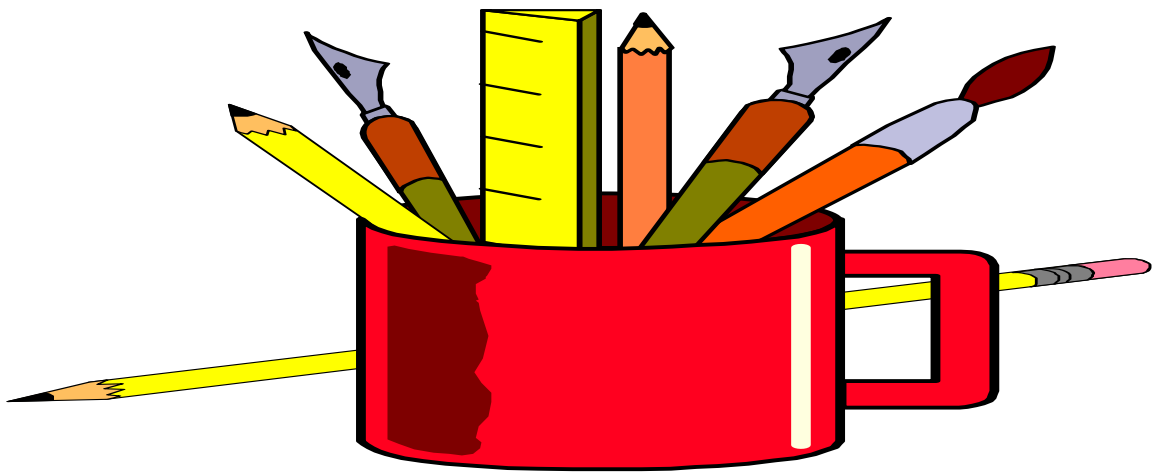


Caring for our students with Disabilities



*A Procedural Manual
For
Parents*

District of Columbia Public Schools and Charter Schools
(All Local Education Agencies-LEAs)
As Revised July 2005

PROCEDURAL SAFEGUARDS

Introduction

Parents have rights that apply to every aspect of the special education process. These are known as *procedural safeguards*. The State Education Agency (SEA) is required to provide notice of these procedural safeguards. There are laws and regulations that spell out those rights and the procedures that must be followed to ensure that children with disabilities receive a free appropriate public education. This document is your *Notice of Procedural Safeguards* and is designed to assist you in understanding your rights and the rights of your child under the reauthorization of the Individuals with Disabilities Education Improvement Act Amendments of 2004 (IDEIA '04). The IDEIA is a federal special education law that requires the Local Education Agency (LEA) to provide a free appropriate public education to children with disabilities. This means special education and related services shall be provided to eligible children with disabilities. These services shall be described in the student's Individualized Education Program (IEP) and provided in the least restrictive environment.

Some areas that will be reviewed in this document are: notice; informed consent; record-keeping; evaluations; resolution meetings; mediation; attorneys' fees; definition of parents/surrogate parents, including when a child reaches the age of majority; discipline; and much more. The District wants to inform you that effective July 1, 2005, the new reauthorization of the Individuals with Disabilities Education Improvement Act Amendments of 2004 (IDEIA '04) will be in place. Thus, federal regulations are expected to be released in the near future to provide guidance and ensure compliance with IDEIA '04. The procedural safeguards in this booklet are consistent with IDEIA '04. Any new federal regulations provided at a later date as a result of IDEIA '04 may require revisions to this document. If you have any questions regarding the information contained in this procedural manual, please feel free to contact your local school, the State Enforcement and Investigation Division at 202/442-5432 or the Office of Special Education at 202/442-4800.

What are Parents' Rights Regarding Notice?

Notice of Procedural Safeguards: When must the LEA notify you of your rights and the rights of your child by giving you a copy of this document?

A copy of the Procedural Safeguards shall be given to the parent only 1 time a year except that a copy shall be provided:

- ✓ Upon initial referral or a parent's request for evaluation; or
- ✓ Upon the first occurrence of the of the filing of a complaint; or
- ✓ Upon request by a parent.

Your participation in your child's education is essential. You have a right to be involved in meetings about identification, evaluation, and educational placement of your child, as well as other matters relating to your child's Free Appropriate Public Education (FAPE). This also means that you have the right to prior written notice from the LEA each time important decisions are made that affect your child's special education services and before those decisions are implemented, including the right to prior written notice from the LEA when they propose or refuse to initiate or change the identification, evaluation or educational placement of your child or the provisions of FAPE for your child.

