriculum and public agency resources available;
- An individual who can interpret the instructional implications of evaluations. This person can be one of the public agency team members listed above;
- If parents or the public agency choose, other individuals who have knowledge or special expertise regarding the child;
- If appropriate, a representative of another public agency that may provide or pay for transition services; and
- If appropriate, the child. The child shall be invited to, and is expected to attend and participate in the IEP team meeting if the purpose of the meeting is to consider transition services needs.

## IEP Development, Review, and Revision

In developing, reviewing, or revising a child's IEP, the IEP team will consider and document:

- The child's strengths and parental concerns for enhancing their child's education;
- Results of the evaluation;
- Results of the child's performance on State or district-wide assessment programs, as appropriate;
- Communication needs; and
- Assistive technology devices and services needs of the child.
- Consideration of special factors, specific to the child, such as:
  - As in the case of a child whose behavior impedes the child's learning or that of others, consider as appropriate, positive behavior intervention strategies and supports to address that behavior;
  - As in the case of a child with limited English proficiency, consider the language needs of the child as they relate to the child's IEP;
  - In the case of a child who is blind or visually impaired, provide for instruction in Braille, including textbooks in Braille, and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child, including textbooks in Braille; and
  - In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

If in considering the special factors above, an IEP team determines the child needs a particular device, service, intervention, accommodation, or program modification in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

As a member of the IEP team, a general education teacher of the child shall, to the extent appropriate, participate in the development of the child's IEP. Participation includes assisting in the determination of appropriate positive behavioral interventions and strategies for the child, and supplementary aids and services, program modifications, and supports for school personnel.

## IEP Content

The IEP is developed by the team and includes:

- Present levels of educational performance, including a description of how the identified disability affects involvement and progress in the general curriculum, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- Annual measurable goals and benchmarks or short-term instructional objectives related to meeting:
  - The child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities, and
  - Each of the child's other educational needs that result from the disability;
- Appropriate objective criteria and evaluation procedures for determining whether the annual goals are being met;
- Specialized instruction, related services and supplementary aids and services, including staffing support to be provided to the child or on behalf of the child;
- A statement of needed interventions, accommodations, or other program modifications, including a particular device or service needed in order to provide FAPE;
- Program modifications or supports for school personnel that will be provided to enable the child:
  - To advance appropriately toward the annual goals,
  - To be involved in and progress in the general curriculum,
  - To participate in extracurricular and other nonacademic activities, and
  - Be educated and participate with other students with disabilities and without disabilities;
- An explanation of the extent, if any, to which the child will not:
  - Participate with nondisabled peers, and
  - Receive specialized instruction, related services, supplementary aids and services, staffing support, interventions, accommodations, or program modifications or supports, including a particular device or service in the general education setting in order to be provided FAPE;
- A statement of any individual accommodations that are needed for the child to participate in State and district-wide assessments, and
  - If your child will not participate in a particular State or district-wide assessment, the IEP team must document why that assessment is not appropriate for the child and how the child will be assessed;
- The projected date(s) services, interventions, accommodations, or other program modifications, including a particular device or service, will start, how often they will be provided, how long they will be provided, and where they will be provided; and
- A description of how parents will be regularly informed of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals within a year.

A public agency shall provide special education and related services to a child in accordance with the child's IEP and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP. A public agency, teacher, or another individual shall not be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives.

If a child requires extended school year services, the IEP must include the specific special education and related services to be provided beyond the regular school year. *Please refer to Part VII - Extended School Year Services for more specific information.*

### **Transition Services**

Transition services are a coordinated set of activities that will promote movement from school to post-school activities, including post-secondary education, career and technology education, integrated employment, adult services, independent living, or community participation. This set of activities is based on a child's needs taking into consideration the child's preferences and interests and includes the course of study, related services, and community activities.

- Beginning when a child is 14, or younger, if appropriate, and updated annually, the IEP must include a statement of the child's transition service needs that focuses on the child's course of study.
- Beginning when a child is 16, or younger, if appropriate, the transition statement must also include a statement of interagency responsibilities or linkages, as appropriate.
- The requirement to provide transition services does not apply to a student with a disability who is convicted as an adult under State law and incarcerated in an adult correctional facility and whose eligibility for special education and related services will end before the student is eligible for release.

### **Placement**

As a member of the IEP team, parents are included in decisions regarding placement of their child. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled.

- The educational placement for the child is determined annually, based on the child's IEP.
- Unless the child's IEP requires some other arrangement, the child is educated in the school the child would attend if not disabled.
- The IEP team may modify the child's IEP or placement if the child, convicted as an adult under State law, is incarcerated in an adult correctional facility, and the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

### **IEP Implementation**

- The IEP must be implemented as soon as possible after it is developed, except if the meeting is held over the summer or a vacation period, or when there are circumstances that require a short delay, such as arranging transportation.
- The public agency must have an IEP in effect for the child at the beginning of the school year.
- The IEP must be accessible to every teacher, related services provider, and other service provider who is responsible for implementing the child's IEP. Each individual identified above must be informed of their responsibilities related to implementing the child's IEP and the accommodations, modifications, and supports that must be provided.
- The public agency shall give parents a copy of their child's IEP at no cost to the parents.

