

# Notice of Procedural Safeguards

## **Rights of Parents of Students with Disabilities**



**DIVISION OF IDEA COORDINATION  
TEXAS EDUCATION AGENCY**

# Notice of Procedural Safeguards Rights of Parents of Students with Disabilities

The Individuals with Disabilities Education Act was amended in December 2004. This document which is produced by the Texas Education Agency (TEA) is intended to be a guide to parents of students with disabilities in order to help them understand their rights under the law.

## ■ Procedural Safeguards in Special Education

*The Notice of Procedural Safeguards* is a description of your legal rights as the parent of a child with a disability under the *Individuals with Disabilities Education Act (IDEA)*. The term *parent* means a biological, adoptive or foster parent; 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 school is required to give you this document only one time a school year, except: upon initial referral or your request for evaluation; upon the school's receipt of the first filing of a complaint to the TEA or a due process hearing complaint; as required by the discipline procedures; or upon request by you.

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: [www.tea.state.tx.us/special.ed/](http://www.tea.state.tx.us/special.ed/).

## ■ Prior Written Notice

*Prior written notice* is written notification from the school, given at least 5 school days in advance, telling you that it is considering making certain decisions or taking certain actions. The purpose is to provide you with information so that you will be able to participate in the decision-making process.

The notice must be written in language that is understandable to the general public. It 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 so that you understand it.

Prior written notice is required before the school proposes or refuses to: identify your child as a student who needs special education; evaluate your child; place your child in a special education program; change your child's placement; or change the *free appropriate public education (FAPE)* provided to your child.

A prior written notice must describe what the school is proposing to do or refusing to do. It must explain why the action is proposed or refused. It must describe other options that were considered by the *admission, review, and dismissal (ARD)* committee and why those options were rejected. It must describe each evaluation procedure, assessment, record, or report the school used as a basis for what it proposes or refuses, and any other factors relevant to what is proposed or refused. The school must tell you that you are protected under the procedural safeguards, and how to get a copy of a description of these safeguards. It must give you the contact information for people or organizations that can help you understand your procedural safeguards.

If you ask, before the school obtains your consent for a psychological examination or test, the school must provide you with the name and type of the examination or test and an explanation of how it will be used to develop an appropriate *individualized education program (IEP)* for your child. If, after requesting and receiving such information and giving your consent, the school decides to expand the scope of your child's evaluation to include other psychological examinations or tests, the school must provide you with the additional information and seek additional consent. This may extend the time period the school

has to complete the evaluation report. If you do not provide the additional consent within 20 calendar days after receiving the information from the school, your consent will be considered denied.

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

### ■ Parental Consent

*Informed consent* is your written permission. Your informed consent indicates that you were given all the relevant information in your native language or other mode of communication. Your informed consent also indicates you understand and agree in writing to the activity; and, you understand that your consent is voluntary and that you can revoke it at any time. The consent must describe to what you are agreeing. If records are to be released, the consent must describe which records and to whom they will be sent.

◆ **Initial Evaluation**—The school must make reasonable efforts to obtain your informed consent to determine whether your child is a child with a disability. Without your consent, the school cannot conduct an initial evaluation of your child to determine if your child qualifies as a child with a disability. Your consent is not consent for initial provision of special education. However, if your child is a ward of the State and is not residing with you, the school is not required to obtain consent if the school cannot find you, or your rights have been terminated or substituted by a judge's order.

◆ **Services**—The school also needs your consent to initially provide your child with special education services. If you refuse to consent to the initial provision of services, however, the school will not be considered to be in violation of the requirement to provide a FAPE since you have refused to consent to services. Additionally, the school will not be required to convene an ARD meeting or develop an IEP for your child. If you give your consent and then revoke it, your revocation will not be retroactive.

◆ **Reevaluation**—The school needs your

consent to reevaluate your child after your child begins to receive special education services. However, if the school can demonstrate that it took reasonable measures to obtain your consent and you failed to respond, then the school can proceed without your consent.

If your child is enrolled in the public school and you refuse to give consent for an initial evaluation or reevaluation, the school may request a due process hearing. A hearing officer may order the school to proceed without your consent. A hearing officer may not order that your child be placed in special education without your consent.