Content of the Prior Written Notice:

What must the LEA include in the Prior Written Notice?

- ✓ A full explanation of all procedural safeguards available to you and how a copy may be obtained;
- ✓ A statement that parents of a child with a disability are protected under the procedural safeguards of IDEIA '04;
- ✓ A list of organizations and/or people you may contact to better understand IDEIA;
- ✓ A description of the action(s) the LEA is proposing or refusing to take;
- ✓ An explanation of why the LEA is proposing or refusing to take the action;
- ✓ A description of any other options considered by the IEP team and the reasons why these options were rejected;
- ✓ A description of each evaluation procedure, test, record or report used as a basis for the action proposed or refused; and
- ✓ A description of any other relevant factors used by the LEA in making the proposal or refusal.

Communication of Notice to Parents

Prior written notice must also be provided in a language understandable to the general public and shall be provided to the parents of a child with a disability in their native language or other mode of communication unless it is not feasible to do so. Also, if the parents are deaf, blind or have no written language, the notice must be translated orally or by other means in which the parent normally communicates (e.g. braille, sign language or spoken language). The LEA shall document in writing that all notice requirements have been met and that the parent (s) understands the content.

What are Parents' Rights Regarding Consent?

Informed Consent

Informed consent is your written approval with signature of a proposed action. Complete information about the action must be given to you in your native language or other mode of communication. It is important that you understand that your approval is voluntary and may be taken back at any time.

Initial (First) Evaluation

The LEA must have your informed written consent and signature before it can conduct an initial evaluation to determine if your child is eligible for special education and related services.

Reevaluation

The LEA must have your informed written consent and signature before reevaluating your child. However, the LEA may reevaluate your child without your written consent if the LEA can demonstrate that it has taken reasonable steps to get your consent and you have not responded.

Initial Placement

The LEA must have your informed written consent and signature before the school district can initially place your child in a special education program or provide special education and related services to your child.

Refusal

You have the right to refuse consent for an evaluation, a reevaluation or the initial placement of your child in special education and related services. You also have the right to revoke (take back) your consent at any time before an activity begins even though you have previously agreed to that action. If you revoke an action, it ***must be done in writing, dated and signed***. Nonetheless, the LEA may seek to evaluate your child for special education services through mediation or a due process hearing if it believes it is necessary to provide FAPE (a free appropriate public education) for your child. For information on both the mediation and due process procedures, refer to later sections of this notice beginning at pages 9 and 10.

However, upon completion of the evaluation process, if you refuse to give consent for special education and related services for your child, then the school/LEA can not provide these services for your child. If you refuse or fail to respond to the request for consent for special education and related services for your child, then the school/LEA will not be considered to be in violation of the requirement to make available FAPE for your child, nor will the school/LEA be required to convene an IEP meeting and/or develop an IEP for your child.



In other words....Your written permission is required before your child is first evaluated or placed in special education and related services. Remember that the LEA may reevaluate your child without your written consent if the school district can demonstrate that it has taken reasonable steps to get your consent and you have not responded.

What are Parents' Rights for Evaluation, Reevaluation and Independent Educational Evaluation?

Evaluation Procedures

A full and individual evaluation of your child must be completed to determine if your child is eligible for special education services, before any special education services begin or before your child is dismissed from services. However, an evaluation is not required if your child is graduating with a high school diploma or has exceeded the age eligibility for FAPE. In these instances a LEA shall provide the child with a summary of his/her academic achievement and functional performance instead of an evaluation. You have the right to participate in meetings regarding the identification, evaluation and educational placement to ensure the provision of FAPE to your child. The LEA uses a multidisciplinary team (MDT) evaluation process to decide whether your child is a child with a disability and to determine his/her educational needs. Assessments may include printed tests, observations, and information from parents and/or other sources of information.

✓ Under District of Columbia law, the LEA has no more than 120 calendar days after the date your child is referred for evaluation to determine his/her eligibility for special education services, develop the Individualized Education Program and begin delivery of appropriate special education and related services.

Reevaluation Procedures

Your child must be reevaluated at least once every three years unless you and the school/LEA agree that a reevaluation is unnecessary. The MDT team may decide that no additional data are needed to determine whether your child continues to be eligible for special education and his/her educational needs. In this case, the LEA must notify you in writing of that decision and the reasons for it. You still have the right to request an assessment to determine if your child continues to be eligible for IDEA services. But remember, the LEA is not required to conduct another assessment of your child unless you request it.

