

## Notice of Procedural Safeguards Rights of Parents of Students 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 the 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 students with disabilities understand their rights under the IDEA.

### ■ Procedural Safeguards in Special Education

Under the IDEA, the term *parent* means a biological parent; an adoptive parent; a foster parent (if allowed by 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.

Additional information regarding the IDEA is available from your school in a companion document, *A Guide to the Admission, Review, and Dismissal Process*. You can also locate it on the TEA website:

<http://www.tea.state.tx.us/special.ed/>.

### ■ Child Find

All children with disabilities residing in the State, who are in need of special education and related services, including children with disabilities attending private schools, must be

identified, located and evaluated. This process is called *Child Find*.

### ■ 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. Prior written notice is written notification from the school given to you at least five school days in advance. This *prior written notice* is intended to provide you with information to help you participate in the decision-making process with regard to your child.

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.

The school must give you prior written notice whenever it proposes to initiate or to 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 whenever the school: refuses to initiate or to change the identification, evaluation, or educational placement of your child; or the FAPE provided to your child.

A prior written notice must: describe the actions the school proposes or refuses to take; explain why the school is proposing or refusing the action; describe each evaluation procedure, assessment, record, or report the school used in deciding to propose or refuse the action; include a statement that you have protections under the procedural safeguards of the IDEA; tell you how to get a copy of this *Notice of Procedural Safeguards*; include contact information for individuals or organizations that can help you in

understanding the IDEA; describe other choices that your child's Admission, Review and Dismissal (ARD) committee considered and the reasons why those choices were rejected; and provide a description of other reasons why the school proposes or refuses the action.

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.

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

## ■ Parental Consent

The school must get your written consent before it may do certain things. Your *informed consent* means you agree to the described action for which your permission is sought and lists the records (if any) that will be released and to whom, and you: have been given all the information related to the action in your native language or other mode of communication; understand and agree in writing to the action; and understand that 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, it must be 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 for initial evaluations (including detailed telephone records, copies of correspondence and detailed records of visits made to your home); provide special education and related services for the first time; complete a reevaluation; and locate parents of wards of the state for initial evaluations.

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.

- ◆ **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 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 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.
- ◆ **Services**—The school also needs your consent to provide special education services to your child for the first time. If you do not respond to a request to provide your consent for services for the first time, refuse to give your consent, or give your consent and then revoke your consent in writing, the school will not be in violation of the requirement to provide a FAPE and is not required to convene an ARD meeting or develop an *individualized education program (IEP)* for your child.
- ◆ **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 the public school and you refuse to give consent for an initial evaluation or a reevaluation, the school may, but is not required to, pursue your child's evaluation or reevaluation by using the mediation or due process procedures. While a due process hearing officer may order the school to evaluate your child without your consent, a hearing officer may not order that your child be provided special education services without your consent.

If you initially gave consent for your child to receive services and later revoked your consent in writing for the continued

provision of services after the school began providing services, the school may not use the mediation process to obtain your agreement or the due process procedures to obtain an order from a hearing officer to continue services.

## ■ Independent Educational Evaluation

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. An *independent educational evaluation (IEE)* is an evaluation conducted by a qualified person who is not employed by the school. When you ask for an IEE, the school must give you information about its evaluation criteria and where to get an IEE.

The school may ask you why you disagree with its evaluation, but the school cannot unreasonably delay or deny the IEE by requiring you to explain your disagreement.

You are entitled to only one IEE at public expense each time the school conducts an evaluation with which you disagree. If you ask the school to pay for an IEE, the school must either pay for it or request a due process hearing without unnecessary delay to show that its evaluation is appropriate.

- ◆ **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 criteria described above, a school may not impose conditions or timelines related to obtaining an IEE at public expense.

- ◆ **Hearing Officer Determination**

- △ If the school requests 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 a 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.

## ■ ARD Committee

You and the school make decisions about your child's educational program through an 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 IEP, and determines your child's educational placement.

- ◆ **Parent Participation**—You are an important member of your child's ARD committee. You have a right to be actively involved in the ARD committee meeting and to discuss any aspect of your child's educational program. While you are not required to attend, the school must invite you to each meeting of your child's ARD committee.