### **Graduation Requirements**

The public agency shall inform parents of the State and local graduation requirements and their child's progress toward meeting those requirements. When a student with a disability graduates from high school with a regular high school diploma, the public agency is to provide the parents notification of their child's pending graduation. Graduation with a regular high school diploma constitutes a change in placement and terminates the child's right to FAPE.

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## **PART VII – EXTENDED SCHOOL YEAR SERVICES**

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Extended school year services (ESY) means the individualized extension of specific special education and related services that are provided to a student with a disability beyond the normal school year of the public agency, in accordance with the IEP, at no cost to the parents, and that meets the standards of the Maryland State Department of Education (MSDE). A public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

Extended school year services are provided if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE. Parents are to be notified of the availability of extended school year services that may be necessary to meet the unique needs of a student with a disability. The IEP team shall determine if any of the following factors will

prevent the child from receiving FAPE from the child's educational program during the regular school year if the child does not receive extended school year services.

To determine whether the child should receive extended school year services, the IEP team shall consider:

- Whether the child's IEP includes annual goals related to critical life skills;
- Whether it is likely that the child would suffer a substantial regression of critical life skills caused by the normal school break and would fail to recover those lost skills in a reasonable time;
- The child's progress toward mastery of IEP goals and objectives;
- The presence of emerging skills or breakthrough opportunities;
- Interfering behaviors;
- The nature and/or severity of the disability; and
- Special circumstances.

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## **PART VIII - TRANSITION FROM AN INFANTS & TODDLERS PROGRAM**

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A public agency and the local Infants and Toddlers Program shall invite parents to a meeting of an IEP team at least 90 days before the child's third birthday to determine if a child has a disability or developmental delay that requires the provision of special education and related services. If the IEP team determines the child is a student with a disability or developmental delay, the IEP Team shall develop an IEP for the child. The child's IEP must be in effect on the child's third birthday.

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## **PART IX - PROCEDURES REGARDING EDUCATIONAL RECORDS**

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### **Definitions**

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act [FERPA] of 1974).

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

Personally identifiable information includes:

- Name of the child, child's parents, or other family member;
- Address of the child;
- A personal identifier, such as the child's social security number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

### **Safeguards**

Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official of a public agency is responsible for protecting the confidentiality of personally identifiable information. In addition to the requirements of these procedural safeguards, federal and State laws and regulations also govern the protection of educational records. All public agency personnel who collect or use personally identifiable information must receive training regarding the State's policies and procedures on the confidentiality of personally identifiable information. Each participating agency shall 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.

### **Consent**

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under the IDEA, or for any purpose other than meeting the requirements of providing a student with a disability FAPE under the IDEA. Disclosures addressed in referral to and action by law enforcement and judicial authorities regarding reporting a crime committed by a student with a disability does not require parental consent to the extent that the transmission is permitted by FERPA.

An educational agency or institution may not release information from education records to participating agencies without parental consent unless authorized to do so under FERPA. MSDE has developed policies and procedures for public agencies, including sanctions, that the State uses to ensure that its policies and procedures are followed, and that the requirements for confidentiality, in accordance with IDEA and FERPA are met.

Each public agency is required to have procedures in place for how adequate notice is provided to fully inform parents about the requirements of confidentiality of personally identifiable information including a:

- Description of the extent that the notice is given in the native languages of the various population groups in the State;
- Description of the children on whom personally identifiable information is maintained, and the types of information sought;
- Summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- Description of policies and procedures used in the event that a parent refuses to provide consent; and
- Description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR §99.

Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the jurisdiction of the activity.

### **Access Rights**

Each public agency shall permit parents of a student with a disability to inspect and review any education records relating to the child that are collected, maintained, or used by the agency with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child under the IDEA. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing, and in no case more than 45 days after the request has been made.

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

- A response from the participating agency to reasonable requests for explanations and interpretations of the records;
- Request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parents from exercising the right to inspect and review the records; and
- Have a representative of the parents inspect and review the records.

A public agency may presume that parents have the authority to inspect and review records relating to their child unless the public agency has been advised that parents do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

### **Record of Access**

Each public agency shall keep a record of individuals, other than parents and authorized employees of the public agency, obtaining access to education records collected, maintained, or used under Part B of the IDEA, including the name of the individual, the date access was given, and the purpose for which the individual is authorized to use the records. 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. Each public agency shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the agency. Each public agency may charge a fee for copies of education records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A public agency may not charge a fee to search for or retrieve information from education records.