Independent Educational Evaluation (IEE)

An independent educational evaluation is an evaluation that meets the same criteria as that of the LEAs' evaluation, by a qualified examiner who is not an employee of the LEA responsible for educating your child. If you disagree with the evaluation completed by the LEA, you may ask for an independent educational evaluation. The LEA may ask for a reason as to why you are requesting an IEE. This evaluation shall be completed at public expense, consistent with the LEA's cost guidelines, unless the LEA believes the school system's evaluation is appropriate and initiates a due process hearing. If the hearing officer finds that the LEA's evaluation is appropriate, you still have the right to an IEE at your own expense. This IEE must be considered in making any educational decision regarding the provision of a free appropriate public education (FAPE) to your child and may be used as evidence in a due process hearing. However, when a hearing officer requests an IEE for your child, it will be paid for at public expense.



In other words....You have the right to an IEE of your child. You may request a list of public and private agencies qualified to conduct an Independent Educational Evaluation from the LEA. Any IEE will have the same status as an evaluation completed by the school district unless the LEA determines that its standards for conducting an evaluation have not been met.

This evaluation shall be done at public expense, consistent with the LEA's cost guidelines, unless the LEA refuses believing the school districts evaluation is appropriate and initiates a due process hearing that substantiates the LEA's position.

Who are Parents and Surrogate Parents?

The rights explained in this document belong to you, the parent of your child. However, if the LEA cannot identify or find a parent of your child with reasonable effort or your child is a ward of the District of Columbia, the LEA must assign a "surrogate parent". The District has a procedure for determining whether a child needs a surrogate parent, and for assigning a surrogate parent to the child. This "surrogate parent" will represent your child in all matters relating to the identification, evaluation, and educational placement of your child and the provision of a free appropriate public education (FAPE) to your child, **and will have no interest that conflicts with the interest of the child he or she represents.** This person may not be an employee of the LEA or any other agency involved in the education or care of your child, but may be paid by the LEA to serve as a "surrogate parent". This person may be an employee of a nonpublic agency that only provides non-education care for the child and who otherwise meets the criteria in this section. This "surrogate parent" must have the knowledge and the skills needed to adequately represent your child.



In other words...Sometimes a natural parent or guardian of a child is unknown or unavailable. When that happens, an educational surrogate parent is appointed by the LEA to represent the child at school.

9-1-04

What are Parent's Rights Regarding your Child's Records?

Both the Family Educational Rights and Privacy Act (FERPA) and IDEIA '04 require that you may have access to your child's educational records. Requests to look at your child's records should typically be made to the building principal. If access is denied and you are prevented from reviewing and inspecting the records, you have the right to request copies of your child's education records. You may ask for a list of the types and locations of education records collected, maintained or used for providing educational services to your child. The LEA shall provide your child's education records within a reasonable time after your request, in no case more than 45 days after the date of the request, or before any hearing requested by you or the LEA.

When you should inspect and review your child's education records?

- ✓ Prior to any meeting about your child's IEP
- ✓ Prior to your child transferring to another school;
- ✓ Prior to any mediation or due process hearing relating to the identification, evaluation, educational placement or a free appropriate public education; and
- ✓ Within a reasonable time of any request to review records, in no case more than 45 days after the date of the request.

Review of Records

Your child's school must keep a record of everyone (except for you and authorized employees of the school) to whom it gives access to your child's education records. This record 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. You have the right to request a copy, at no cost, of your child's education records if failure to provide copies would prevent you from reviewing and inspecting your child's records. The LEA may charge for copies if the fee does not prevent you from reviewing the records, but there is no fee to locate your child's records. If you find out that your child's records also include information about other students, then the school will inform you only of the information concerning your child. With the proper permission (written parental release), you also have the right to have a representative inspect and review your records.

✓ School personnel shall explain or interpret any information in your child's record.

Change or Remove Record Items

If you believe items in your child's records are inaccurate or misleading or violate the privacy or other rights of your child, you may ask for them to be changed or removed. The school district will decide whether or not to amend the record within a reasonable time of the request. When the school district decides not to amend the records, it must notify you of this. And, if you disagree, you have a right to an administrative hearing.

When you request such a hearing, the LEA will provide you an opportunity to challenge the information in your child's record and to ensure its accuracy. If the review of the record at the hearing results in the conclusion that the information is inaccurate, misleading or violates the child's right, the LEA will inform you in writing and amend the record.