The school must give you prior written notice of a scheduled ARD committee meeting at least 5 school days before the meeting, unless you agree otherwise. This notice must state the purpose, time and place for the meeting and who will attend. It must tell you that you may bring others to the meeting to help you or represent you. The meeting must take place at a time and place agreed upon by you and the school. The school must make reasonable efforts to find a time that you are able to meet or use other methods such as the telephone, letter, or personal conferences to allow you to participate. The school may hold the meeting without you if the school is unable to convince you to attend.

If you are deaf or hard of hearing or use a language other than English, the school must provide an interpreter at the meeting.

The school must give you a copy of your child's IEP. If Spanish is your native

language and you are unable to speak English, the school must provide you with the IEP in Spanish. The translation may be either written or audio taped. If your native language is not Spanish and you cannot speak English, the school must make a good faith effort to provide you with a translation of the IEP in your native language.

- ◆ **Frequency**—The ARD committee must meet at least once a year and must have an IEP for your child in effect by the beginning of each school year. After the annual meeting, you and the school may agree not to convene an ARD committee meeting for the purpose of amending your child’s IEP, and instead may amend or modify the IEP through a written document. The ARD committee members must be informed of the changes. At any time, you may request an ARD committee meeting to be held at a time convenient for both you and the school. The school must either hold the meeting or ask for help through the TEA mediation process.
- ◆ **Disagreements about the IEP**—If you disagree with the school about the IEP, the school must offer to recess the ARD committee meeting for no more than 10 school days. This recess gives you and the school time to gather more information that will help you reach agreement. If you and the school still cannot agree, the school must implement the IEP that it determines appropriate for your child. The school must give you prior written notice that this is what will happen. The reasons for your disagreement must be stated in the IEP. You may write your own statement about the disagreement, if you choose.

If you cannot reach agreement, you may request mediation, file a special education complaint with TEA or ask for a due process hearing.

- ◆ **Student Transfers**—If a school district assigns a student to a district campus other than the home campus the district must permit the transfer to the assigned campus for any other student residing in the household of the student receiving special education services, provided that: the other student is entitled to attend school in the district; and the appropriate grade level for the other student is offered at the campus. A school district is not required to provide

transportation to a student who transfers under this requirement. This requirement does not affect any transportation services provided by the district in accordance with other laws for the student receiving special education services. This requirement does not apply if the student receiving special education services resides in a residential facility.

## ■ Discipline

If your child’s behavior interferes with learning, the ARD committee must consider the use of positive behavioral interventions and supports, and other strategies to address those behaviors. If the ARD committee decides that these are needed, the interventions must be documented in the IEP. If your child violates school rules, you and your child have certain rights throughout the school’s discipline process.

- ◆ **Referral to and Action by Law Enforcement and Judicial Authorities**—IDEA does not prohibit a school from reporting a crime committed by a child with a disability to appropriate authorities or prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and State law to crimes committed by a child with a disability. If a school 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 school reports the crime; however, these records may be transmitted only to the extent permitted by the Family Educational Rights and Privacy Act (**FERPA**).
- ◆ **Removals of 10 Days or Less at a Time**—If your child violates the school’s student code of conduct, the school may remove your child from the current placement for 10 school days or less in a school year, just as it does when disciplining children without disabilities. The school is not required to provide educational services during these short-term removals unless services are provided to students without disabilities. If the school chooses to suspend your child, under State law the suspension may not exceed 3 school days.

If your child is removed from his or her current placement for more than a total of 10 school days in a school year, your child has additional rights. If the removal is not a *change of placement* (see **Change of Placement**, below), school personnel, in consultation with at least one of your child's teachers, must determine the extent to which services are needed so as to enable your 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.

- ◆ **Change of Placement**—Your child's placement is changed if the removal is for more than 10 consecutive school days or if a series of shorter removals totaling more than 10 school days forms a pattern. When deciding if there has been a pattern of removals, the school must consider factors such as: whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; the length of each removal; the total amount of time the child has been removed; and how close the removals are 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.

On the date in which the decision is made to change your child's placement because of a violation of the student code of conduct, the school must notify you of that decision and provide you with this *Notice of Procedural Safeguards*. Within 10 school days of any decision to change the placement of your child because of a violation of the student code of conduct, the school, you, and relevant members of the ARD committee (as determined by you and the school) must conduct a *manifestation determination review (MDR)*.

When conducting the MDR, the members must review all relevant information in your child's file, including the child's IEP, any teacher observations, and any relevant information provided by you. The members determine: if your child's conduct was the direct result of the school's failure to implement your child's

IEP; or if your child's conduct was caused by or had a direct and substantial relationship to your child's disability. If the members determine that either clause is applicable, then your child's conduct must be considered a manifestation of your child's disability.

