Notice of Procedural Safeguards

September 2022

THE LEGAL FRAMEWORK
for the Child-Centered Special Education Process

Link to The Legal Framework

TEA®
Texas Education Agency

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Notice of Procedural Safeguards

Rights of Parents of Children with Disabilities

The Individuals with Disabilities Education Act (**IDEA**), as amended in 2004, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under IDEA and its implementing regulations. This document, produced by the Texas Education Agency (**TEA**), is intended to meet this notice requirement and help parents of children with disabilities understand their rights under IDEA.

Procedural Safeguards in Special Education

Under IDEA, the term *parent* means a biological parent, an adoptive parent, a foster parent who meets state requirements, a guardian, an individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, an individual who is legally responsible for the child's welfare, or a surrogate parent.

The term *native language* when used with someone who has limited English proficiency means the language normally used by that person. When used for people who are deaf or hard of hearing, native language is the mode of communication normally used by the person.

The school is required to give you this *Notice of Procedural Safeguards* only one time a school year, except that the school must give you another copy of the document: upon initial referral or your request for evaluation; upon receipt of the first special education complaint filed with the TEA; upon receipt of the first due process hearing complaint in a school year; when a decision is made to take disciplinary action that constitutes a change of placement; or upon your request.

You and the school make decisions about your child's educational program through an admission, review, and dismissal (**ARD**) committee. The ARD committee determines whether your child qualifies for special education and related services. The ARD committee develops, reviews, and revises your child's individualized educational program (**IEP**) and determines your child's educational placement. Additional information regarding the role of the ARD committee and IDEA is available from your school in a companion document *Parent's Guide to the Admission, Review, and Dismissal Process* (Link: fw.escapps.net).

Foster Parent as Parent

Under IDEA, a foster parent may act as the parent unless state law or rule prohibits it or unless contractual obligations with a state or local entity prohibit a foster parent from acting as the parent. In Texas, if you are a foster parent for a child with a disability, you may serve as the parent if you agree to participate in making special education decisions and if you complete the required training program before the child's next ARD committee meeting, but not later than the 90th day after you begin acting as the parent for the purpose of making special education decisions for the child. Once you have completed an approved training program, you do not have to retake a training program to act as a parent for the same child or to serve as a parent or as a surrogate parent for another child. If the school decides not to appoint you as a parent for the purposes of special education decision-making, it must give you written notice within seven calendar days after the date on which the decision is made. The notice must explain the local educational agency's (**LEA's**) reasons for its decision and must inform you that you may file a special education complaint with the TEA.

Surrogate Parent

If, after reasonable efforts, the school cannot identify or find a parent of a child, the foster parent is unwilling or unable to serve as a parent, the child does not reside in a foster home setting, or the child is a ward of the state, the school must appoint a surrogate parent to act in place of the child's parent, unless the child is a ward of the state and a court has appointed a surrogate parent. The school must also appoint a surrogate parent for an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act. As soon as practicable after appointing a surrogate parent for a child who is homeless or in substitute care, the school must provide written notice of the appointment to the child's educational decision-maker and case worker.

For more information, visit Children and Youth Experiencing Homelessness (Link: bit.ly/39v6KzG).

To be eligible to serve as a surrogate parent, you must not be an employee of the TEA, the school, or any agency that is involved in the education or care of the child, and you must not have any interest that conflicts with the interest of the child. A person appointed as a surrogate parent must have adequate knowledge and skills, be willing to serve, exercise independent judgment in pursuing the child's interest, ensure that the child's due process rights are not violated, visit the child and the school, review the child's education records, consult with any person involved in the child's education, attend ARD committee meetings, and complete a training program. The person appointed by a school to act as a surrogate parent must complete the training program before the child's next scheduled ARD committee meeting but not later than the 90th day after the date of initial appointment as a surrogate parent. Once you have completed an approved training program, you do not have to retake a training program to act as a parent for the same child or to serve as a parent or as a surrogate parent for another child.

For additional requirements regarding surrogate parents, please see 19 TAC §89.1047 (Link: bit.ly/39B7jIa).

Child Find

All children with disabilities residing in the state, who are in need of special education and related services, including children with disabilities who are homeless children or who are wards of the state and children with disabilities attending private schools, regardless of the severity of their disability, must be identified, located, and evaluated. This process is called *Child Find*.

As part of its Child Find activities, an LEA must publish or announce a notice in newspapers or other media, or both, with circulation adequate to notify parents of the activity to locate, identify, and evaluate children in need of special education and related services.

For a fuller description of Child Find requirements, please refer to The Legal Framework for the Child-Centered Special Education Process (Link: fw.escapps.net).

Prior Written Notice

You have the right to be given written information about the school's actions relating to your child's special education needs. The school must give you prior written notice a reasonable time before it proposes to initiate or change the identification, evaluation, or educational placement of your child or the free appropriate public education (**FAPE**) provided to your child. You also have a right to prior written notice before the school refuses to initiate or change the identification, evaluation, or educational placement of your child or the FAPE provided to your child. The school must provide the prior written notice regardless of whether you agreed to the change or requested the change.