Your consent is not required before your school district may review existing data as part of your child's evaluation or reevaluation; or give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

Your school district may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

### ■ Evaluation Procedures

Your school must use a variety of evaluation tools and strategies when it conducts a *full and individual evaluation* of your child. The evaluation must assess your child in all areas related to the suspected disability. It must be sufficiently comprehensive to identify all of your child's needs for special education and related services even if the needs are not commonly related to your child's particular category of disability.

Your school must use technically sound instruments and procedures that are not biased against your child because of race, culture, language, or disability. These materials and procedures must be provided and administered in the language and form most likely to provide accurate information on what your child knows and can do.

◆ **Initial Evaluation**—Either you or the school may initiate a request for an initial evaluation of your child. If your school determines that there should be an initial

evaluation to determine if your child has a disability and a need for special education, within 60 calendar days of receiving your written consent, the district must complete the evaluation report.

The evaluation must be conducted by a team of qualified professionals and include your input. Your child shall not be determined to be a child with a disability if lack of appropriate instruction in reading including in the essential components of reading instruction, lack of instruction in math, or limited English proficiency are judged to be determinant factors.

After the evaluation is complete, the ARD committee, of which you are a member, should then meet within 30 calendar days to determine whether your child is a child with a disability and the educational needs of your child. The school must give you a copy of your child's evaluation report.

◆ **Reevaluation**—At least every three years after the first evaluation, the school must reevaluate your child unless you and the school agree a reevaluation is unnecessary. As part of any reevaluation, the ARD committee members review existing data. This may include information and evaluations you provide, current classroom-based assessments, and observations. The ARD committee members then determine if additional evaluations are needed. If the school does not believe additional evaluation is needed and you disagree, you may ask for a full evaluation. The district must provide it.

The results of the review and any new evaluations will be used to determine whether your child continues to be eligible for special education services and the content of your child's IEP.

◆ **Independent Educational Evaluation**— An *independent educational evaluation (IEE)* means an evaluation conducted by a qualified person who is chosen by you and is not employed by your school. You have the right to request an IEE at public expense

if you disagree with the educational evaluation provided 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 IEE criteria must be the same as what the school uses for its own evaluations.

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. 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.

The school does not have to pay for the IEE if it can show at a due process hearing that the school's evaluation is appropriate or that the IEE does not meet the school's IEE criteria. You still can get an IEE, but the school does not have to pay for it.

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

#### ■ **ARD Committee**

You and your 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, or 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, your school must invite you to each meeting of your child's ARD committee.

Your 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. In addition, 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 have a hearing impairment or use a native 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 an audiotape. 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 complaint, or ask for a due process hearing.

#### ■ **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.

◆ **Removals of 10 Days or Less at a Time**—If your child violates the 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 that do not total more than 10 days in a school year unless services are provided to students without disabilities. If the school chooses to suspend your child, the suspension may not exceed 3 school days under State law.

If your child is removed from the current placement for more than a total of 10 school days in a school year, your child

has additional rights. If the current removal is not a change of placement, 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 IEP during these additional short-term removals.

◆ **Change of Placement**—Your child has certain additional rights when there is a change of placement for disciplinary reasons. 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.

On the date on which the decision is made to make a removal that constitutes a change of placement of your child because of a violation of the student code of conduct, the school must notify you of that decision, and provide you notice of procedural safeguards.

Additionally, 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 LEA, 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: (I) if your child's conduct was the direct result of

the school's failure to implement your child's IEP; or (II) 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 the school had conducted a FBA 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, in *special circumstances* where your child: (I) carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function; (II) 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 (III) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

◆ **When 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**—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 shall continue to receive educational services as necessary for 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 your child's IEP. Your child must receive, as appropriate, a FBA, behavioral intervention services, and modifications that are designed to address the behavior violation 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 because 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 IEP placement from which he or she was removed.

◆ **Protection for Students Not Yet 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 federal law. A school is considered to have prior knowledge if: (I) the parent expressed concerns in writing to an administrator or teacher that the child is in need of special education and related services; (II) the parent requested an evaluation of the child in accordance with IDEA; or (III) a teacher of the child, or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education or other supervisory personnel.

If you have not allowed an IDEA evaluation of your child, or you have refused IDEA services, or your child has been evaluated and determined not to be eligible for special education services, these "Protections for Students Not Yet Eligible for Special Education" do not apply.

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. Until the evaluation is completed, if the school did not have prior knowledge, 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, demean, or 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 physical 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

◆ **Safeguards and Destruction**—The school must protect the confidentiality of your child's records. 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.