- ◆ **When Behavior Is a Manifestation**—If your child's conduct is a manifestation of his or her disability, the ARD committee must: conduct a *functional behavioral assessment (FBA)*, unless it conducted one before the behavior that resulted in the change of placement occurred, and implement a *behavioral intervention plan (BIP)* for your child. Where a BIP has already been developed, the ARD committee must review the BIP and modify it as necessary to address the behavior. If your child's conduct was the direct result of the school's failure to implement your child's IEP, the school must take immediate steps to remedy those deficiencies. Finally, except in the special circumstances described below, the ARD committee must return your child to the placement from which your child was removed, unless you and the school agree to a change of placement as part of the modification of the BIP.
- ◆ **Special Circumstances**—The school may remove your child to an *interim alternative educational setting (IAES)* 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 or possesses a weapon at school, on school premises, or to or at a school function; knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.
- ◆ **When Your Child's Behavior Is Not a Manifestation**—When your child's behavior is not a manifestation of your child's disability, then your child can be disciplined in the same manner and for the same duration as non-disabled students except that your child must continue to receive a FAPE.
- ◆ **Interim Alternative Educational Setting (IAES)**—If your child is removed from his

or her current educational placement either because of special circumstances or because the behavior is not a manifestation of your child's disability, the IAES shall be determined by your child's ARD committee. In Texas, one type of IAES may be a *disciplinary alternative education program (DAEP)*. Your child will continue to receive educational services as necessary to receive a FAPE. The services must enable him or her to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the IEP. Your child must receive, as appropriate, a FBA, behavioral intervention services, and modifications that are designed to address the behavior so that it does not recur.

- ◆ **Expedited Due Process Hearing**—If you disagree with any decision regarding disciplinary placement or manifestation determination, you have the right to request an expedited due process hearing through the TEA. Additionally, if the school believes that maintaining your child in his or her current placement is substantially likely to result in injury to your child or to others, the school may request an expedited due process hearing. The hearing must occur within 20 school days of the date the hearing is requested. The hearing officer must make a determination within 10 school days after the hearing. Unless you and the school agree otherwise, your child must remain in an IAES until the hearing officer makes a determination or until the school's IAES placement expires, whichever occurs first. Remaining in a current setting is commonly referred to as *stay-put*. In this situation, the stay-put is the IAES.

When the school requests an expedited due process hearing, the hearing officer may order continued placement in an appropriate IAES for not more than 45 school days if maintaining your child's IEP placement is substantially likely to result in injury to your child or others. The hearing officer may order the IAES placement even if your child's behaviors are a manifestation of his or her disability. Alternatively, the hearing officer may decide to return your child to the placement from which he or she was removed.

- ◆ **Protection for Students Not Yet Determined Eligible for Special Education**—If the school had knowledge that your child was a child with a disability before the behavior that resulted in the disciplinary action, then your child has all the rights and protections that a child with a disability would have under the IDEA. A school is considered to have prior knowledge if: the parent expressed concerns in writing to an administrator or teacher that the child is in need of special education and related services; the parent requested an evaluation of the child in accordance with IDEA; or a teacher of the child or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the special education director or other supervisory personnel.

A school is considered not to have prior knowledge if: you have refused to consent to an IDEA evaluation, you have refused IDEA services with regard to your child, or your child has been evaluated and determined not to be eligible for special education services.

If you initially gave your consent for services, and then later revoked your consent in writing for the continued provision of services after the school began providing services, you have refused IDEA services, and your child may be disciplined as a general education student and is not entitled to IDEA protections.

If you request an initial 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. If the school did not have prior knowledge that your child was a child with a disability, 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.

- ◆ **State Law/Rules on Confinement, Restraint and Time-Out**—The school must protect the health and safety of your child and others. When dealing with discipline or behavior issues, the school cannot use any practice that is intended to injure, cause harm, demeanor deprive your child of basic human necessities.