In Texas, the school must give you prior written notice at least five school days before it proposes or refuses the action unless you agree to a shorter timeframe.

The school must include in the prior written notice: a description of the actions the school proposes or refuses to take; an explanation of why the school is proposing or refusing the action; a description of each evaluation procedure, assessment, record, or report the school used in deciding to propose or refuse the action; a statement that you have protections under the procedural safeguards of IDEA; an explanation of how to get a copy of this *Notice of Procedural Safeguards*; contact information for individuals or organizations that can help you in understanding IDEA; a description of other choices that your child's ARD committee considered and the reasons why those choices were rejected; and a description of other reasons why the school proposes or refuses the action.

The notice must be written in language understandable to the general public and must be translated into your native language or other mode of communication unless it clearly is not feasible to do so.

If your native language or other mode of communication is not a written language, the school must translate the notice orally or by other means in your native language or other mode of communication so that you understand it. The school must have written evidence that this has been done.

If, at any time after the school begins providing special education and related services to your child, you revoke your consent for services, the school must discontinue providing

special education and related services to your child. Before discontinuing services; however, the school must give you prior written notice at least five school days before services end unless you agree to a shorter timeframe.

Electronic Mail

A parent of a child with a disability may elect to receive written notices by electronic mail if the school makes such an option available.

Parental Consent

The school must obtain your informed consent before it may do certain things. Your informed consent means that: you have been given all the information related to the action for which your permission is sought in your native language or other mode of communication; you understand and agree in writing to the activity for which your permission is sought, and the written consent describes the activity and lists any records that will be released and to whom; and you understand that the granting of your consent is voluntary and may be withdrawn at any time. If you wish to revoke your consent for the continued provision of special education and related services, you must do so in writing. If you give consent and then revoke it, your revocation will not be retroactive.

The school must maintain documentation of reasonable efforts to obtain parental consent. The documentation must include a record of a school's attempts to obtain consent such as detailed telephone records, copies of correspondence, and detailed records of visits made to your home or place of employment.

Initial Evaluation

Before conducting an initial evaluation of your child to determine if your child qualifies as a child with a disability under the IDEA, the school must give you a copy of the *Notice of Procedural Safeguards* and prior written notice of the proposed evaluation and get your informed consent. The school must make reasonable efforts to obtain your consent for an initial evaluation. Your consent for initial evaluation does not mean that you have also given your consent for the school to start providing special education and related services to your child. If your child is a ward of the state and is not residing with you, the school is not required to obtain your consent if they cannot find you or if your parental rights have been terminated or assigned to someone else by a court order.

Initial Services

Your school must obtain your informed consent before providing special education and related services to your child for the first time. The school must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time. If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, your school may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services recommended by your child's ARD committee may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the school does not provide your child with the special education and related services for which it sought your consent, your school is not in violation of the requirement to make a FAPE available to your child for its failure to provide those services to your child; and is not required to have an ARD committee meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

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

Reevaluation

The school must get your consent to reevaluate your child unless it can demonstrate that it took reasonable measures to obtain your consent and you failed to respond.

Override Procedures – If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school may, but is not required to, seek to conduct an initial

evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school will not violate its obligations to locate, identify, and evaluate your child (child find obligation) if it does not pursue an evaluation of your child in these circumstances.

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

If a parent of a child who is homeschooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation or the parent fails to respond to a request to provide consent, the school may not use IDEA's consent override procedures described above. The school district is also not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

Your consent is not required before the school reviews existing data as part of your child's evaluation or reevaluation or gives your child a test or other evaluation that is given to all children unless parental consent is required for all children. The school may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

Independent Educational Evaluation

An independent educational evaluation (**IEE**) is an evaluation conducted by a qualified person who is not employed by the school. You have the right to obtain an IEE of your child if you disagree with the evaluation of your child that was obtained by your school. When you ask for an IEE, the school must give you information about its evaluation criteria and where to get an IEE.

IEE at Public Expense

If you disagree with an evaluation provided by the school, you have the right to request that your child be evaluated, at public expense, by someone who does not work for the school.

Public expense means that the school either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

If you request an IEE of your child at public expense, your school must, without unnecessary delay, **either**: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; **or** (b) Provide an IEE at public expense, unless the school demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school 's criteria.

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

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

IEE Criteria

If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school uses when it initiates an evaluation to the extent those criteria are consistent with your right to an IEE. Except for the preceding criteria, a school may not impose conditions or timelines related to obtaining an IEE at public expense.

Hearing Officer Determination

If the school files a due process complaint to request a due process hearing and a hearing officer determines that the school's evaluation is appropriate or that the IEE you obtained does not meet the school's IEE criteria, the school does not have to pay for the IEE.

IEE at Private Expense

You always have the right to get an IEE at your own expense. No matter who pays for it, the school must consider the IEE in any decision about providing FAPE to your child if the IEE meets the school's criteria. You may also present an IEE as evidence in a due process hearing.

IEE Ordered by a Hearing Officer

If a hearing officer orders an IEE as part of a due process hearing, the school must pay for it.