◆ **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. 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**—*The Family Educational Rights and Privacy Act (FERPA)* permits certain individuals including school officials to see your child's records without your consent. Except as permitted by FERPA, your consent must be obtained before personally identifiable information is disclosed to other persons. Your 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.

◆ **Amending Records**—If you believe that your child's education records are inaccurate, misleading, or violate your child's rights, you may ask your school to amend the information. Within a reasonable time the school must decide whether to amend the information. If the school district refuses to amend the information as requested, it must inform you of the refusal and of your right to a records hearing. If you request the record hearing, the school must provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. This is not a due process hearing and is not held before a hearing officer appointed by the TEA.

You must be informed in writing of the results of the hearing, including whether

or not the school must amend your child's education record. If it is decided that the record 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 in your child's records. The school must keep your statement as part of your child's education record as long as the school maintains the record with which you disagree. If the school shares this part of the record with any person, your statement must also be included.

◆ **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 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: [www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

#### ■ **Voluntary Private School Placements by Parents**

This section describes your and your child's rights when you voluntarily place your child in a private school. In Texas, home schools are considered private schools.

◆ **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, called *Child Find*, is the responsibility of the public school where your child's private or home 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 evaluation 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 district 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 the public school 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, however, 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 or dual enrollment services, you have a right to file a written complaint with the TEA, but you 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.

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

At the age of 18, your child becomes an adult student. For the majority of students, all of the parental rights discussed in this document will transfer to the adult student at 18 years of age. However, the parent will share the right to receive all of the required prior written notices. The school must provide all prior written notices to both the parent and adult child.

When your child becomes an adult, although you will continue to receive prior written notices, you will no longer have the right to agree with, participate in, or refuse what is proposed in the notice. For example, a notice of an ARD meeting does not mean that you are invited to or may attend the meeting.

However, the school or your adult child may invite you to participate as an individual who has knowledge or expertise related to the student.

On or before your child's 17th birthday the IEP must include a statement that your child was informed that the parents' 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 Rights

- ◆ **General Requirements**—The rights explained in this document belong to parents of children with disabilities. However, if, after reasonable effort, your school cannot identify or find a parent of a child, or the child is a ward of the State (for example, under the managing conservatorship of the Texas Department of Family and Protective Services), the school must assign a surrogate parent. The school must also appoint a surrogate parent for an unaccompanied homeless youth, as defined in the McKinney-Vento Homeless Assistance Act.

If your school appointed you to be a surrogate parent, all of the rights explained in this document belong to

you. You may not be an employee of any public agency that is involved in the education or care of the child or have any other conflict of interest with the child. However, the school may pay you to serve as a surrogate parent. You must have the knowledge and skills needed to adequately represent the child. Within 90 calendar days of your appointment, you must complete an approved surrogate parent training program.

- ◆ **Foster Parent as Parent**—If you are a foster parent of a child who has been placed with you for at least 60 days, and the Department of Protective and Regulatory Services is the temporary or permanent managing conservator of the child, you may serve as the parent. To do so, you must meet the requirements for surrogate parents, including no conflict of interest. The fact that you are a foster parent is not a conflict of interest. You must also complete an approved training program within 90 calendar days.

- ◆ **Foster Parent as Surrogate Parent**—If you do not meet the 60-day placement requirement to serve as parent, you may ask to be a surrogate parent if your foster child needs a surrogate parent. In fact, the school must give you preferential consideration. To do so, you must satisfy all of the requirements to be a surrogate parent. If the school tells you no, then the school must give you written notice within 7 calendar days. The written notice must tell you specifically why you are being denied the right to serve as the surrogate parent. It must also tell you that you may file a complaint with the TEA.

## ■ Resolving Disagreements

There may be times when you disagree with the actions taken by your school related to your child's special education services. You are strongly encouraged to work with your school personnel to resolve differences as they occur. You may ask your school about local resolution options that are available to you, as they are to all parents in your school district. Beyond the school's local options, you have the right to ask for TEA mediation services, write a complaint to the TEA, or

request a due process hearing through the TEA.