### **Amendment of Records at Parent's Request**

Parents who believe that information in the education records collected, maintained, or used under the IDEA is inaccurate or misleading or violates the privacy or other rights of the child may request the public agency, that maintains the information, to amend the information. The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal and advise the parents of the right to a hearing to challenge the information in educational records. A hearing conducted to challenge information in educational records must be conducted in accordance with FERPA procedures as found in 34 CFR §99.22.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If, as a result of the hearing, the public agency decides that the information is inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parents in writing. If, as a result of the hearing, the public agency decides that the information is not inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, it shall inform the parents of the right to place in the records it maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency. Any explanation placed in the records of the child must:

- Be maintained by the public agency as part of the records of the child as long as the record or contested portion is maintained by the public agency; and
- If the records of the child or the contested portion are disclosed by the public agency to any party, the explanation must also be disclosed to the party.

## Procedures for the Destruction of Information

The public agency is required to inform parents when personally identifiable information collected, maintained, or used under the IDEA is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, the student's grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## Children's Rights

MSDE has policies and procedures that afford students a right to privacy similar to that which is given to their parents and suitable to the students ages and disabilities. Under the regulations for FERPA, the parent's rights regarding their child's education records are transferred to the child once the child reaches the age of 18, unless the child's disability makes the child incompetent under State law. If the rights accorded to parents under Part B of IDEA are transferred to a student who reaches the age of majority, consistent with §300.517, the rights regarding educational records in §§300.562-300.573 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of IDEA to the student and the parents.

## Disciplinary Information

A public agency may include in the records of a student with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement, to the same extent that disciplinary information is included in, and transmitted with the records of nondisabled students. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If a child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

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## PART X - DISCIPLINE OF STUDENTS WITH DISABILITIES

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### Definitions

For purposes of this part, the following definitions apply:

- 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 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 the IDEA or under any other provision of federal law.
- Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### Change of Placement

For purposes of removals of a student with a disability from the child's current educational placement for disciplinary action in accordance with the IDEA and COMAR 13A.08.03, a change of placement occurs if a student with a disability is:

- Removed from the child's current placement for more than 10 consecutive school days; or
- Subjected to a series of removals that constitutes a pattern of removal that accumulates to more than 10 school days in a school year.

To determine if the removal constitutes a pattern of removal, the IEP team shall consider the:

- Length of each removal;
- Total amount of time the child is removed; and
- Proximity of the removals to one another.

### Authority of School Personnel

#### Removal of a Student with a Disability for Not More than 10 Consecutive School Days

A student with a disability may be removed from the child's current placement for not more than 10 consecutive school days for any violation of school rules to the same extent removal is applied to students without disabilities. A public agency is not required to provide services to a student with a disability if services are not provided to students without disabilities.

### **Removal of a Student with a Disability for More than 10 School Days**

A student with a disability may be removed from the child's current placement for up to 10 consecutive school days for each incident of misconduct in a school year, if the cumulative effect of such removals does not constitute a change of placement. For each period of removal after a student with a disability has been removed for the cumulative equivalent of 10 school days in a school year, the principal shall consult with the child's special education teacher to determine what services to provide to enable the child to appropriately:

- Progress in the general curriculum; and
- Advance toward achieving the goals of the child's IEP.

### **Interim Alternative Educational Setting**

A child may be removed to an appropriate interim alternative educational setting for up to 45 days if:

- The child carries or possesses a weapon to school or to a school function;
- The child knowingly possesses or uses illegal drugs at school or at a school function; or
- Sells or solicits the sale of a controlled substance at school or at a school function.

The IEP team must determine the interim alternative educational setting. Any interim alternative educational setting in which a child is placed must be selected so as to enable the child to:

- Continue to progress in the general curriculum, although in another setting;
- Continue to receive the special education and related services, and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
- Receive services and modifications designed to address the behavior that resulted in the disciplinary action, so that it does not recur.

### **Parent Notification**

On the date the principal decides to remove a student with a disability from the child's current placement for a violation of a school rule, the principal shall notify the parents of the decision and provide the parents with the procedural safeguards notice.

### **Functional Behavioral Assessment/Behavioral Intervention Plan**

The IEP team shall meet within 10 business days of the removal of a student with a disability to develop an assessment plan, if the IEP team has not:

- Conducted a functional behavioral assessment; and
- Implemented a behavioral intervention plan to address the behavior before the behavior occurred, that resulted in the child's removal.

As soon as possible after the completion of assessments determined appropriate by the IEP team, the IEP team shall meet to develop appropriate behavioral interventions to address the behavior and implement the behavioral intervention plan. If the child has a behavioral intervention plan, the IEP team shall meet within 10 business days of the removal to review the behavioral intervention plan to address the behavior that resulted in the removal. The purpose is to determine if the behavioral intervention plan or the implementation of the behavioral intervention plan needs to be modified to address the behavior. For subsequent disciplinary removals of the child beyond the first 10 school days the child is removed during the school year, the IEP team shall meet to review the child's behavioral intervention plan. The IEP team shall modify the behavioral implementation plan and its implementation to the extent the IEP team determines necessary.