Procedures When Disciplining Children with Disabilities

Authority of School Personnel

Case-by-Case Determination

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

General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than 10 school days in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (**IAES**), another setting, or suspension. School personnel may also impose additional removals of the child of not more than 10 school days in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see the heading Change of Placement Because of Disciplinary Removals for the definition). Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, the school must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading Services.

Additional Authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability, and the disciplinary change of placement would exceed 10 school days in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under Services. The child's ARD committee determines the IAES for such services.

Services

The school district does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for 10 school days or less in that school year.

A child with a disability who is removed from the child's current placement for more than 10 school days and the behavior is not a manifestation of the child's disability or who is removed under special circumstances must:

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

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

If the removal is a change of placement, the child's ARD committee determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an IAES), and to progress toward meeting the goals set out in the child's IEP.

Manifestation Determination

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for 10 school days in a row or less and not a change of placement), the school, you, and relevant members of the ARD committee (as determined by you and the school) must

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

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

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

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

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

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

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

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

Special Circumstances

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an IAES (determined by the child's ARD committee) for not more than 45 school days, if your child:

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

Definitions

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

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

Serious bodily injury has the meaning given the term *serious bodily injury* under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

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

Notification

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

Change of Placement Because of Disciplinary Removals

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

- The removal is for more than 10 school days in a row; or

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

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

Determination of Setting

The ARD committee determines the IAES for removals that are changes of placement, and removals in the Additional Authority and Special Circumstances sections.

Appeal

General

You may file a due process complaint to request a due process hearing if you disagree with:

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

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

Authority of Hearing Officer

A hearing officer that meets requirement described in the section on Due Process Procedures below must conduct the due process hearing and make a decision. The hearing officer may:

- Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading Authority of School Personnel, or that your child's behavior was a manifestation of your child's disability; or
- Order a change of placement of your child with a disability to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

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

Whenever you or a school files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described in the section on Due Process Procedures below, except as follows:

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

You or the school may appeal the decision in an expedited due process hearing in the same manner as decisions in other due process hearings, as described in the section on Civil Actions, below.

Placement During Appeals

When, as described above, you or the school file a due process complaint related to disciplinary matters, your child must (unless you and the TEA or the school agree otherwise) remain in the IAES pending the decision of the hearing

officer, or until the expiration of the time period of removal as provided for and described under the heading Authority of School Personnel, whichever occurs first.

Protections for Children Not Yet Eligible for Special Education and Related Services

General

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

Basis of Knowledge for Disciplinary Matters

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

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

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

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

Conditions that Apply if there is No Basis of Knowledge

If prior to taking disciplinary measures against your child, a school does not have knowledge that your child is a child with a disability as described above in Basis of Knowledge for Disciplinary Matters and Exception, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors. However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school and information provided by you, the school must provide special education and related services in accordance with IDEA Part B, including the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities

IDEA Part B does not:

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

Transmittal of Records

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

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

Confidentiality of Information

As used in this section:

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* as described in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act (FERPA) of 1974, 20 U.S.C. 1232g).

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

Personally identifiable information includes: your child's name, your name as a parent, or the name of another family member; your child's address; a personal identifier like your child's Social Security number; or a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

You have the right to review your child's entire education record including the parts that are related to special education. The school may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce. You can also give permission for someone else to review your child's record. When you ask to review the records, the school must make them available without unnecessary delay and before any meeting regarding your child's IEP, before any due process hearing or resolution session, and in no case more than 45 calendar days after the date of the request.

Clarification, Copies, and Fees

If you ask, the school must explain and interpret the records, within reason. The school must make you copies if that is the only way you will be able to inspect and review the records. The school may not charge a fee to search for or to retrieve any education record about your child. However, it may charge a fee for copying if the fee does not keep you from being able to inspect and review the records.

Information on More than One Child

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

You have the right to request and obtain a list of the types and locations of education records collected, maintained, or used by the school.

Consent for Disclosure of Personally Identifiable Information

Unless the information is contained in education records, and the disclosure is authorized without parental consent under FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of IDEA Part B.

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

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

The school must keep a log of everyone, except for you and authorized school officials, who reviews your child's special education records, unless you provided consent for the disclosure. This log must include the name of the person, the date access was given, and the purpose for which the person is authorized to use the records.

One official at the school must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures regarding confidentiality under IDEA and FERPA. Each school must maintain, for public inspection, a current listing of the names and positions of those employees within the school who may have access to personally identifiable information.

Amending Records

If you believe that your child's education records are inaccurate, misleading, or violate your child's rights, you may ask the school to amend the information. Within a reasonable time, the school must decide whether to amend the information. If the school refuses to amend the information as requested, it must inform you of the refusal and of your right to a hearing to challenge the information in the records. This type of hearing is a local hearing under FERPA and is not an IDEA due process hearing held before an impartial hearing officer.

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must change the information and inform you in writing. If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, you must be informed of your right to place a statement commenting on the information in your child's records for as long as the record or contested portion is maintained by the school.