◆ **TEA Toll-free Parent Information Line**—If you need information about your rights related to special education, you may call and leave a message at any time on the toll-free number operated by the TEA. A 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 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 your child’s identification, evaluation, educational placement, and FAPE. If both you and the school agree to participate, the TEA makes the arrangements. There is no cost to you or the school. Mediation may not be used to delay or deny you a due process hearing or any other special education rights.

The TEA will automatically offer mediation services to you and the school each time a due process hearing is requested by either you or the school. However, you or the school are encouraged to ask for the TEA’s mediation services any time you and the school cannot resolve a disagreement about your child’s educational program.

The TEA mediators are professionals who are qualified and trained in resolving disputes. They also are trained in special education laws. They are not employees of the TEA or any school district in Texas. The mediator cannot advise or advocate for any person in the mediation. The mediator does not speak for the TEA.

When you or the school asks for mediation or a due process hearing, a TEA staff member will contact you and the school to explain the mediation services. If you and the school agree to mediate, a 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 your own attorney or advocate attending if you choose to bring one. The discussions that occur during mediation are private. What you and the school say during mediation cannot be used in a due process hearing or in a civil court proceeding.

If you and the school reach agreement, the mediator will put your agreement in writing and ask that it be signed by you and the school’s representative who has the authority to bind the school district. You and the school must obey the legally binding agreement. This legally binding agreement is enforceable in any State court of competent jurisdiction or in a United States district court. If you have a complaint about the written agreement, you may write to the TEA (see “Contact Information” at the end of this document).

You may find more information about the mediation process on the TEA website at: [www.tea.state.tx.us/special.ed/medcom/medinfo.html](http://www.tea.state.tx.us/special.ed/medcom/medinfo.html).

◆ **State Complaint Investigations**—Any organization or individual may file a complaint with the TEA. If you believe your school has violated federal or State laws that apply to students with disabilities, you may send a written and signed complaint to the TEA at the address given at the end of this document.

If you need assistance or have any questions about filing a State 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 call the voice number above using Relay Texas at 7-1-1.

Your written complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the TEA. You should state the violation(s) and at least two facts on which you base your complaint. If your complaint concerns a specific child (including your own child), you must

give the name and address of the residence of the child and the name of the school the child is attending. If your complaint concerns a homeless child, you must give available contact information for the child. Your complaint must also state a proposed solution to the problem, to the extent known and available to you at the time. Within 60 calendar days after receiving your written complaint (unless extended due to exceptional circumstances or party agreement), the TEA will conduct an independent investigation, including an on-site investigation, if necessary, and render a decision. As part of the investigation, the TEA will offer you an opportunity to give more information about the complaint. 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 your school has failed to provide your child with appropriate services, the TEA must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and appropriate future provision of services for all children with disabilities.

Filing a complaint does not take away your right to request mediation or a due process hearing. If you file a complaint and request a due process hearing during the same time on the same subject(s), the TEA will set aside any part of the complaint that is being addressed by the due process hearing until the hearing officer gives you a written decision. The hearing officer's decision on an issue involving the same parties is binding. 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. The TEA's decisions regarding your complaint are final.

A private school or home school representative can file a complaint with the TEA if he or she believes the public school did not engage in meaningful and timely consultation or did not genuinely consider the views of the private school official regarding the provision of special education and/or related services through service plans to private school students. If the private school official is dissatisfied with the decision of the TEA, the official may submit a complaint to the U.S. Secretary of Education.

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: [www.tea.state.tx.us/special.ed/medcom/compform.html](http://www.tea.state.tx.us/special.ed/medcom/compform.html).

♦ **Impartial Due Process Hearing**—A due process hearing is a legal process that is similar to a civil court hearing. A hearing officer (similar to a judge) hears evidence from all parties and makes a legally binding decision.

You have the right to request a due process hearing about any of the following: identifying your child as needing special education; evaluating your child for special education; placing your child in special education; or your child's FAPE.

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 proof. In certain situations, your school may request a due process hearing against you (such as when you refuse to consent to an initial or reevaluation of your child but not when you refuse to consent to the initial provi-

sion of services). If the school requests a due process hearing, the rules described in this document pertaining to due process hearing requests apply to the school.

Before you sue your 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 a copy of your procedural safeguards upon receipt of your request. A form you may use to request a due process hearing is available on the TEA website: [www.tea.state.tx.us/special.ed/hearings/duepro.html](http://www.tea.state.tx.us/special.ed/hearings/duepro.html).