- △ **Confinement**—State law prohibits schools from *confining* students with disabilities in a locked box, locked closet, or other specially designed locked space. There is one exception to this requirement: State law does not prohibit a student’s locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement if the student possesses a weapon and confinement is necessary to prevent harm to the student or others.
- △ **Restraint**—The use of physical force or a mechanical device to significantly restrict a student’s free movement is called *restraint*. The school can restrain your child only in an emergency that involves the threat of serious harm to your child or others or the threat of serious property damage. If the school restrains your child, the school must try to reach you on the day restraint is used. The school must also notify you in writing. Physical contact or using adaptive equipment to promote your child’s body positioning/physical functioning is not restraint. Limited contact with your child to promote safety, prevent a potentially harmful action, teach a skill or provide comfort is not restraint. Limited physical contact or using adaptive equipment to prevent your child from engaging in ongoing repetitive self-injurious behavior is not restraint. Seat belts or other safety equipment used to secure your child during transportation are not restraints.
- △ **Time-Out**—There are also requirements that the school must meet if the school repeatedly uses time-out. *Time-out* is a technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period of time. The school cannot use force or threat of force to put your child in time-out. Time-out cannot take place in a locked setting. The exit may not be physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

## ■ Educational Records

- ◆ **Notice to Parents**—The TEA must 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 the State intends to use 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 the *Family Educational Rights and Privacy Act* (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major Child Find activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity to locate, identify, and evaluate children in need of special education and related services.

- ◆ **Safeguards and Destruction**—The school must protect the confidentiality of your child’s records at collection, storage, disclosure and destruction stages. *Education records* means the type of records covered under the definition of education records in 34 CFR Part 99 (the regulations implementing the FERPA).

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

- ◆ **Types and Locations**—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.
- ◆ **Access and Timelines**—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, or separation and divorce.
- ◆ **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 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 ARD meeting or any due process hearing or resolution session, and in no case more than 45 days after the date of the request.
- ◆ **Clarification, Copies, and Fees**—If you ask, the school must explain and interpret the records, within reason. If you ask, the school must provide a list of the types and locations of all of your child’s records. 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.
- ◆ **Access by Others**—FERPA permits certain individuals, including school officials, to see your child’s records without your consent. Otherwise, your consent must be obtained before personally identifiable information is disclosed to other individuals. Personally identifiable information includes your child’s name, your name as a parent, or the name of another family member; your address; a personal identifier (like social security number); or a list of characteristics that would make it possible to identify your child with reasonable certainty.

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 in, or is going to go to, a private school that is not located in the same school district you reside in, 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. 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 the IDEA and the 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 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.

**Texas Public Information Act**—The Texas Public Information Act also gives you the right to inspect and obtain copies of your child's education records. The school may charge a reasonable fee for copies. The Attorney General enforces the Texas Public Information Act. The toll free number you can call if you have questions is 1-877-673-6839. You can find more information about the Texas Public Information Act at: [http://www.oag.state.tx.us/open/og\\_resources.shtml](http://www.oag.state.tx.us/open/og_resources.shtml).

## ■ 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 a 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 the IDEA provisions regarding children who have been placed by their parents in a private school.

- ◆ **Child Find**—Child Find is the responsibility of the public school where your child's private school is located. If your child is determined eligible for special education services, Child Find includes the right to a three-year reevaluation. The rights described in this document related to identification and evaluations do not change when you place your child in a private school. This includes the right to seek an IEE, request mediation, file a complaint with the TEA or request a due process hearing. However, if you do not provide your consent for your child's initial evaluation or reevaluation, or you fail to respond to a request to provide your consent, the school may not use the mediation or due process hearing procedures to obtain your consent or override your refusal to consent.
- ◆ **Children Ages 5-21**—If you choose to place your child with a disability in a private school, your child does not have a right to receive any of the special education or related services he or she would receive if enrolled in the public school.

If your child is determined to be eligible for special education services, the public school district in which your child resides will hold an ARD committee meeting to determine whether it can provide a FAPE to your child. However, the FAPE will be available to you only if you choose to enroll your child in the public school full time. If you make it clear from the beginning that you will not place your child in the public school, the school does not need to develop an IEP.

Some special education services may be available to your child while enrolled in the private school, but the type and amount will be limited by how the public school where your child's private school is located decides to serve private school students. The school's decision is made after consulting with representatives of private schools and parents of private school children with disabilities. The school determines how to use the limited federal funds that are designated for private school services. If a public school elects to provide any type of service to your child, then a *services plan* must be developed by a services plan committee. The services plan includes goals and those elements of a traditional IEP that are

appropriate for your child and the services to be provided.

The process for developing the services plan is basically the same as it is for developing the IEP. The services plan committee has the same membership as an ARD committee, except it includes a representative of the private school. You must be given reasonable notice so that you can participate in the meetings of the committee.