If you revoke your consent in writing for your child's receipt of special education and related services after the school initially provided services to your child, the school is not required to amend your child's education records to remove any references to your child's previous receipt of special education and related services. However, you still have the right to ask the school to amend your child's records if you believe the records are inaccurate, misleading, or violate your child's rights.

Safeguards and Destruction

The school must protect the confidentiality of your child's records at collection, storage, disclosure, and destruction stages. *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. The school must inform you when information in your child's records is no longer needed to provide educational services to your child. The information must be destroyed at your request except for name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed.

Notice to Parents

The TEA will give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including: a description of the extent to which the notice is given in the native languages of the various population groups in the state; a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods to be used in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information; a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and a description of all of the rights of parents and children regarding this information, including the rights under FERPA and its implementing regulations in 34 CFR Part 99.

Voluntary Private School Placements by Parents

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

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

You have specific rights when you place your child in a private school because you disagree with the public school regarding the availability of a program appropriate for your child.

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

does not meet the state standards that apply to education provided by the TEA and schools.

Limitation on Reimbursement

The cost of reimbursement described in the paragraph preceding may be reduced or denied if: at the most recent ARD committee meeting that you attended before your removal of your child from the public school, you did not inform the ARD committee that you were rejecting the placement proposed by the public school to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or at least 10 business days, including any holidays that occur on a business day, before your removal of your child from the public school, you did not give written notice to the public school of that information; or, before your removal of your child from the public school, the public school provided prior written notice to you of its intent to evaluate your child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but you did not make the child available for the evaluation; or a court finds that your actions were unreasonable.

However, the cost of reimbursement must not be reduced or denied for failure to provide the notice if: the public school prevented you from providing the notice; you had not received notice of your responsibility to provide the notice described; or compliance with the preceding requirements would likely result in physical harm to your child. At the discretion of the court or a hearing officer, the cost of reimbursement may not be reduced or denied for your failure to provide the required notice if you are not literate or cannot write in English, or compliance with the preceding requirement would likely result in serious emotional harm to your child.

Transfer of Parental Rights

All parental rights under IDEA transfer to the child when the child reaches the age of majority. The age of majority under Texas law is age 18. For most children, all of the parental rights discussed in this document will transfer to the child at 18 years of age. When parental rights transfer to your adult student, he or she has the right to make educational decisions, although the public school must still provide you with notices of ARD committee meetings and prior written notices. You, however, may not attend meetings unless specifically invited by the adult student or the school or unless your adult student gives you that right in a supported decision-making agreement.

Court-Appointed Guardian for an Adult Student

If a court has appointed you or another person as the adult student's legal guardian, the rights under IDEA will not transfer to the adult student. The legally appointed guardian will receive the rights.

Incarcerated Adult Student

If the adult student is incarcerated, all of IDEA rights will transfer to the adult student at age 18. You will not keep the right to receive prior written notices related to special education.

Adult Students before Age of 18

There are certain conditions described in Chapter 31 of the Texas Family Code that result in a child becoming an adult before age 18. If your child is determined to be an adult under this chapter, the rights under IDEA will transfer to your child at that time.

Alternatives to Guardianship

The public school must honor a valid power of attorney or a valid supported decision-making agreement that is executed by your adult student.

Required Notices and Information

On or before your child's 17th birthday, the public school must provide you and your child written notice describing the transfer of parental rights and include information about guardianship and alternatives to guardianship, including supported decision-making agreements, and other supports and services that may assist your child in living independently. Your child's IEP must also state that the public school provided this information.

At your child's 18th birthday, the public school must provide you and your child written notice that parental rights transferred to the adult student. This written notice must include information and resources about guardianship and alternatives to guardianship, including supported decision-making agreements, and other supports and services that may assist your child in living independently. This written notice must also include contact information to use in seeking additional information.

Special Education Information

If you need information about special education issues, you may call the Special Education Information Center at 1-855-SPEDTEX (1-855-773-3839). If you call this number and leave a message, someone will return your call during normal business hours. Individuals who are deaf or hard of hearing may call the SPEDTEX number using Relay Texas at 7-1-1.

Resolving Disagreements

There may be times when you disagree with the actions taken by the school related to your child's special education and related services. You are strongly encouraged to work with school personnel to resolve differences as they occur. You may ask the school about what dispute resolution options it offers for parents. The TEA offers four formal options for resolving special education disagreements: state IEP facilitation, mediation services, the special education complaint resolution process, and the due process hearing program.

Differences Between the Procedures for Due Process Complaints and Hearings and Special Education Complaints

Federal special education regulations set forth separate procedures for special education complaints and for due process complaints and hearings. As explained above, any individual or organization, including one from out of state, may file a special education complaint alleging a violation of any IDEA Part B requirement by a school, the TEA, or any other public agency. Only you or a school may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. While the TEA generally must resolve a special education complaint within a 60 calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school's request.