### **Authority of Hearing Officer**

An administrative law judge (ALJ) may order a change in placement to an interim alternative educational setting for not more than 45 days if the ALJ in an expedited due process hearing:

- Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the student with a disability is substantially likely to result in injury to the child or others. As used in this part, substantial evidence means beyond a preponderance of the evidence.
- Considers the appropriateness of the child's current placement;
- Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- Determines that the interim alternative educational setting proposed by the public agency in consultation with the child's special education teacher must enable the child to:
  - Continue to progress in the general curriculum, although in another setting;
  - Continue to receive the special education and related services, and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
  - Receive services and modifications designed to address the behavior that resulted in the disciplinary action, so that it does not recur.

## Manifestation Determination

The IEP team shall meet to determine whether a child's behavior, that resulted in a disciplinary removal, is a manifestation of the child's disability when the child:

- Is subject to a removal that constitutes a change of placement;
- Carries or possesses a weapon at school or a school function;
- Knowingly possesses or uses an illegal drug while at school or a school function; or
- Sells or solicits the sale of a controlled substance while at school or a school function.

The IEP team shall meet within 10 school days of the date that the principal takes disciplinary action for the removal of a student with a disability, to determine:

- Whether the child's behavior that resulted in disciplinary removal is a manifestation of the child's disability; and
- The services to be provided during the removal to ensure the provision of FAPE.

This review may be conducted at the same IEP team meeting that is convened to develop an assessment plan, if the IEP team has not conducted a functional behavioral assessment and implemented a behavioral intervention plan to address the behavior before the behavior occurred, that resulted in the child's removal.

In determining whether the child's behavior was a manifestation of the child's disability, the IEP team and other qualified personnel shall consider all relevant information in relation to the behavior that resulted in the disciplinary action including:

- Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the child;
- Observations of the child; and
- The child's IEP and placement.

To determine the behavior subject to the disciplinary action is not a manifestation of the child's disability, the IEP team and other qualified personnel must determine that:

- The child's IEP is appropriate;
- Special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the IEP and placement;
- The child's current placement is appropriate;
- The disability did not impair the child's ability to understand the impact and consequences of the behavior; and
- The disability did not impair the child's ability to control the behavior. If any of the determinations listed above are not met, the IEP team shall consider the behavior a manifestation of the child's disability.

If the IEP team, and other qualified personnel, determines that the child's behavior is a manifestation of the child's disability, the IEP team shall, as appropriate:

- Revise the child's IEP to address needed services;
- Revise the child's behavioral intervention plan to address the behavior;
- Review the child's placement; and
- Implement services as soon as possible.

If the IEP team determines the behavior is not a manifestation of the child's disability, the child may be disciplined in the same manner as students without disabilities, including a period of suspension or expulsion, applicable to students without disabilities. The IEP team shall determine the extent to which services are necessary during the period of suspension or expulsion to enable the child to appropriately progress in the general curriculum and advance toward achieving the goals of the child's IEP.

Upon initiation of disciplinary actions described above, the principal shall transmit the child's special education and disciplinary records to the local superintendent.

## For Students Not Yet Eligible for Special Education and Related Services

A child who has not been determined to be eligible for special education and related services under the IDEA, and who has engaged in behavior that violated any rule or code of conduct of the public agency, including any behavior described above in *Authority of School Personnel* or *Authority of Hearing Officer*, the parents may assert any of the protections provided under the IDEA, if the public agency had knowledge that the child was a student with a disability before the behavior that precipitated the disciplinary action occurred.

A public agency must be deemed to have knowledge that a child is a student with a disability if:

- The parents of the child have expressed concern in writing (or orally if the parents do not know how to write or have a disability that prevents a written statement) to personnel of the public agency that the child is in need of special education and related services;
- The behavior or performance of the child demonstrates the need for these services;
- The parents of the child have requested an evaluation of the child; or

- The teacher of the child, or other personnel of the public agency have expressed concern about the behavior or performance of the child to the director of special education of the public agency, or to other personnel, in accordance with the agency's established child find or special education referral system.

A public agency would not be deemed to have knowledge that the child is a student with a disability if the public agency:

- Conducted an evaluation and determined that the child is not a student with a disability under the IDEA, or
- Determined that an evaluation was not necessary; and
- Provided parents with written notice, consistent with prior notice requirements, of its determination that the child was not a student with a disability as a result of the evaluation.

If a public agency does not have knowledge that a child is a student with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as those measures apply to students without disabilities who engage in comparable behaviors.

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services to ensure the provision of FAPE.

### **Appeal of Decisions Related to Discipline**

Except as provided below, the requirements and procedures for due process, as described in *Part XIV - Resolving Disagreements*, apply if the parents request a due process hearing to challenge a manifestation determination, made by the IEP team, that the behavior of the child was not a manifestation of the child's disability.

If the child's parents disagree with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under the discipline procedures, the parents may request a due process hearing. If parents request a due process hearing, the public agency shall arrange for an expedited due process hearing.