When you disagree with the public school about matters other than Child Find, including those related to your child's services plan, you have a right to file a written complaint with the TEA but do not have a right to a due process hearing.

- ◆ **Children Ages 3 and 4**—If you choose to enroll your 3- or 4-year-old child with a disability in a private school, you have the right to dually enroll your child. *Dual enrollment* means your child is enrolled in both the public school and the private school. Your child's ARD committee will develop an appropriate IEP. From the IEP, you and the school where you and your child reside will determine which special education and/or related services will be provided to your child and the location where those services will be provided. When you choose to dually enroll your child in both the public school and the private school, you have the right to file a complaint if you feel your child's rights have been denied; however, rights related to due process hearings do not apply.

#### ■ **Private School Placements by Parents When FAPE is at Issue**

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 a 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 school districts.

- ◆ **Limitation on Reimbursement**—The cost of reimbursement described in the paragraph above may be reduced or denied if: at the most recent ARD committee that you attended prior to 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) prior to your removal of your child from the public school, you did not give written notice to the public school of that information; or, prior to 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 upon a court's finding, 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 above; or compliance with the requirements above would likely result in physical harm to your child. In the discretion of the court or a hearing officer, the cost of reimbursement may not be reduced or denied for the parents' failure to provide the required notice if the parent is not literate or cannot write in English; or compliance with the above requirement would likely result in serious emotional harm to the child.

## ■ **Transfer of Rights When Your Child Turns 18**

The age of majority under Texas law is age 18. For the majority of students, all of the parental rights discussed in this document will transfer to the student at 18 years of age. Even if parental rights transfer to an adult student and he or she has the right to make educational decisions, the parent will still be provided with notices of ARD meetings and prior written notices. The parent, however, may not attend meetings unless specifically invited by the adult student or the school.

On or before your child's 17th birthday, the IEP must include a statement that you and your child were informed that the procedural rights under IDEA will transfer to your child on his or her 18th birthday. The transfer occurs without specific ARD committee action. There are several exceptions and special situations:

- ◆ **Court-appointed Guardian for an Adult Student**—If a court has appointed you or another person as your adult child's legal guardian, the rights under IDEA will not transfer to your adult child. The legally appointed guardian will receive the rights.
- ◆ **Incarcerated Adult Student**—If your adult child is incarcerated, all of the IDEA rights will transfer to your adult child 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 the IDEA will transfer to your child at that time.

## ■ **Surrogate Parent**

- ◆ **General Requirements**—The rights explained in this document belong to parents of children with disabilities. If, after reasonable effort, the school cannot identify or find a parent of a child or the child is a ward of the State, the school must assign a surrogate parent to act in place of the child's parent. The school must also appoint a surrogate parent for an unaccompanied homeless youth, as defined in the McKinney-Vento Homeless Assistance Act. <http://www.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>

To be eligible to serve as a surrogate parent under the IDEA, you must not have a personal or professional interest that conflicts with the interest of the child and you must have knowledge and skills that ensure adequate representation of the child. Furthermore, the IDEA regulations prohibit employees of the TEA, the school district, or any agency that is involved in the education or care of the child from serving as surrogate parents. Texas special education rules require a surrogate parent to complete an approved surrogate parent training program within 90 calendar days of his or her appointment.

- ◆ **Foster Parent as Parent or Surrogate Parent**—Foster parents often meet the criteria for serving as a child's parent. If you are a foster parent and you do not yet meet the criteria to serve as a parent, you may be appointed as a surrogate parent if you meet the requirements for serving as a surrogate parent as described above. In fact, the school must give you preferential consideration. If the school decides not to appoint you as a surrogate parent, it must give you written notice within 7 calendar days explaining the reasons for its decision and informing you that you may file a complaint with the TEA.

## ■ **Resolving Disagreements**

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

- ◆ **TEA Toll-free Parent Information Line**— If you need information about special education issues, you may call and leave a message at any time on TEA's toll-free Parent Information Line, and a TEA staff person will return your call during normal working hours. The telephone number is 1-800-252-9668. For individuals who are deaf or hard of hearing, the TTY telephone number is 1-512-475-3540, or you may call the voice number above using Relay Texas at 7-1-1.

- ◆ **TEA Mediation Services**—Mediation is one of the available options used for resolving disagreements about a child’s identification, evaluation, educational placement, and FAPE. If both you and the school 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 the 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 your child’s special education program.