State IEP Facilitation

As required by state law, the TEA has established a state IEP facilitation project to provide independent IEP facilitators to assist with an ARD committee meeting for parties who are in dispute about decisions relating to the provision of FAPE to a child with a disability. The conditions that must be met for the TEA to provide an independent facilitator are as follows:

- The required request form must be completed and signed by both you and the school. This form is available in English and Spanish, online at Individualized Education Program Facilitation (Link: bit.ly/3spluIV). It is also available upon request from the TEA.
- The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements of the IEP was not reached and the ARD committee agreed to recess and reconvene the meeting.
- You and the school must have filed the required request form within five calendar days of the ARD committee meeting that ended in disagreement, and a facilitator must be available on the date set for reconvening the meeting.
- The dispute must not relate to a manifestation determination or determination of an IAES placement.
- You and the school must not be concurrently involved in special education mediation.
- The issues in dispute must not be the subject of a special education complaint or a special education due process hearing.
- You and the school must not have participated in IEP facilitation concerning the same child within the same school year of the filing of the current request for IEP facilitation.
- State rule related to the state's IEP facilitation program can be found at 19 TAC §89.1197 (Link: bit.ly/3bCULCL).

Mediation Services

Mediation must be available to resolve disputes regarding any matter under IDEA Part B, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under IDEA Part B whether or not you have filed a due process complaint to request a due

process hearing as described under the heading Due Process Procedures. Mediation is not limited to disputes between parents and schools regarding the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.

Mediation is a voluntary process. Thus, if both you and the school voluntarily agree to participate in mediation, the TEA makes the arrangements and pays for the mediation. Mediation may not be used to delay or deny you a due process hearing or any other rights under IDEA.

The TEA automatically offers mediation services each time a due process hearing is requested. But, you may ask for mediation services any time you and the school have a disagreement about any matter under IDEA Part B.

The mediators are not employees of the TEA or of the school district that is involved in the education or care of the child who is the subject of the mediation process, and they cannot have any personal or professional interest that would conflict with their objectivity. A person who otherwise qualifies as a mediator is not an employee of a school district or of the TEA solely because he or she is paid by the TEA to serve as the mediator. The mediators are professionals who are qualified and trained in resolving disputes and who have knowledge of special education laws. The mediator's role is to be objective and not take the side of either party at the mediation. The goal of mediation is to assist you and the school in reaching an agreement that satisfies both of you.

A link to a current list of mediators can be found at Office of General Counsel, Special Mediation Program (Link: bit.ly/39yQTjK).

If you and the school agree to mediate, you can agree to use a specific mediator, or a mediator will be randomly assigned. In either case, the mediator will contact you promptly to schedule the mediation session at a place and time convenient to you and the school.

The discussions that occur during the mediation process must be confidential. They cannot be used as evidence in a future due process hearing or civil proceeding of any federal court or state court of a state that receives assistance under IDEA Part B.

If you and the school resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution. The agreement must state that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The agreement must also be signed by both you and a representative of the school district who has the authority to bind the school district. The written, signed mediation agreement is legally binding and enforceable in any court that has authority under state law to hear this type of case or in a federal district court.

You can find more information about the mediation process on the TEA website at Office of General Counsel, Special Mediation Program (Link: bit.ly/39yQTjK).

State rule related to the special education mediation process can be found at 19 TAC §89.1193 (Link: bit.ly/35Dyrp2).

Special Education Complaint Resolution Process

Another option for resolving special education disputes is the TEA's special education complaint resolution process. In this document, the term *special education complaint* refers to a state complaint under IDEA and its implementing regulations. If you believe a public agency has violated a special education requirement, or if you believe that a public agency is not implementing a due process hearing decision, you may send a written complaint to the TEA. You must also send your complaint to the entity against whom the complaint is filed at the same time you send your complaint to the TEA. Any organization or individual, including one from another state, may file a special education complaint with the TEA. The complaint timeline will start the next business day after the day that the TEA receives the complaint.

The TEA has developed a model form to assist parents and other parties in filing a special education complaint. A party filing a special education complaint can use the state's model form or any other document so long as the complaint includes all required information.

Your written complaint must describe a violation that occurred not more than one year before the date that the complaint is received. The complaint must include: a

statement that the public agency has violated a special education requirement, the facts upon which the statement is based, and your signature and contact information. If the complaint concerns a specific child, the complaint must also include: the child's name and address or available contact information if the child is homeless, the name of the child's school, and a description of the nature of the problem of the child, including facts relating to the problem to the extent known and available to you at the time. The complaint must also include a proposed resolution of the problem to the extent known and available to the complainant at the time the complaint is filed.

Upon the filing of a special education complaint, the TEA will give the complainant the opportunity to submit additional information regarding the allegations in the complaint, either orally or in writing. The TEA will also give the public agency an opportunity to respond to the complaint and the opportunity to submit a proposal to resolve the complaint. Also, the TEA will give the parent who filed the complaint and the public agency the opportunity to engage in mediation.

Within 60 calendar days after receiving a special education complaint, the TEA will conduct an investigation, including an on-site investigation if necessary. The 60 calendar-day timeline for resolving the complaint may be extended due to exceptional circumstances with respect to a particular complaint or if both parties to a special education complaint agree to an extension to engage in mediation or other alternative means of dispute resolution.