However, if the LEA determines that the record need not be changed, you will be informed of your right to write your own statement explaining why you disagree with the information. Your statement will remain in the record and shall be disclosed when the school district discloses the portion you find inaccurate, misleading or believe violates your child's rights.



In other words...You have the right to request copies of your child's school records. If information in the record is wrong, you have the right to ask the school to change the information so it is right.

Extended School Year Services

Extended school year (ESY) services means an individualized extension of specific service beyond the regular school year. Extended school year services are part of a free appropriate public education based on a student's individualized education program (IEP) for students exhibiting the need for special education, related services, or both, beyond the regular school

year. You are to be notified of the availability of extended school year services that may be necessary to meet the unique needs of an individual student with disabilities. Annually, the MDT that develops, reviews, and revises your child's IEP shall consider whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time. The team will consider the student's degree of progress toward mastery of IEP objectives, the presence of emerging skills, breakthrough opportunities, interfering behaviors, the nature and/or severity of the disability, and/or special circumstances. It will determine if any of these factors will prevent the student from receiving some benefit from his or her educational program during the regular school year if he or she does not receive extended school year services. Extended school year services must be provided pursuant to a properly developed IEP.

What is a Resolution Session?

Prior to the opportunity for an impartial due process hearing, the LEA shall convene a Resolution Session meeting with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint within 15 days of receiving notice of the parent's complaint. The meeting shall include a representative of the LEA who has decision-making authority on behalf of the school/LEA. An attorney from the school system/LEA can not participate in the meeting unless you as the parent are accompanied by an attorney. At this meeting you may discuss your complaint and the facts related to your complaint with the school staff. You and the LEA can agree in writing to waive this meeting or you can agree to use the mediation process described below on this page.

If the LEA has not resolved the complaint to your satisfaction within 30 days of the date that you filed the complaint with the SEA (Student Hearing Office), then a due process hearing may occur. Once you have had your due process hearing the SEA must ensure that a final decision is reached and sent to you and the LEA within 45 days, unless the hearing officer has granted a specific extension of time at the request of you or the LEA. See Due Process Procedures outlined below on page 9.

If you and the LEA resolve the complaint through the resolution process then you and the LEA must prepare a legally binding agreement that is signed by both you and a representative of the LEA who has the authority to bind the school/LEA.

If you and the school/LEA reach a signed agreement you may still withdraw from the agreement within 3 business days of the date you and the school/LEA have signed the agreement.

The agreement reached at a Resolution Session meeting is enforceable in any State court of competent jurisdiction and in any district court of the United States.

What is Mediation?

Parents and the LEA are strongly encouraged to work together if problems occur. If you disagree with a decision or recommendation regarding the identification, evaluation, placement or provisions of a free appropriate public education (FAPE) for your child, you may choose to

take the disagreement to mediation, whether or not you have initiated a formal written complaint or requested a due process hearing. There may be times that a neutral third party may help you reach an agreement through mediation. Mediation is an informal and voluntary process that promotes agreement through discussion. The mediation process is free for you and is conducted by a qualified and impartial mediator who is not employed by the LEA/SEA. Both the parent and the school system have to agree to pursue mediation to resolve disputes. Both parties may invite others to participate and support them in the mediation conference.

What do you need to know about mediation?

- ✓ Mediation cannot be used to deny or delay your right to a due process hearing or any other legal rights;
- ✓ Mediation is free for you (the SEA must pay for the process);
- ✓ Mediation may be requested by the parent or guardian of a student with a disability, or a student of majority age, or by the LEA;
- ✓ Mediation is conducted by a neutral and qualified third party, not an employee of the LEA;
- ✓ Mediation is voluntary for both you and the school district;
- ✓ Mediation shall be scheduled and conducted within a reasonable time period from the receipt of the request for mediation unless the parties agree on a specific date and time;
- ✓ It shall also be held at a location convenient to you and the LEA;
- ✓ All discussions are confidential and may not be used as evidence in a future due process hearing or civil proceeding (you will need to sign a confidentiality pledge and include this as a provision in the mediation agreement);
- ✓ A written mediation agreement that is legally binding on the parties will be developed, and this agreement is enforceable in any State court of competent jurisdiction or in the district court of the United States;
- ✓ Mediation may be requested as an alternative to the Resolution Session Meeting;
- ✓ Mediation may be requested at any time by the parent(s) or by the LEA without a request for a due process hearing;
- ✓ All requests for mediation must be submitted in writing on the SEA "Due Process Complaint Notice" form;
- ✓ Send form to **Student Hearing Office**, 825 N. Capitol St. N.E., Washington, DC 20002. For copies of the form or other information, please write to the address above or **fax the Student Hearing Office on (202) 442-5556** or call (202) 442-5432

The mediation is presided over by a trained and impartial mediator. At any time (whether mediation has been tried or not), a parent may request a due process hearing before a duly appointed hearing officer.