The mediators are not employees of the TEA or any school district in Texas, and they cannot have any personal or professional interest that would conflict with their objectivity. 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.

When mediation (or a due process hearing) is requested, a TEA staff member will contact the parties to explain the mediation services. If you and the school agree to mediate, the two of 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. You may bring an attorney or someone else to help you in the mediation; but you are not required to do so. You will have to pay for the attorney or advocate if you choose to hire one to help you with the mediation. The discussions that occur during mediation are private and cannot be used as evidence in a future due process hearing or court proceeding.

If you and the school reach agreement, the mediator will draft a written agreement and ask you and the school’s authorized representative to sign the agreement. The agreement is legally-binding and enforceable in a court that has authority

under State law to hear this type of case or in a federal district court.

You may find more information about the mediation process on the TEA website at: <http://ritter.tea.state.tx.us/special.ed/medcom/>.

- ◆ **State Special Education Complaint Resolution Process**—Another option for resolving special education disputes is TEA’s special education complaint resolution process. If you believe the school has violated a special education requirement, you may send a written complaint to the TEA at the address given at the end of this document. You must also send a copy of your complaint to the school. Any organization or individual may file a complaint with the TEA.

If you need assistance or have any questions about filing a complaint, call the TEA toll-free Parent Information Line at 1-800-252-9668. For individuals who are deaf or hard of hearing, the TTY telephone number is 1-512-475-3540, or you may call the voice number above using Relay Texas at 7-1-1.

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 school has violated a special education requirement; the facts upon which the statement is based; your signature and contact information; a proposed solution to the problem (to the extent known and available to you at the time); and, if the complaint concerns a specific child, the child’s name and address (or available contact information if the child is homeless) and the name of the child’s school.

The TEA will give you the opportunity to submit additional information or enter into voluntary mediation. The TEA will also give the school an opportunity to respond to the complaint and the opportunity to submit a proposal to resolve the complaint.

Within 60 calendar days after receiving your written complaint, (unless extended due to special circumstances or party agreement), the TEA will conduct an investigation, including an on-site investigation, if necessary. The TEA will review all relevant information and

determine whether the school has violated applicable laws. You will be given a written decision addressing each of the allegations including findings of fact, conclusions, and reasons for the TEA's decision.

If the TEA determines that the school has violated a special education requirement, it must require the school to take appropriate steps to address the violations found including engaging in technical assistance activities, negotiations, and corrective actions. Corrective actions may include providing services to make up for services that were not previously provided to a specific student or a group of students and appropriate future provision of services for all children with disabilities. The TEA's decisions regarding your complaint are final and may not be appealed. Filing a complaint, however, 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 must 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.

You can find more information about the complaint process on the TEA website at [www.tea.state.tx.us/special.ed/medcom/compinfo.html](http://www.tea.state.tx.us/special.ed/medcom/compinfo.html). A form you may use to file a complaint is available on the TEA website at: <http://ritter.tea.state.tx.us/special.ed/medcom/compform.html>.

- ◆ **Impartial Due Process Hearing**—The third 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.

You have the right to request a due process hearing on any matter relating to the identification, evaluation, educational placement of your child, or the provision

of FAPE to your child. If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the hearing is over.

You must request a due process hearing within one year of the date you knew or should have known about the alleged action that forms the basis of the hearing request. This timeline does not apply to you if you were prevented from requesting the hearing 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. If you request the due process hearing, you have the burden of proving that the school violated a special education requirement. In certain situations, the school may 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 listed above, you must request a due process hearing. If you have not participated in a due process hearing, your claims in court may be dismissed.

- ◆ **Requesting a Due Process Hearing**—To request a hearing, you or an attorney representing you must send a written request for a due process hearing (“due process complaint notice”) to the TEA at the address at the end of this document. The TEA must send you this *Notice of Procedural Safeguards* upon receipt of your request. A form you may use to request a due process hearing is available on the TEA website: <http://ritter.tea.state.tx.us/special.ed/hearings/duepro.html>.

You do not have to use the TEA form, but your complaint notice must contain the following information: 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).

If you request the hearing, you must send a copy of your complaint notice to the school.

You may not have a hearing until you, or an attorney representing you, sends a complaint notice that meets all of the above requirements. Within 10 days upon receiving your complaint notice, the school must send you a response that meets the requirements of prior written notice unless it has already done so. Within 15 days of receiving your complaint notice, the school must notify the hearing officer and you if it believes you did not include all the required information. The hearing officer has 5 days to rule on whether the information in your complaint notice is sufficient.