You do not have to use the TEA form, but your due process complaint notice must contain the following information: your child's name, the address where your child resides (or available contact information in the case of a homeless child), and the name of the school your child is attending; 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 due process complaint notice to your 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 due process complaint notice, your school must send to you a response that meets the requirements of prior written notice unless it has already done so. Within 15 days of receiving your due process 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 due process complaint notice is sufficient.

You may change your due process hearing request only by agreement or by order of the hearing officer not later than 5 days before the due process hearing. You may not raise issues at the due process hearing that were not raised in the due process complaint notice.

◆ **Resolution Session**—Also within 15 days of receiving your due process complaint notice (or within 7 days in the case of an expedited hearing), the school must convene a meeting with you, a school representative with decision-making authority, and the relevant members of the ARD committee. The school may not include an attorney at the meeting unless you have an attorney at the meeting. This meeting is called a *resolution session*. 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.

The purpose of the resolution session is to give you an opportunity to discuss your due process hearing complaint and the underlying facts, 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 settlement agreement is enforceable in State court unless you void or the school voids the agreement within 3 business days of the date it is signed.

If the school has not resolved your due process hearing complaint to your satisfaction within 30 days from the receipt of your due process 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 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 and are not employees of the TEA.

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: [www.tea.state.tx.us/special.ed/hearings/officers.html](http://www.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. This is commonly referred to as stay-put. (If the proceeding involves discipline, see the discipline section for stay-put 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 evaluations and recommendations based on evaluations 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 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 (i.e., a determination of whether your child received a FAPE). If you complain about a procedural error, the hearing officer cannot find that your child did not receive a FAPE unless the error: (I) impeded your child's right to a FAPE, (II) deprived your child of educational benefits, or (III) 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 with the exception of any personally identifiable information protected by law.

The school district must implement the decision of the hearing officer within 10 school days even if the school district appeals the decision except that any reimbursements can be withheld until the appeal is resolved.

◆ **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 school district, 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 private school may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the 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 you do not give advance notice, even if the hearing officer agrees with your reasons for removing your child, reimbursement may be reduced or denied. 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 reasonable and appropriate reasons, but you did not allow them to do so. Finally, reimbursement may be reduced or denied if a judge finds your actions were unreasonable.

You will be excused from giving the advance notice to your public school if giving the notice might result in physical or serious emotional harm to your child. You will be excused if the school did not tell you in writing, such as through this document, that you needed to give them notice. You will be excused if the school kept you from providing the notice. If you did not provide advance notice to your public school, a hearing officer has the discretion to excuse this failure 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 findings and decision of the hearing officer to State or federal court, no more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 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; and basing its decision on the preponderance of the evidence, grant the relief the court determines is appropriate.

If you want to sue your school about matters for which a due process hearing is available, you must have a due process hearing before filing suit in court. If you do not, your claims in court may be dismissed.

◆ **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 in a court proceeding may rule that you are the prevailing party. If so, the judge may order your school to pay for your reasonable attorney's fees and related costs.

This order may include attorney's fees and related costs for any due process hearing or appeal to court from a due process hearing. This order will not include attorney's fees and related costs for the resolution session or representation at ARD committee meetings, unless a due process hearing officer or a judge ordered the ARD committee meeting.

If the school made a written offer to settle the dispute, you cannot be awarded attorney's fees or costs for work done after the written offer to settle if the school made the offer more than 10 calendar days before the due process hearing begins; you did not accept the offer within 10 calendar days; and the judge finds that the relief you obtained from the hearing officer was not more favorable than the school's offer, unless

the judge finds you were substantially justified in rejecting the offer.

The judge must reduce the amount of attorney's fees awarded to you whenever the judge finds that you or your attorney unreasonably protracted 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 school the appropriate information in the due process hearing complaint notice when your due process hearing was originally requested. A reduction in fees is not required if the judge finds the school unreasonably protracted the proceedings or behaved improperly.

If the school prevails before the hearing officer or on appeal to court, a judge may order you or your attorney to pay the school's reasonable attorney's fees, under certain circumstances. Your attorney may have to pay the school's attorney's fees if your attorney filed a due process hearing complaint 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 may have to pay the school's attorney's fees if your due process hearing complaint or subsequent cause of action 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:

	School District	Education Service Center	Parent Training Information Center
CONTACT INFORMATION	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://www.tea.state.tx.us/special.ed/>