In reviewing a decision with respect to the manifestation determination, the ALJ shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements for manifestation determination described above in *Manifestation Determination*. In reviewing a decision to place the child in an interim alternative educational setting, the ALJ shall apply the standards described above in *Authority of the Hearing Officer*. If parents request a due process hearing to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the ALJ or until the end of the 45-day placement, whichever occurs first, unless the parents and the public agency agree otherwise.

If a child is placed in an interim alternative educational setting, and school personnel propose to change the child's placement after the expiration of the interim alternative educational setting, during the pendency of any proceeding to challenge the proposed change in placement, the child must remain in the child's current placement (placement prior to the interim alternative educational setting). If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the public agency may request an expedited due process hearing.

In determining whether the child may be placed in the alternative educational setting or in another appropriate placement, the ALJ shall apply the standards described above in *Authority of the Hearing Officer*. A placement ordered by an ALJ may not be longer than 45 days. The procedure may be repeated, as necessary.

### **Referral to Law Enforcement and Judicial Authorities**

If a student with a disability is suspected of committing a crime, the public agency may report the crime to the appropriate authorities as they would if a student without disabilities committed a like offense. Local and State law enforcement officials and judicial authorities may exercise their duties and responsibilities and apply all applicable federal and State laws to crimes, which may have been committed by a student with a disability. The public agency reporting a crime may transmit copies of the child's special education record and disciplinary records only to the extent that the transmission is permitted by the FERPA.

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## **PART XI - PLACEMENT OF STUDENTS IN PRIVATE SCHOOLS BY THEIR PARENTS**

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### **Placement of Children by Parents when FAPE is at Issue**

The IDEA does not require a public agency to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if that public agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include the child in the population whose needs are addressed with regards to services provided to students with disabilities placed in private schools by their parents, in accordance with the federal regulations governing students with disabilities enrolled by their parents in private schools. Disagreements between parents and public agencies regarding the availability of FAPE and financial responsibility are subject to due process hearing procedures under the IDEA. *Please refer to Part XIV – Resolving Disagreements for more specific information.*

If the parents of a student with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent or referral of the public agency, an ALJ or a court, may require the public agency to reimburse parents for the cost of that enrollment if an ALJ or a court finds that the public agency had not made FAPE available to the child in a timely manner prior to that enrollment, and that the private placement is appropriate. A parental placement may be found to be appropriate by an ALJ or a court even if it does not meet the State standards that apply to education provided by public agencies.

### **Limitation on Reimbursement**

Reimbursement may be reduced or denied by an ALJ or a court if:

- At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- At least 10 business days (including any business days that occur on a holiday) prior to the removal of the child from the public school, the parents did not give the public agency written notice of their intent to remove the child, including their concerns regarding their child's public placement; or
- If prior to the parent's removal of the child from the public school, the public agency informed the parents, through the prior notice requirements of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

The cost of reimbursement may not be reduced or denied for failure of the parents to:

- Inform the IEP team at the most recent IEP team meeting that the parents attended, prior to removal of the child from the public school that they were rejecting the placement proposed by the public agency to provide FAPE, including stating their concerns and the intent to enroll the child in a private school at public expense, or
- Give the public agency written notice of their intent to remove the child, including their concerns regarding the child's public placement at least 10 business days (including any business days that occur on a holiday) prior to the child's removal from the public school if:
  - The parent is illiterate and cannot write in English,
  - Compliance with the notice as described above would likely result in physical or serious emotional harm to the child,
  - The school prevented the parent from providing the notice, or
  - The parents had not received notice, under the IDEA notice requirements described above.

### **Students with Disabilities Enrolled by Their Parents in Private Schools**

A public agency shall make special education and related services available to a child in accordance with the federal regulations for children with disabilities enrolled by their parents in private schools. No private school student with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions regarding which students receive services, what services are provided, how and where services will be provided, and how services will be evaluated are made by the public agency after consultation with appropriate representatives of private school children. If a student with a disability attending a private or religiously affiliated school will receive special education and related services the public agency will initiate and conduct meetings to develop, review, and revise a service plan for the child

If the parents of a student with a disability enroll their child in a private or religiously affiliated school, the parents' rights to file for a due process hearing applies only to child find issues. Child find is the procedure that public agencies use to identify, locate, and evaluate all students with disabilities, residing within the jurisdiction of the public agency, including children attending private and religiously affiliated schools. An individual may file a written complaint with MSDE when the individual believes a public agency has failed comply with the federal regulations under the IDEA concerning students with disabilities enrolled by their parents in private schools. *Please refer to Part XIV - Resolving Disagreements for more specific information.*

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## **PART XII - PARENT SURROGATE**

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The public agency shall ensure an individual is assigned to act as a surrogate for the parents of a child when:

- No parent can be identified;
- The whereabouts of the parents cannot be located, after reasonable efforts; or
- The child is a Ward of the State.

The public agency has a procedure for determining whether a child needs a parent surrogate and for assigning a parent surrogate to the child. A parent surrogate is a person appointed by the local school superintendent to represent the child as parents would in the educational decision making process. The parent surrogate may represent the child in all matters relating to the identification, evaluation, and the educational placement of the child, and the provision of FAPE, including the appeal process.