You may only change your complaint if the school agrees or if the hearing officer gives you permission not later than 5 days before the hearing. You may not raise issues at the hearing that were not raised in the complaint notice. If the complaining party (you or the school) makes changes to the due process complaint, the timelines for the resolution session and the time period for resolution start again on the date the amended complaint is filed.

The public agency (TEA) must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or the school district file a due process complaint.

- ◆ **Resolution Session**—Within 15 days of receiving your complaint notice (or within 7 days in the case of an expedited hearing), the school must convene a meeting called a *resolution session* 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. Unless you and the school agree in writing to waive the resolution session or agree to go to mediation, the resolution session must occur before you can have a hearing.

If the school has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar day timeline for issuing a final decision begins at the expiration of the 30-calendar day resolution period, with certain exceptions for adjustments made to the 30-calendar day resolution period, as described below.

Except where you and the school have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the school is not able to obtain your participation in the resolution meeting, the school may, at the end of the 30-calendar day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include: a record of the school district'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 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 a hearing officer to order that the 45-calendar day due process hearing timeline begin.

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

then the 45-calendar day timeline for the due process hearing starts the next day.

The purposes of the resolution session are to give you an opportunity to discuss your complaint and the underlying facts with the school and to give the school the opportunity to resolve your complaint. 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 3 business days of the date it is signed.

If the school has not resolved your complaint to your satisfaction within 30 days from the receipt of your complaint notice (or within 15 days in the case of an expedited hearing), the due process hearing may occur.

- ◆ **Hearing Officer**—An impartial hearing officer appointed by the TEA will conduct the hearing. The hearing officer cannot be an employee 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 objectivity in the hearing. The hearing officer must possess the necessary knowledge and skill to serve as a hearing officer. Hearing officers are paid through federal IDEA funds.

The TEA maintains a list of hearing officers that includes the qualifications of each hearing officer. You can request this list by faxing the TEA Office of Legal Services at 1-512-475-3662. The list of current hearing officers is also available on the TEA website at:

<http://ritter.tea.state.tx.us/special.ed/hearings/officers.html>.

- ◆ **Child's Status during Proceedings (Stay-put)**—During a due process hearing and any court appeals, your child generally must remain in the current educational placement, unless you and the school agree otherwise. As stated previously, remaining in a current setting is commonly referred to as *stay-put*. (If the proceeding involves discipline, see the discipline section for discussion of the child's placement during discipline disputes.)

If the hearing 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 3 and transitioning from an *Early Childhood Intervention (ECI)* program, stay-put is not the ECI services. If the child qualifies for special education services and the parent consents, the services that are not in dispute shall be provided.

- ◆ **Before the Hearing**—At least 5 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. The hearing officer may prohibit the introduction of evidence including evaluations and recommendations not disclosed within the timelines.
- ◆ **During the Hearing**—You have the right to bring and be advised by your attorney and by people with special knowledge or training regarding children with disabilities. You have the right to present evidence, confront, cross-examine, and compel the attendance of witnesses. You have the right to bring your child and to open the hearing to the public. You have the right to have each session of the hearing conducted at a time and place that is reasonably convenient to you and your child. You have the right to obtain a written or electronic verbatim record of the hearing and obtain written or electronic findings of fact and decisions at no cost to you.
- ◆ **The Decision**—The hearing officer's decision must be made on substantive grounds based upon a determination of whether your child received a FAPE. If you complain about a procedural error, the hearing officer may only find that your child did not receive a FAPE if the error: impeded your child's right to a FAPE; deprived your child of educational benefits; or significantly interfered with your opportunity to participate in the decision-making process regarding a FAPE to your child.

The TEA must ensure that a final hearing decision is reached and mailed to the parties within 45 calendar days after the expiration of the 30-day resolution period.

The hearing officer may grant a specific extension for a good reason at the request of either party. The decision of the hearing officer is final, unless a party to the hearing appeals the decision to State or federal court. The hearing officer's decision will be posted on the TEA's website after all personally identifiable information about your child has been removed.

The school must implement the hearing officer's decision within 10 school days even if the school appeals the decision except that any reimbursements can be withheld until the appeal is resolved. Nothing in the IDEA limits you from filing another due process complaint on an issue separate from the one addressed in a previous hearing.

