SPECIAL EDUCATION IN NORTH DAKOTA

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NORTH DAKOTA DEPARTMENT OF PUBLIC INSTRUCTION

Parental Rights for Public School Students Receiving Special Education Services

Notice of Procedural Safeguards

Dan Pangbourne/Getty Images

Building the Legacy: IDEA 2004

United States Department of Education, Office of Special Education Programs (OSEP)

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Acronyms:

NDDPI = North Dakota Department of Public Instruction
FAPE = Free Appropriate Public Education
FERPA = Family Educational Rights and Privacy Act
IDEA = Individuals with Disabilities Education Act
IEP = Individualized Education Program
PART B = Section of the Individuals with Disabilities Education Act

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Introduction

Children with disabilities and their parents are guaranteed certain educational rights, known as procedural safeguards, from ages 3 through 21. This document helps parents or guardians of these children make appropriate educational decisions on their behalf.

The Individuals with Disabilities Education Improvement Act (IDEA 2004) is the federal special education law that requires school districts to provide a free appropriate public education (FAPE) to eligible children with disabilities. This free appropriate public education refers to special education and related services, described in an Individualized Education Program (IEP) and provided to the child in the least restrictive environment.

For More Information

Whenever you need assistance, your first step is to contact your local school district. Talk to your child's classroom or special education teacher, the school principal, or the special education director for your school district. Other resources are listed at the end of this document.

Notice of Procedural Safeguards

This document is your notice of procedural safeguards and must be given to you once a year and also:

- the first time your child is referred for a special education evaluation;
- the first time a complaint is filed or a due process hearing is requested;
- if the school notifies you that a disciplinary action has or will be taken that would constitute a change in placement;
- whenever you request a copy.

You may also access a current copy of the procedural safeguards on your school district's website, if such a site exists, or from the NDDPI website at: https://www.nd.gov/dpi/education-programs/special-education

In Other Words…you have certain procedural rights that must be given to you at least once a year and in other specific circumstances within the special education process.

Parent Participation

Your participation is essential. You will be given opportunities to become actively involved in meetings about identification, evaluation, and the educational placement of your child, as well as other matters related to your child's free and appropriate public education (FAPE). This includes the right to participate in meetings to develop your child's IEP.

In Other Words…To ensure that your child receives a free appropriate public education, you have the right to be fully involved in decisions regarding your child.

Notice of Meeting

The Notice of Meeting form serves as an invitation to the meeting and is designed to ensure your participation. The Notice of Meeting form must be provided before the IEP meeting is held. This written notice contains the elements such as, purpose, time, location and attendees.

Prior Written Notice of Special Education Action

Prior Written Notice of Special Education Action is provided whenever:

- the school proposes to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child; or
- the school refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of free appropriate public education to your child.

The district must inform you in writing of important decisions regarding your child's special education, and you must be notified before those decisions are put into place.

Prior Written Notice of Special Education Action must include:

- a description of the action proposed or refused by the school;
- an explanation of why the school proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the school used as a basis for their decision;
- a statement that the parents of a child with a disability have protection under the procedural safeguards and, how the parents can obtain a copy of them;
- sources for parents to obtain assistance in understanding these provisions;
- a description of other options that the IEP Team considered and the reasons why those options were rejected; and
- a description of other factors relevant to the school's proposal or refusal.

Prior written notice of special education action must also include resources you can contact for help in understanding these procedural safeguards and a description of how you can file a complaint.

Prior written notice of special education action must be provided in your native language unless doing so is clearly not feasible.

If you revoke consent for special education services, the school must discontinue the provision of special education and related services and send you a prior written notice of special education action.

You may also receive a prior written notice of special education action by email upon your request.

In Other Words…The school will notify you by letter, or email if requested, if it proposes or refuses to initiate or change your child's services. The notice must be simple and easy to understand, and information about upcoming meetings must be sent to you sufficiently in advance to allow you to attend.