If you choose to go straight to a due process hearing without mediation first, the SEA may require you and the LEA to come to a meeting at a convenient time and location to learn about the benefits of mediation by a disinterested third party from a Parent Training and Information Center or an alternative dispute resolution entity to encourage you to use the mediation process.

What is a Due Process Hearing?

Either a parent or the LEA may initiate a hearing before a trained and impartial hearing officer on any matter related to the provision of special education services. You may request a due

process hearing on any of the following issues that occurred not more than two years before the date when you or the school knew or should have known about the issues.

When do you have a right to a due process hearing?

When there is a disagreement with the following:

- ✓ Identification of your child as needing special education or related services;
- ✓ Evaluation of your child for such services;
- ✓ Placement of your child in a setting to obtain special education or related services; or
- ✓ Your child's free appropriate public education (FAPE).

However, prior to the opportunity to have a due process hearing, you will need to participate in a resolution session meeting with the school/LEA to try to resolve the issues in the complaint, unless both you and the school waive the resolution session meeting or decide to go to mediation. (See the sections above on resolution session and mediation).

To request a due process hearing, you or your attorney must send a Due Process Complaint Notice to the school/LEA with a copy to the **State Enforcement and Investigation Division/Student Hearing Office**, 825 N. Capitol St. N.E., Washington, DC 20002. If the school/LEA files a complaint against you they must forward a copy to you and to the **State Enforcement and Investigation Division/Student Hearing Office**. For copies of the form or other information, please write to the address above or **fax the Student Hearing Office on (202) 442-5556** or call (202) 442-5432. You may ask for a form for this purpose. Your Due Process Complaint Notice must contain the information in the box below and your child's birth date, your (parents) name, address, phone number, and primary language; and any special assistance you might need to participate in the hearing (e.g. interpreter).

What information must be included in your Due Process Complaint Notice form by you or your attorney?

- ✓ Your child's name, the address where your child resides, the name of the school your child is attending (and, if different, the name of your child's neighborhood school);
- ✓ In the case of a homeless child or youth, it would be available contact information for the child and the name of the school the child is attending;
- ✓ A description of the problem including facts related to it, i.e. steps you may have taken to resolve the matter or information about school personnel you may have spoken with regarding your concerns; and
- ✓ A proposed resolution of the problem (to the extent known and available to you at the time of filing).

You will not be allowed to raise new issues at the due process hearing that were not raised in your Due Process Complaint Notice, unless the LEA agrees to allow you to do so. However, you can file a new Due Process Complaint Notice regarding issues that are not a part of another filing.

If the above information is not provided, you will not be able to have a due process hearing until all of the requested information is submitted and your attorney's fees may be reduced. For more information on attorney's fees see p. 13 below.

An impartial hearing officer who is paid and appointed by the SEA will conduct the hearing. The hearing officer cannot be an employee of any agency involved in the education or care of your child and cannot have any professional or personal interest that would conflict with his/her objectivity in the hearing. The SEA maintains a list of the current hearing officers and their qualifications. This list can be requested by calling or writing the Student Hearing Office, 825 N. Capitol St. N.E., Washington, D.C. 20002 (202) 442-5432.

What are your rights at a due process hearing?

- ✓ The right to bring your attorney or people with special knowledge or training in the problems of children with disabilities to give you advice;
- ✓ The right to present evidence and confront, cross-examine and require the attendance of witnesses;
- ✓ The right to have each session conducted at a time and place that is reasonably convenient to you and your child;
- ✓ The right to obtain a written or electronic verbatim record of the hearing;
- ✓ The right to obtain written or electronic findings of fact and decisions (this information, after the removal of any personally identifiable data, information or records to maintain proper confidentiality under the law, will be given to the DC “State” Advisory Panel and then made public); and
- ✓ The SEA shall inform you of any information it has about free or low cost legal or related services to assist you in the hearing.

Each party to the hearing is required to disclose to the other any evidence, including evaluations completed by that date, it intends to introduce at a due process hearing at least 5 business days prior to the hearing. This includes recommendations based on your evaluations that your attorney intends to argue. The hearing officer can not allow you to introduce the relevant evaluation or recommendation if you do not comply with this disclosure requirement without the consent of the school district. This applies equally to the school district.