In conducting the investigation, the TEA will review all relevant information and make an independent determination as to whether the public agency has violated federal or state special education requirements. The TEA will issue a written decision addressing each of the allegations including findings of fact, conclusions, and reasons for the TEA's decision.

In resolving a complaint in which the TEA has found a failure to provide appropriate services, the TEA must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement) and appropriate future provision of services for all children with disabilities.

The TEA's decision regarding a special education complaint is final and may not be appealed.

Filing a complaint does not take away your right to request mediation or a due process hearing. If you file a complaint and request a due process hearing about the same issues, the TEA will set aside any issues in the complaint that are being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the due process hearing will be resolved within the timelines and procedures described in this document.

If an issue raised in a complaint is decided in a due process hearing involving the same parties, the hearing decision is binding on that issue, and the TEA will inform the complainant to that effect.

The TEA must have written procedures for widely disseminating its complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

The TEA must also have written procedures for ensuring the effective implementation of its final decision, if needed, including: (a) technical assistance activities; (b) negotiations; and (c) corrective actions to achieve compliance.

You can find more information about the special education complaint process and complaint investigation forms on the TEA website at Special Education Dispute Resolution Processes (Link: bit.ly/3bL6n73).

State rule related to the special education complaints process can be found at 19 TAC §89.1195 (Link: bit.ly/35IU1rY).

Due Process Procedures

The fourth option for resolving special education disputes is the due process hearing program. In a due process hearing, an impartial hearing officer hears evidence from the parties and makes a legally binding decision.

In order to request a hearing, you or the school (or your attorney/representative or the school's attorney/ representative) must submit a due process complaint to the other party and file it with the TEA. You have the right to request a due process hearing by filing a due process

complaint on any matter relating to the identification, evaluation or educational placement of your child, or the provision of FAPE to your child.

If you filed a due process complaint on or before August 31, 2022, the law in place at that time required you to file it within **one** year of the date you knew or should have known about the alleged action that forms the basis of the complaint. However, because of a change in the law, beginning on September 1, 2022, you must file a due process complaint within **two** years of the date you knew or should have known about the alleged action that forms the basis of the complaint. This timeline is also referred to as a statute of limitations. The timeline does not apply to you if you were prevented from filing a due process complaint because of specific misrepresentations by the school that it had resolved the problem or because the school withheld information from you that was required to be provided to you. While not an IDEA requirement, Texas state law provides that in some circumstances, the one-year statute of limitations to file a due process complaint may be tolled or paused if you are an active-duty member of the armed forces, the Commissioned Corps of the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the United States Public Health Service, and if the statute of limitations provisions of a federal law known as the Service Members Civil Relief Act apply to you.

If you file a due process complaint to request a due process hearing, you have the burden of proving that the school violated a special education requirement. In certain situations, the school may file a due process complaint to request a due process hearing against you. In these situations, the school has the burden of proof.

Before you sue the school in court about any of the matters previously listed, you must file a due process complaint. If you have not done so, your claims in court may be dismissed.

Requesting a Due Process Hearing

You or the school may not have a due process hearing until you or the school (or your attorney/representative or the school's attorney/representative) files a due process complaint that includes: your child's name and address or available contact information if your child is homeless; the name of your child's school; a description of the problem your child is having, including facts relating to the problem; and a resolution of the problem that you propose to the extent known and available to you at the time.

A form for a due process complaint is available from the TEA at Office of General Counsel, Special Education Due Process Hearing (Link: bit.ly/2XCdKFw).

You do not have to use the TEA form, but your complaint must contain the required information above.

You, your attorney, or your representative (or the school, its attorney, or its representative) must send the written due process complaint to the TEA and to the opposing party at the same time. The due process complaint must be kept confidential.

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

Within five calendar days of receiving the notification that the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above and notify you and the school in writing immediately.

School District Response to a Due Process Complaint

If the school has not already sent you a prior written notice under 34 CFR §300.503 regarding the subject matter contained in the due process complaint, the school must, within 10 days of receiving the due process complaint, send you a response that includes:

- An explanation of why it proposed or refused to take the action raised in the due process complaint;
- A description of other options that the ARD committee considered and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report it used as the basis for the proposed or refused action; and

- A description of the other factors that are relevant to the school's proposed or refused action.

Providing this information does not prevent the school from asserting that your due process complaint was insufficient, where appropriate.

Other Party Response to a Due Process Complaint

Except as stated in the section immediately above, the party receiving a due process complaint must, within 10 calendar days of receiving a complaint, send the other party a response that specifically addresses the issues in the complaint.

The parent or school may amend or change the due process complaint only if the other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting or if the hearing officer gives permission no later than five calendar days before the hearing begins. The party who requested the hearing may not raise issues at the hearing that were not raised in the due process complaint unless the other party agrees that the additional issues may be raised. If the filing party, whether you or the school, amends (changes) the due process complaint, the timelines for the resolution period and the timelines for the hearing start again on the date the amended complaint is filed.