A person selected as a surrogate:

- Cannot be an employee of any public agency that is involved in the education or care of the child;
- Must have no interest that conflicts with the interest of the child that the individual represents; and
- Is to have knowledge and skills that ensure adequate representation of the child.

A public agency may select as a surrogate an individual who is an employee of a nonpublic agency that only provides non-educational care for the child, and who has no interest that conflicts with the interest of the child the individual represents, and who has knowledge and skills that ensure adequate representation of the child. An individual is not considered an agency employee solely because that individual may be paid by an agency to serve as a foster parent or a parent surrogate.

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## **PART XIII - TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY**

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Under IDEA, the parents of a student with a disability have certain rights in the special education decision making process. Under Maryland law, in certain limited circumstances, all rights accorded to the parents under IDEA shall transfer to a student with a disability. This transfer occurs when the student reaches the age of 18 years, if the student has not been adjudged incompetent under State law and there is documentation that:

- The parents are unavailable or unknown, and the child requests that the parental rights be transferred to the child rather than have a parent surrogate appointed;
- The parents have not participated in the special education decision making process for the child after repeated attempts by the public agency to involve the parents over the previous year;
- The parents have affirmatively rejected participation in the special education decision making process;
- The parents cannot participate in the special education decision making process due to prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of the parents and the parents have consented to the transfer of rights to the child;
- The parents cannot participate in the special education decision making process due to extraordinary circumstances beyond their control, and the parents have consented to the transfer of rights to the child; or
- The child is living outside of the parents' home and is not in the care or custody of another public agency.

If the parents of a student with a disability, with whom the child resides, do not consent to the transfer of rights to the child at the age of 18, and the student has not been adjudged incompetent under State law, either party may file for due process to determine whether the rights should be transferred.

If a student with a disability has been represented by a parent surrogate in accordance with federal and State laws and regulations, the public agency shall provide any written notice required under federal and State laws and regulations to both the student and parent surrogate. All other rights afforded the parent surrogate under IDEA shall transfer to the student if the student has not been adjudged incompetent under State law and the student requests that the rights transfer to the student.

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## **PART XIV RESOLVING DISAGREEMENTS**

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### **Written Complaint Procedures**

The MSDE has adopted written complaint procedures for resolving complaints filed by an individual or organization. MSDE disseminates the State's procedures for resolving complaints to parents and other interested individuals including Parents' Place of Maryland, advocacy agencies, independent living centers, and other appropriate entities. Individuals may obtain a copy of the State complaint procedures by sending a written request addressed to the Division of Special Education/Early Intervention Services, MSDE, 200 West Baltimore Street, Baltimore, Maryland 21201. The procedures are also available on the MSDE web-site: [www.msde.state.md.us](http://www.msde.state.md.us).

### **Filing a Written Complaint with MSDE**

If an individual or an organization believes that a federal or State law or regulation concerning the identification, evaluation, the educational placement of the child, and the provision of FAPE, including the appeal process is not being followed, an individual or organization has the right to file a written and signed complaint with the Assistant State Superintendent, Division of Special Education/Early Intervention Services, MSDE, 200 West Baltimore Street, Baltimore, Maryland 21201.

The written complaint shall include:

- A statement that the public agency has violated a requirement of federal or State law or regulation; and
- The facts upon which the statement is based.

This must include any documentation supporting the allegation(s). Complaints must be filed within one (1) year of the date that the alleged violation occurred, unless a longer period is reasonable because the violation is continuing. If the complainant is requesting compensatory services, the complaint must be received within three (3) years of the date of the alleged violation. The MSDE is to investigate and issue their findings within 60 calendar days of receipt of the written complaint. MSDE may permit an extension of the 60-day timeline only if exceptional circumstances exist regarding a particular complaint.

At a minimum, MSDE shall:

- Conduct an independent on-site investigation if MSDE determines an investigation is necessary;
- Provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Review all relevant information and make an independent determination as to whether a public agency has violated requirements of federal and State laws or regulations concerning the identification, evaluation, the educational placement of the child, and the provision of FAPE; and
- Issue a written decision to the complainant that addresses all allegations in the complaint and contains findings of fact and conclusions, and the reasons for the final decision of MSDE. The final decision shall include procedures for the effective implementation of the final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

### **Resolving A Complaint**

In accordance with MSDE's general supervisory authority under the IDEA, if MSDE determines a public agency has failed to provide appropriate services, the final written decision shall include how a public agency is to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action(s) appropriate to the needs of the child and provide appropriate future services for all students with disabilities.

### **Complaints and Due Process Hearings**

If MSDE receives a written complaint that is also part of a due process hearing, or if a written complaint contains multiple issues of which one or more are part of a hearing, MSDE must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of that due process hearing. However, any issue in the complaint that is not part of the due process hearing must be resolved using the timeline and procedures described above. If an issue is raised in a complaint that has previously been decided in a due process hearing, involving the same parties, the hearing decision is binding, and MSDE shall inform the complainant to that effect. A complaint alleging a public agency has failed to implement a due process hearing decision shall be resolved by MSDE.