In other words....both parties must give all completed evaluations, recommendations from the evaluations and other information that will be used at least 5 business days prior to the hearing. If not, the hearing officer must keep out any evidence that has not been so disclosed (unless the other party consents).

The SEA must ensure that a final decision is reached and sent to the parties within 45 days after the 30 day timeline for Resolution Session meeting expires, unless the hearing officer has granted a specific extension of time at the request of a party. The hearing decision is final unless you disagree with the decision and decide to appeal it. Please keep in mind that if you disagree with a decision or recommendation regarding the identification, evaluation, placement or provisions of a free appropriate public education (FAPE) for your child, you may choose to take the disagreement to mediation, whether or not you have initiated a formal written complaint or requested a due process hearing.

Right to an Appeal in a Civil Court Action

Within 90 days after issuance of the decision by the Hearing Officer, you or the LEA have the right to appeal the decision and the findings to the Superior Court of the District of Columbia or the U.S. District Court. The Court must receive the records of the due process hearing; may hear additional evidence at the request of either party; grant the relief the court determines is appropriate based upon a preponderance of the evidence before the court; and provide a copy of written findings and decision to the parties.

Child's Placement during Proceedings

During the process of a hearing and an appeal, but not in conjunction with a mediation request, your child will remain in his/her present educational placement unless 1) you and the school district agree otherwise; 2) your child is applying for initial admission to a public school and you consent to your child's placement in the public school program; or 3) your child is removed to an interim alternative educational setting by school personnel or a hearing officer (see information following on discipline and interim alternative educational settings beginning on page 12).

How do you make a Formal State Complaint?

If you believe the LEA has violated federal or district law regarding children with disabilities while educating your child, you may file a formal written complaint with the State Complaint Office (SCO). This complaint shall include your name and contact information; state the violation you believed has occurred and give the specific facts about the problem. The SCO, within 10 calendar days of receipt of the filing of the complaint, will provide written notice to the LEA that a complaint has been filed and request a written response from the LEA within 10 business days, not including holidays. Additionally, the SCO will begin its investigation of the underlying allegations in the complaint. The SCO will, within 60 calendar days from receipt of the complaint, issue a written decision that addresses each allegation in the complaint.

If a written complaint is received that is also the subject of a mediation proceeding or a due process hearing, or contains multiple issues of which one or more may be part of that proceeding or hearing, the SCO shall set aside any part of the complaint that is being addressed in the mediation or due process hearing, until the conclusion of the other processes. The filing of a state complaint does not waive your rights to mediation, and/or a due process hearing before an independent mediator/independent hearing officer.

To file a complaint you must submit a Complaint Investigation Form or send a written request by mail or fax to the following address:

District of Columbia Public Schools
State Complaint Office (SCO)
State Enforcement and Investigation Division (SEID)
825 North Capitol Street, NE
Washington, DC 20002
202/442-5107
202/535-1566 (fax)

For more information about the complaint process, or to obtain a Complaint Investigation Form, please call (202) 442-5107.

How and when shall Attorneys' Fees be awarded?

When you win all or part of what you are seeking in a due process hearing or in a court, a hearing officer or a judge may rule that you are the "prevailing party". If so, the judge may order the school to pay for any fees you may be entitled including reasonable attorneys' fees and related costs to your case. This order may include attorneys' fees and related costs for any due process hearing or, an appeal in court and for mediation conducted after the filing of a due process hearing complaint. **Attorneys' fees may not be awarded for any meeting of the IEP team unless convened as a result of an order of a due process hearing officer or a judge.** Additionally, attorneys' fees may not be awarded if your attorney participates in a Resolution Session meeting. Pursuant to the D.C. Appropriations Act, for FY-05, Attorneys' fees shall be awarded at a rate not to exceed \$4,000 per case.

Attorneys' Fees may be limited or required by the Parent and/or the Parent's Attorney:

Your right to have the school pay for your attorney's fees and costs may be limited in response to what you or your attorney do or fail to do in the process. Additionally, under IDEIA '04, your attorney may have to pay attorneys' fees to the LEA if he or she files a complaint or continues to pursue a complaint that is frivolous, unreasonable, or without foundation. Also, you or your attorney may be required to pay attorneys' fees to the LEA if your complaint or a follow-up complaint was presented for any improper purpose such as to harass, to cause unnecessary delay, or to needlessly increase the cost of your case.

When may attorneys' fees not be awarded?