You must be provided with information about any free or low-cost legal and other relevant services available in the area if you request the information or if you or the school files a due process complaint.

Child's Status during Proceedings (Stay-Put)

Except for a proceeding that involves discipline, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the state or the school agree otherwise, your child must remain in his or her current educational placement. Remaining in a current setting is commonly referred to as stay-put. If the proceeding involves discipline, see Placement During Appeals for discussion of the child's placement during discipline disputes.

If the due process complaint involves an application for your child to be initially enrolled in public school, your child must be placed, if you consent, in the public school program until the completion of all the proceedings. If the child is turning three and transitioning from an Early Childhood Intervention (**ECI**) program, stay-put is not the ECI services. If the child qualifies for special education and related services and the parent consents, the services that are not in dispute must be provided.

If the hearing officer in a due process hearing conducted by the TEA agrees with you that it is appropriate to change your child's placement, this change in placement must be treated as an agreement between you and the state. Therefore, this change of placement becomes your child's current placement pending the outcome of any further appeals.

Resolution Period

Except in the case of an expedited hearing, within 15 calendar days of receiving your due process complaint, the school must convene a meeting called a resolution meeting with you, a school representative with decision-making authority, and the relevant members of the ARD committee chosen by you and the school. The school may only include an attorney at the meeting if you have an attorney at the meeting.

Except when you and the school have both agreed in writing to waive the resolution process or agreed to use mediation instead, the resolution meeting must be held. If you do not participate in the resolution meeting, the timelines for the resolution process and hearing will be delayed until the meeting is held.

If the school makes reasonable efforts to get you to attend the resolution meeting, but you do not attend, then at the end of the 30 calendar-day resolution period, the school may ask the hearing officer to dismiss your due process complaint. The school must be able to show that it made reasonable efforts to get you to attend the resolution meeting using the following documentation: a record of the school's attempts to arrange a mutually agreed upon time and place, such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to you and any responses received; and detailed records of visits made to your home or place of employment and the results of those visits.

If, on the other hand, the school fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint or fails to participate in the resolution

meeting, you may ask the hearing officer to end the resolution period and to order the 45 calendar-day hearing timeline to begin.

Ordinarily, the resolution period lasts for 30 calendar days. However, if you and the school agree in writing to waive the resolution meeting, then the 45 calendar-day timeline for the hearing starts the next calendar day. Likewise, if you and the school have started the mediation process or the resolution meeting, but before the end of the 30 calendar-day resolution period, you and the school agree in writing that no agreement is possible, then the 45 calendar-day timeline for the hearing starts the next calendar day. Finally, if you and the school have agreed to use the mediation process, both parties can agree in writing to continue the mediation at the end of the 30 calendar-day resolution period until an agreement is reached. However, if either you or the school withdraws from the mediation process, the 45 calendar-day timeline for the hearing starts the next calendar day.

If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint (the resolution period) start over when the amended due process complaint is filed.

The purposes of the resolution meeting are to give you an opportunity to discuss your request and the underlying facts with the school and to give the school the opportunity to resolve the dispute that is the basis of the request. If you reach an agreement in the meeting, you and the school must put your agreement in writing and sign it. This written agreement is enforceable in a court that has authority under state law to hear this type of case or in a federal district court unless one of the parties voids the agreement within three business days of the date it is signed.

If the school has not resolved the issues raised in your due process complaint to your satisfaction within 30 calendar days from the receipt of your complaint, the 45 calendar-day hearing timeline begins and the hearing may proceed.

Resolution Period in Expedited Hearings

For expedited hearings, the school must convene the resolution meeting within seven calendar days of receiving the due process complaint. You have a right to a hearing if the school has not resolved the issues raised in your complaint to your satisfaction within 15 calendar days of the school's receipt of the complaint. The hearing must be held within 20 school days of the date that the complaint is filed. The hearing officer must issue a final decision within 10 school days after the hearing.

Hearings

The TEA provides impartial hearing officers to conduct hearings. The hearing officers are not employees of the TEA or any agency involved in the education or care of your child and cannot have any personal or professional interest that would conflict with his or her objectivity in the hearing. The hearing officer: (1) Must be knowledgeable and understand the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts; and (2) Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The TEA maintains a list of hearing officers that includes the qualifications of each hearing officer. This list is available on the TEA website at Office of General Counsel, Special Education Due Process Hearing (Link: bit.ly/2XCdKFw). You can also request the list from the TEA Office of Legal Services, whose contact information is provided at the end of this document.

Before the Hearing

At least five business days before the due process hearing, you and the school must disclose to each other any evidence that will be introduced at the hearing. Either party may contest the introduction of any evidence that has not been shared on time. Likewise, at least five business days before the hearing, you and the school must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school intend to use at the hearing. A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

During the Hearing

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

- Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
- Represent himself or herself or be represented by an attorney who is licensed in the state of Texas or an individual who is not an attorney licensed in the state of Texas but who has special knowledge or training with respect to problems of children with disabilities and who satisfies the qualifications set out at 19 TAC §89.1175 (Link: bit.ly/2XFtKq9).
- Present evidence and confront, cross-examine, and require the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
- Obtain written, or, at your option, electronic findings of fact and decisions.