### **Mediation Procedures**

Each public agency must ensure that procedures are established and implemented to allow parties (parents or public agencies) to appropriately resolve disputes involving any matter concerning the proposal, refusal, or consent for identification, evaluation, educational placement, the provision of a FAPE, or disciplinary procedures through a mediation process. At a minimum, mediation must be available whenever a due process hearing is requested. The procedures must ensure that the mediation process is a voluntary process available to either parents or the public agency. The request for mediation may not be used to deny or delay either party's rights under federal or State laws or regulations.

An employee of the Office of Administrative Hearings (OAH), selected on a rotating basis, who is qualified, impartial, and trained in effective mediation techniques, conducts mediation. An individual who serves as a mediator is not an employee of a public agency or State agency responsible for the provision of services to students with disabilities, or MSDE. A mediator must not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator is not an employee of a public agency or State agency responsible for the provision of services to students with disabilities, or MSDE, solely because that individual is paid by the State to serve as a mediator.

- MSDE pays for the costs of the mediation process, including the cost of a meeting with parents to encourage mediation.

- MSDE maintains a list of qualified mediators who are knowledgeable of the laws and regulations related to the provision of special education and related services.
- A request for mediation is made in writing to the public agency responsible for the education of the child. The Mediation/Due Process Request Form, developed by MSDE and OAH, is available from the public agency where the child attends school. For assistance contact the public agency's special education office.
- Within three (3) days of receipt of the written request for mediation it is the responsibility of the public agency to send a facsimile (fax) of the written request to the OAH.
- Parents or the public agency may be accompanied and advised by counsel during mediation.
- A mediation session will be scheduled to occur within 20 days of the receipt of a written request at a location convenient to parents and the public agency.
- Mediation sessions are closed proceedings. Discussions that occur during mediation must be confidential and cannot be used as evidence in any subsequent due process hearing or civil action. Parents or the public agency may be asked to sign a confidentiality pledge before the start of the mediation.
- An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

### **Meeting to Encourage Mediation**

A public agency may establish procedures to require parents who elect not to use the mediation process to meet at a time and location convenient to the parents, with a disinterested party, who is under contract with the Parents' Place of Maryland, Inc., Families Involved Together, Inc., or an appropriate alternative dispute resolution entity who would explain the benefits of the mediation process and encourage parents to use the process. A public agency may not deny or delay the parents right to a due process hearing if parents fail to participate in the meeting to encourage the use of mediation.

### **Due Process Hearings**

Parents or a public agency may initiate a due process hearing on any matter relating to the proposal, refusal or consent for identification, evaluation, educational placement, and the provision of FAPE, or disciplinary issues. *Please refer to Part X – Discipline of Students with Disabilities for more specific information.* Whenever a due process hearing is initiated, the public agency shall inform the parents of the availability of mediation. The public agency is to give parents a copy of all procedural safeguards and inform parents of free or low-cost legal and other relevant services in the area. At any time, upon the request of parents, the public agency is to provide parents with information about available free or low-cost legal and other relevant services in the area.

### **Parent Notice**

The Mediation/Due Process Hearing Request Form, developed by MSDE and OAH, is available from the public agency where the child attends school. The public agency may not deny or delay the parents right to a due process hearing because the parents failed to provide a written request. For assistance completing the form, contact the public agency's special education office. A request for a due process hearing made by the parents or the attorney representing the child must be made in writing to the public agency responsible for the education of the child and include:

- The name of the child;
- The address of the residence of the child;
- The name of the school the child is attending;
- A description of the problem(s) or area(s) of disagreement related to what the public agency is proposing, refusing, or changing, including facts relating to the problem; and
- A proposed resolution for the problem or disagreement to the extent known and available to the parents at the time.

Within three (3) days of receipt of the written request for a due process hearing, it is the responsibility of the public agency to send the facsimile (fax) of the written request to OAH. Upon the initiation of a due process hearing, it is also the responsibility of OAH to inform parents of free or low-cost legal and other relevant services in the area. The public agency is responsible for informing parents of information regarding the possible reimbursement of attorneys' fees incurred as a result of a due process hearing or court action. *Please refer to Part XV - Attorneys' Fees for more specific information.*

### **Impartial Hearing Officer**

OAH will assign an ALJ to serve as an impartial hearing officer from a list of ALJs approved to serve. The list must include a statement of the qualifications of each of those persons. An ALJ is not an employee of the public agency or any public agency involved in the education or care of the child and shall not have any personal or professional interest which would conflict with objectivity in the hearing. The ALJ is not an employee of the public agency solely because the ALJ is paid as a hearing officer. OAH will schedule the due process hearing to be conducted within 30 days of receipt of the written request. OAH will notify parents and the public agency of the right to mediation, if mediation has not been requested.