Attorneys' fees may not be awarded and related costs may not be reimbursed for services performed after a written offer to you to settle if the following is true:

- ✓ The LEA makes an offer to settle the dispute more than 10 days before a due process hearing (or if you are appealing to court, within the time allowed by the Federal Rules of Civil Procedure);
- ✓ You do not accept the offer within 10 days; and
- ✓ The judge or a due process hearing officer makes a finding that the school's offer was at least as favorable to you as the order you received.

However, an award of attorneys' fees and related costs may be awarded to you when you are the prevailing party and you were substantially justified in rejecting the settlement offer.

When may attorneys' fees be reduced?

Attorneys' fees may be reduced whenever:

- ✓ You unreasonably delayed the final solution of the dispute;
- ✓ The fees charged by your attorney unreasonably exceed the hourly rate charged by similar attorneys in your community for similar services;
- ✓ The time billed by your attorney is excessive considering the nature of the proceeding; or
- ✓ Your attorney failed to give the LEA the required notice when your due process hearing was

originally requested. (See *"What information must be included in your due process complaint notice by you or your attorney?"* on page 9.)

However, attorneys' fees will be awarded to you in any action or proceeding where the LEA/SEA unreasonably delayed the final resolution or violated the procedural safeguards under section 615 of IDEIA '04.

What are Parents and their Child's Rights in Disciplinary Actions?

There may be instances when your child's behavior requires the LEA to use special methods of discipline that require removal of your child to an Interim Alternative Educational Setting.

Discipline: Interim Alternative Educational Setting:

Short Term:

Short-term removal from your child's normal educational setting may occur for up to 10 school days. School personnel may use short-term removals to the same extent these options would be used with children who do not have disabilities so long as these short-term exclusions do not establish a pattern of removal that denies FAPE to a student with a disability.

Longer Removals:

Longer removals include expulsion and suspensions of more than 10 school days. The LEA cannot take this kind of action for behavior that is related to or caused by the student's disability. If school staff is considering a removal of more than 10 school days, the LEA must inform you on the date the decision is made. The school/LEA, parent and relevant members of the IEP team (as determined by the parent and LEA) shall review all relevant information in the student's file, including the child's IEP, and teacher observation and any relevant information provided by the parents in order to make a "manifestation determination". This meeting must take place within 10 school days of the LEA's decision to remove your child in excess of 10 school days.

Manifestation Determination:

The IEP team determines whether the behavior is a manifestation of your child's disability and you will be invited to participate as a member of the team in making this decision.

When is the behavior a manifestation of your child's disability?

First, the IEP team, which includes the parent and relevant members of the IEP team as determined by the parent and the school/LEA, shall review all relevant information in the student's file, including the child's IEP, and teacher observations and any relevant information provided by the parents to determine if the conduct was:

- ✓ Caused by, or directly and strongly related to the child's disability; or
- ✓ The conduct is directly related to the school/LEA failing to implement the IEP.

If either of these two things happened in regards to the child then, the behavior was a manifestation of your child's disability.

When the IEP team concludes that the behavior was not a manifestation of your child's disability, the LEA may take disciplinary action in the same manner it would for children without disabilities. This does not affect the LEA obligation to make a free appropriate public education available to all eligible children with disabilities, including children with disabilities whether or not they have been suspended or expelled from school. The LEA must also ensure that the special education and disciplinary records of your child be transmitted for consideration to the person(s) making the final discipline decision. You may request a due process hearing to appeal the IEP team's manifestation finding as well as an expedited hearing if you wish. In reviewing a decision in respect to a manifestation determination, the hearing officer shall determine whether the public agency has shown that the child's behavior was not a manifestation of the child's disability consistent with whether the IEP team determined that neither of the standards were met. (See page 12)

Assessment Plan to Address Behavior

If the school/LEA, the parent, and relevant members of the IEP Team determine that the behavior resulting in misconduct is a manifestation of your child's disability then the IEP team, if it has not done so already, must conduct a functional behavioral assessment, and develop and provide a behavioral intervention plan, to address the behavior of your child or, if your child has a behavioral intervention plan, the IEP Team must review and modify it, as necessary, to address the behavior.

What happens with behavior involving weapons, drugs, and serious bodily harm?

School personnel may move your child to an interim alternative educational placement for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of your child's disability if:

- ✓ Your child carries a weapon to school or to a school function; or
- ✓ Your child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; or
- ✓ Your child inflicts serious bodily injury upon another person while at school, on school premises, or at a school function; and
- ✓ The interim alternative educational placement (IAEP) meets the following requirements:
 - (1) allows your child to continue to participate in the general curriculum;
 - (2) allows your child to continue to receive special education and related services and modifications, including those described in your child's IEP, to enable your child to meet his/her IEP goals; and
 - (3) includes services and modifications designed to address your child's behavior.