Parental Consent

Consent means that you have been fully informed, in your native language, of all information relevant to the activity for which your written permission is sought. Consent is voluntary and may be revoked at any time. The school district must obtain your consent:

- before conducting an initial evaluation of your child and the initial provision of special education or related services to your child;
- before conducting a reevaluation of your child, unless the district has taken reasonable steps to get your consent and you have failed to respond. In that case, the reevaluation may occur without your consent;

- before disclosing personally identifiable information about you or sharing data with anyone other than officials of participating agencies collecting or using the information under the IDEA;
- before accessing your private insurance to pay for services to ensure FAPE;
- before a required IEP team member may be excused from an IEP team meeting;
- before inviting to the IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services.

EXCEPTIONS:

Your consent is not required before your school district may:

1. Review existing data as part of your child's evaluation or a reevaluation; or
2. 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.

Consent need not be obtained to reevaluate a child with a disability if the school can demonstrate that it made reasonable efforts to obtain parental consent and the parent failed to respond.

Consent Refusal

You may refuse consent for an evaluation, a reevaluation, or the initial placement of your child in special education. If the school district believes it is necessary to evaluate your child, it may pursue dispute resolution options, including a due process hearing. The school may not pursue a due process hearing to place your child in special education services if you have refused a special education placement. You and the school district may agree to try mediation to resolve your disagreements. For more information on mediation, see page 11.

If you fail to respond to a request for, or refuse to consent to, the initial provision of special education and related services, the school district may not use dispute resolution procedures (including mediation) in order to obtain agreement or a ruling that the services may be provided to your child. Should you fail to respond or refuse your consent for the initial provision of services, the school will not be required to provide FAPE and is not obligated to convene an IEP meeting or develop an IEP for your student.

Revocation of Consent

If, at any time after the initial provision of special education and related services, you decide to revoke consent for special education and related services, you must do so in writing. Once you revoke consent, the school district may not continue to provide special education and related services to your child and it may not use dispute resolution procedures (including mediation) in order to obtain agreement or a ruling that the services may be provided to your child. In this case, the school will not be required to provide FAPE and is not obligated to convene an IEP meeting or develop an IEP for your student. The school is not required to amend your student's education records to remove any references to your child's receipt of special education and related services because of the revocation of consent.

In Other Words…Your written consent is required in specific instances that occur within the special education process. You may revoke your consent for services at any time.

Confidentiality of Information

Definitions

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

Education records means the type of records covered under the definition of ‘‘education records’’ in the regulations implementing the Family Educational Rights and Privacy Act of 1974. The term “**education records**” is **defined** as those **records** that are: (1) directly related to a student; and (2) maintained by an **educational** agency or institution, or by a party acting for the agency or institution.

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

Personally identifiable means information that has your child's name, your name as the parent, or the name of another family member; your child's address; a personal identifier, such as your child’s social security number or student number; or a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Access Rights

The Family Educational Rights and Privacy Act (FERPA) and the IDEA 2004 ensure that you have access to your child’s educational records. You have the right to inspect and review all of your child’s education records:

- before any meeting about your child's IEP;
- before any due process hearing related to your child; and
- within 45 calendar days of your request.

If any record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

At your request, each participating agency must provide you with a list of the types and locations of educational records collected, maintained, or used by the school.

The school (or other participating agency) may charge you a fee for copies of records that are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records. The school (or other participating agency) may not charge a fee to search for or to retrieve education records.

Record of Access

The school (or other participating agency) must keep a record of anyone obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Amendment of Records at Parent Request
If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA 2004 is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the school (or other participating agency) that maintains the information to change the information.

The school (or other participating agency) must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the school (or other participating agency) refuses to change the information in accordance with your request, the school must inform you of the refusal and advise you of the right to a hearing for this purpose.

Hearing Procedures
A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

If, as a result of the hearing, the school (or other participating agency) decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the school (or other participating agency) decides that the information is *not* inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records a statement regarding the reasons you disagree with the decision of the participating agency.