An ALJ shall conduct the due process hearing according to the requirements of applicable federal and State laws and regulations. During a due process hearing, an ALJ may:

- After the review of the educational record of the child, dismiss any request for a review, which does not relate to a matter involving the identification, evaluation, educational placement of a student, or the provision of FAPE;
- Require the parents and the public agency to participate in a pre-hearing conference prior to the due process hearing;
- Hear any testimony that it considers relevant;
- Require an independent evaluation and/or call upon an impartial expert witness in the diagnosis or education of students with disabilities whose testimony shall be on the record and whose costs shall be paid by MSDE.

### **Due Process Hearing Rights**

Any party to a due process hearing has the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing, that has not been disclosed to that party at least five (5) business days before the hearing;
- Obtain a written, or at the option of the parents, an electronic verbatim record of the hearing; and
- Obtain a written, or at the option of the parents, an electronic findings of fact and decisions.

At least five (5) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendations at the due process hearing without the consent of the other party.

### **Parental Rights at a Due Process Hearing**

Parents involved in due process hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents. The parents have the right to inspect and review, at reasonable times, before a due process hearing any education records relating to the child, as described in *Part IX - Procedures Regarding Educational Records*.

### **Timelines and Convenience of Due Process Hearings**

- The ALJ is required to make a final decision and the decision must be mailed to the parents and the public agency within 45 days of receiving the written request for a hearing.
- An ALJ may grant specific extensions of time beyond 45 days at the request of either party.
- The ALJ is to transmit a copy of the hearing decision to MSDE upon the close of the hearing record.
- Each due process hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and the child involved.
- The MSDE shall transmit the decision(s) to the State Advisory Committee and make decisions available to the public, in a manner consistent with State and federal confidentiality requirements, after removing personally identifiable information.

### **Expedited Due Process Hearing**

If, at the time of the request for a due process hearing, the child is not enrolled and attending an educational program or the request for a due process hearing involves a disciplinary issue, an expedited hearing will be scheduled. An expedited due process hearing shall meet the requirements of the due process hearing rights described above. Regardless of which party (parents or a public agency) requests an expedited due process hearing the timeline shall be the same. All requests for an expedited due process hearing will be considered by OAH. An expedited due process hearing shall be held within 20 days of receipt of a written request and a written decision will be issued within 15 days of the expedited due process hearing.

### **Child's Status During Proceedings**

The child will stay in the child's present educational setting pending administrative and judicial proceedings unless the parents and the public agency agree otherwise. If initial admission to public school is involved, the child must be placed in public school, if the parents consent, pending the completion of all administrative and judicial proceedings, unless the parents and the public agency agree otherwise. If in a decision of an ALJ, the ALJ agrees with a child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the State or local public agency and the parents of the child. For information on placement during appeals of disciplinary action, *Please refer to Part X - Discipline of Students with Disabilities for more specific information*.

### **Civil Action**

An ALJ decision is final unless appealed by either the parents or the public agency. Any party aggrieved by the findings and decisions has the right to bring a civil action with respect to the complaint presented in the due process hearing. Parents may file for civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in

controversy within 180 days of the issuance of the final decision. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, The Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities. Except, that before filing for civil action under these laws the parents or a public agency must have exhausted the procedures for a due process hearing with OAH under section 615 of the IDEA.

In any action, the court will:

- Receive the record of the due process hearing;
- Hear additional evidence at the request of either the parents or the public agency;
- Base its decision on the preponderance of evidence; and
- Grant the relief it determines to be appropriate.

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## **PART XV - ATTORNEYS' FEES**

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In any action or proceeding brought under section 615 of the IDEA, a court may award reasonable attorneys' fees as part of the costs to the parents of the student with a disability that is the prevailing party. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA. This does not preclude a public agency from using funds under Part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA. Because the parent's right to recover attorneys' fees depends upon meeting certain conditions set out in the IDEA, parents should discuss this matter with their attorney.

A court awards reasonable attorneys' fees consistent with the following:

- Fees awarded under section 615(i)(3) of the IDEA must be based upon the prevailing rate in the community in which the action or proceeding arose for the kind and quality of services furnished.
- No bonus or multiplier may be used in calculating the fees awarded.

### **Prohibition of Attorneys' Fees and Related Costs**

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to the parents if:

- The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
- The offer is not accepted within 10 days; and
- The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation that is conducted prior to the filing of a request for a due process hearing. Notwithstanding the prohibition of attorneys' fees and related costs described above, an award of attorneys' fees and related costs may be made to parents who are the prevailing party and who were substantially justified in rejecting the settlement offer.

### **Reduction in Attorneys' Fees or Related Costs**

The court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the IDEA, if the court finds that:

- The parents, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing the parents did not provide the public agency the appropriate information in the written request for a due process hearing, as required.

### **Exception to Reduction in Attorneys' Fees or Related Costs**

A reduction in attorneys' fees or related costs does not apply if the public agency:

- Unreasonably delayed the final resolution of the due process hearing or judicial proceeding; or
- Was in violation of section 615 of the IDEA.