You may appeal the placement of your child by the school in an interim alternative educational placement. However, your child must remain in the interim alternative educational setting for up to 45 school days or until the hearing officer makes a determination, whichever happens first. The only exception is if you and the LEA come to an agreement. After the 45 school days have expired, your child shall return to his/her placement prior to the interim alternative educational placement.

Hearing Officer Placement

The LEA may file for a due process hearing or seek a court injunction to place your child in an interim alternative educational setting when the LEA claims that it would be dangerous for your child to remain in the current placement. The following analysis is required:

When can a hearing officer or court remove your child to an interim alternative educational placement?

- ✓ Your child would be substantially likely to cause injury to himself or herself or others in the current placement;
- ✓ After determining that the interim alternative educational placement is appropriate . This placement may last for up to 45 school days.

Referral to Law Enforcement and Judicial Authorities

If your child is suspected of committing a crime, the LEA may report the crime to the appropriate authorities as they would for a student without disabilities who committed a similar offense. Local and state law enforcement officials and judicial authorities may exercise their duties and responsibilities, as well as apply all federal and local laws to crimes that may have been committed by a child with a disability. Copies of all special education and disciplinary records would be given to the appropriate authorities for consideration.

What Happens when you enroll your Child in Private School?

Public Reimbursement for Private School Placement by Parents:

The LEA is not required to pay for your child's education in a private, parochial or home school if the LEA offers a free appropriate public education (FAPE) to your child and you chose to place your child in a private school. But if your child previously received special education or related services from the LEA and you enroll your child in private school without the consent or referral of the LEA, a court or hearing officer may order the district to reimburse you for that enrollment if it finds that the district did not provide a free appropriate public education (FAPE) in a timely manner prior to that enrollment. However, the amount of reimbursement may be reduced or denied if you do not give prior notice to the district.

What prior notice is the parent required to give to the LEA?

- ✓ At the last IEP meeting you attend before removing your child from public school, you state that you reject the LEA's offer of FAPE to your child, state your concerns and state that you intend to enroll your child in private school at public expense; or
- ✓ You give the LEA written notice of your concerns 10 business days before removing your child from public school. This includes any holiday that occurs on a business day.

Exceptions to Prior Notice

The prior notice required does not apply to you if: 1) you cannot read or write in English; 2) giving notice would likely cause physical or serious emotional harm to your child; 3) the public school prevents you from giving notice; or 4) you had not received a copy of this notice of procedural safeguards or otherwise been informed of this notice requirement.

Additional Limitations of Payment for Private School Placement:

The amount of reimbursement may be reduced or denied if: 1) prior to your removal of your child, the school district provided you a notice of intent to evaluate, but you did not make your child available for that evaluation; or 2) there has been a court decision that your actions have been unreasonable.



In other words...If you place your child in a private school without the school's concurrence, you could be awarded reimbursement for private school educational costs if a court or hearing officer determines that the public school was not providing a free appropriate public education. Reimbursement may be denied if you do not provide appropriate notice to the LEA that you intend to enroll your child in private school.

When do Parental Rights Transfer to your Child?

Parental rights will transfer to your child in the District of Columbia at the age of majority. This age of majority is eighteen (18), except for a child with a disability who has been determined to be incompetent under State law.

What happens at the age of majority?

- ✓ Any notice required under the law will now be provided by the LEA to you and your child;
- ✓ All other rights given to you will now transfer to your child (this includes youth who are incarcerated in a juvenile or an adult Federal or District of Columbia correctional institution);
and
- ✓ You and your child shall receive notice of the transfer of rights from the LEA.

STATE EDUCATION AGENCY
SPECIAL EDUCATION
DISTRICT OF COLUMBIA PUBLIC SCHOOLS AND CHARTER SCHOOLS
825 North Capitol Street, N.E.
Washington, D.C. 20002-4232

Caring for Our Students with Disabilities
A Procedural Manual for Parents

RECEIPT

I, _____, received a copy of *A Procedural*
(Parent/Guardian Name)

Manual for Parents from _____/Title _____
(Person Issuing Document)

at _____.
(School)

_____/_____/_____.
(Date)

Parent/Guardian Signature

(This receipt is to remain in a designated file in the school.)