- ◆ **Public Reimbursement for Private School**—If, after receiving special education services from the public school, you choose to enroll your child in a private school without the consent or referral of your public school, you have the right to ask for a due process hearing to determine if the public school must reimburse you for the cost of private schooling. If the hearing officer finds that the public school did not make a FAPE available to your child in a timely manner and that the private school is appropriate, the hearing officer may order the school to reimburse you for the cost of the private school. A hearing officer or court may find a private school placement to be appropriate even if it does not meet the State standards that apply to a public school.

At least 10 business days (including holidays that occur on a business day) before removing your child, you should tell the school in writing that you are turning down their proposed placement and why, that you plan to enroll your child in a private school, and that you expect the school to pay for the private school. Or, you should provide this information to the ARD committee at the last meeting before you remove your child.

If the hearing officer agrees with your reasons for removing your child but you did not give advance notice, the hearing officer may reduce or deny reimbursement. The reimbursement may also be reduced or denied if, before you removed your child,

your school gave you written notice that it planned to evaluate your child for appropriate reasons, but you did not allow them to do so. Finally, reimbursement may be reduced or denied if a court finds that your actions were unreasonable.

You will be excused from the requirement to give notice if: giving the notice might result in physical or serious emotional harm to your child; the school did not tell you in writing (such as through this document) that you needed to give them notice; or the school kept you from providing the notice. A hearing officer may decide to excuse your failure to provide notice if you are illiterate or cannot write in English or if giving the notice would likely result in serious emotional harm to your child.

- ◆ **Civil Action**—You have the right to appeal the hearing officer's findings and decision to State or federal court, no more than 90 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 Part B of the IDEA limits the rights, procedures, and remedies available under the U.S. Constitution or other federal laws protecting the rights of children with disabilities, except that before filing a civil action in court seeking relief that is available under the IDEA, a parent or school must utilize the due process hearing procedures provided under the IDEA. This means that even if you have remedies under other laws that overlap with those available under the IDEA, you first must use the IDEA's due process hearing procedures before filing an action in court.

- ◆ **Award of Attorney's Fees**—If you win part or all of what you are seeking in a due process hearing or in court, a judge may award you reasonable attorney's fees and related costs.

The award of attorney's fees will not include costs related to the resolution session or to ARD committee meetings, unless a hearing officer or a court ordered the ARD committee meeting.

You cannot be awarded attorney's fees or costs for work done after the time the school gave you written settlement offer if: the school made the offer more than 10 calendar days before the due process hearing began; you did not accept the offer within 10 calendar days; and the court finds that the relief you obtained from the hearing was not more favorable than the school's offer. A court may award attorney's fees and related costs to a parent who prevailed at the due process hearing and was substantially justified in rejecting the school's settlement offer.

The court must reduce the amount of attorney's fees awarded to you if it finds that: you or your attorney unreasonably protracted the dispute; the attorney's fees unreasonably exceed the hourly rate charged by similar attorneys in the community for similar services; the time spent by your attorney is excessive given the nature of the proceeding; or your attorney failed to give the school the appropriate information in the complaint notice. A reduction in fees is not required if the court finds the school unreasonably protracted the proceedings or behaved improperly.

If the school wins at the hearing or court proceeding, a court may order you or your attorney to pay the school's reasonable attorney's fees if your attorney filed a complaint notice or subsequent cause of action that was frivolous, unreasonable, or without foundation, or continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. You or your attorney could also be required to pay the school's attorney's fees if your due process hearing complaint or subsequent court proceeding was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

**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 District	Education Service Center	Parent Training Information Center
Name:	Name:	Name:
Telephone Number:	Telephone Number:	Telephone Number:
E-mail:	E-mail:	E-mail:

If you need an explanation of the Agency’s dispute resolution options or assistance in requesting the Agency’s services, you may leave a message with the Division of IDEA Coordination’s toll-free Parent Information Line: **1-800-252-9668**. A staff member will return your call during normal business hours.

**When sending a written request for Agency services, please address your letter to the following address:**

Texas Education Agency  
 1701 N. Congress Avenue  
 Austin, TX 78701-1494

**To the attention of the following Divisions:**

Office of Legal Services  
 Special Education Mediation Coordinator

Division of IDEA Coordination  
 Special Education Complaint Unit

Office of Legal Services  
 Special Education Due Process Hearings

Please visit the TEA Division of IDEA Coordination Website at:

<http://ritter.tea.state.tx.us/special.ed/>