Parental Rights at Hearings

You must be given the right to:

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

After the Hearing

The hearing officer will issue a decision. The hearing officer's decision of whether your child received FAPE must be based on substantive grounds. If you complain about a procedural error, the hearing officer may only find that your child did not receive FAPE if the error: impeded your child's right to FAPE; deprived your child of educational benefits; or significantly interfered with your opportunity to participate in the decision-making process regarding FAPE to your child. None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school to comply with the requirements in the procedural safeguards section of the federal regulations under IDEA Part B (34 CFR §§500 through 300.536).

The TEA will ensure that a final hearing decision is reached and mailed to the parties within 45 calendar days after the expiration of the 30 calendar-day resolution period, or the adjusted resolution period if applicable. In an expedited hearing, the TEA will ensure that a final decision is reached within 10 school days from the date of the hearing. The hearing officer may grant a specific extension for a good reason at the request of either party in a non-expedited hearing. A hearing officer may not grant an extension in an expedited hearing. The decision of the hearing officer (including a decision in a hearing related to disciplinary procedures) is final unless a party to the hearing (you or the school) appeals the decision to state or federal court, as described below.

The school must implement the hearing officer's decision within the timeframe stated by the hearing officer, or if there is no timeframe stated, within 10 school days after the date the decision was rendered, even if the school appeals the decision, except that any reimbursements for past expenses can be withheld until the appeal is resolved. Nothing in the procedural safeguards section of the federal regulations under IDEA Part B (34 C.F.R. §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process hearing already filed.

Findings and Decision to Advisory Panel and the General Public

After deleting any personally identifiable information from the hearing officer's decision, the TEA must provide the decision (which contains the hearing officer's findings and decisions) to the state advisory panel. In Texas, the state advisory panel is called the Continuing Advisory Committee. The TEA must also make the decision available to the public.

Civil Action

Any party (you or the school) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to appeal the hearing officer's findings and decision by bringing a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought to a state court that has the authority to hear this type of case or to a district court of the United States without regard to the amount in dispute and must be brought no more than 90 calendar days after the date the decision was issued. As part of the appeal process, the court must receive the records of the due process hearing, hear additional evidence at the request of either party, base its decision on the preponderance of the evidence, and grant any appropriate relief.

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

Attorney's Fees

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

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

In any action or proceeding brought under IDEA Part B, the court may, in its discretion, award reasonable attorney's fees as part of the costs to a prevailing school or state education agency, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).

A court awards reasonable attorney's fees as follows:

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

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

Fees may not be awarded relating to any meeting of the ARD committee unless the meeting is held as a result of an administrative proceeding or court action. A resolution meeting, as described above, is not considered a meeting convened as a result of an administrative hearing or court action and is not considered an administrative hearing or court action for purposes of these attorney's fees provisions.

A court reduces, as appropriate, the amount of attorney's fees awarded under IDEA Part B if the court finds that:

- You or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
- The amount of the attorney's fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing you did not provide to the school the appropriate information in the due process complaint as described above in the section on due process procedures.

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

State rule related to the special education due process hearing program begins at 19 TAC §89.1151 (Link: bit.ly/3nQcmtG).

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Contact Information

If you have any questions about the information in this document or need someone to explain it to you, please contact:

Local Contact Information

School: Name: Telephone Number: Email:	Education Service Center: Name: Telephone Number: Email:	Other Resource: Name: Telephone Number: Email:

If you need information about special education issues, you may call the Special Education Information Center at 1-855-SPEDTEX (1-855-773-3839). If you call this number and leave a message, someone will return your call during normal business hours. Individuals who are deaf or hard of hearing may call the SPEDTEX number using Relay Texas at 7-1-1.

If you have questions about a pending special education complaint, please call 512-463-9414. If you have questions about a pending mediation or due process hearing, contact the assigned mediator or hearing officer respectively.

Dispute Resolution Contact Information

When requesting a Facilitated IEP, send the request to:	When filing a Special Education Complaint, send the complaint to:	When requesting a Mediation, send the request to:	When filing a Due Process Complaint, send the complaint to:
State IEP Facilitation Project Texas Education Agency 1701 N. Congress Avenue Austin, TX 78701-1494 or Fax: 512-463-9560 or specialeducation@tea.texas.gov	**Special Education Complaints Unit** Texas Education Agency 1701 N. Congress Avenue Austin, TX 78701-1494 or Fax: 512-463-9560 or specialeducation@tea.texas.gov	**Mediation Coordinator** Texas Education Agency 1701 N. Congress Avenue Austin, TX 78701-1494 or Fax: 512-463-6027 or SE-Legal@tea.texas.gov	**Special Education Due Process Hearings** Texas Education Agency 1701 N. Congress Avenue Austin, TX 78701-1494 or Fax: 512-463-6027 or SE-Legal@tea.texas.gov

Please visit the TEA's Department of Special Education website at

https://tea.texas.gov/TexasSped