This explanation is placed in the records of your child and must:

1. Be maintained by the school (or other participating agency) as part of the records of your child as long as the record or contested portion is maintained; and
2. If the school (or other participating agency) discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

Consent for Disclosure of Personally Identifiable Information
Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA 2004.

- Your consent, or consent of your child if he or she has reached the age of majority (age 18), 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.

Safeguards
Your child's school (or other participating agency) must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

You must be informed when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child. The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and the year completed may be maintained without time limitation.

In Other Words…You have the right to see or request copies of your child's school records. Your school district has a more detailed written policy about school records, and any parent can request to see this policy. If you disagree with items in your child's records, you can ask that they be changed or removed. If the school decides to refuse to amend the information, the school must inform you of this refusal and advise you of your right to a hearing. There are certain instances when your consent will be required to release personally identifiable information and you must be informed when this information is no longer needed to provide educational services to your child.

Evaluation Procedures

A full, individual, appropriate evaluation of your child must be completed before any special education services begin or before your child is dismissed from services, with the exception of graduation with a regular diploma or your child exceeds the age of eligibility. You must be included in the team that conducts the evaluation. You may request an evaluation, preferably in writing, with copies to the principal and the school district's director or coordinator of special education.

Initial evaluation must occur within 60 calendar days from the time the school receives your consent, unless your child transfers to a new school district or you fail to bring your child to the evaluation.

Your child must be reevaluated at least once every three years unless you and the school agree that a reevaluation is unnecessary. A reevaluation may not occur more than once per year, unless you and the school agree otherwise. The team may decide no additional data are needed to determine whether your child continues to be eligible for special education. If so, the school district must notify you of that decision and the corresponding reasons. You still have the right to request an evaluation to determine whether your child continues to be eligible.

Your child does not need to be reevaluated if eligibility is being ended due to graduation with a regular diploma or your child exceeds the age of eligibility. If services are ended for one of these reasons, the school must provide your child with a summary of performance along with recommendations of how to assist your child in meeting his or her goals after high school.

An independent educational evaluation is an evaluation by a qualified examiner who is not an employee of the school district responsible for educating your child. You may ask for an independent educational evaluation at school district expense if you disagree with an evaluation completed by the school district. You are entitled to only one independent educational evaluation at public expense each time you disagree with a specific evaluation or reevaluation that is conducted or obtained by the school district.

If the school district does not agree with you that an independent evaluation is necessary, it may either initiate a due process hearing to show that its evaluation was sufficient or pay for the independent evaluation. The school district will not have to pay for an independent evaluation if the hearing is concluded in the district's favor. You may still get an independent educational evaluation at your own expense.

School districts must maintain a list of public and private agencies that meet the district's criteria to conduct independent educational evaluations. The district's criteria will indicate acceptable qualifications of an examiner and location. This list is available to you, and you can request it from your school district's special education director.

The results of independent educational evaluations must be considered by the school district. These evaluations may be considered evidence in a due process hearing. A hearing officer may also require an independent educational evaluation of your child at school district expense during due process hearing procedures.

In Other Words…You are a part of the team that evaluates your child. At least every three years, this team must consider whether any additional evaluation is needed. If you disagree with the school's evaluation of your child, you may request one independent evaluation at the school district's expense.

Least Restrictive Environment

Every effort must be made to provide the necessary supports that will allow your child to be educated in your neighborhood school. Access to the general education curriculum must be given to your child. As much as possible, your child must be educated with children who do not have disabilities.

In Other Words…The least restrictive environment is the setting where your child can receive an appropriate education as close as possible to your home and with children who do not have disabilities.

Surrogate Parents

When a parent or guardian of a child is unknown or unavailable, or if the child is a ward of the state, the school district must assign an individual to act as this child's surrogate parent. For a child who is a ward of the state, the school or a judge may appoint a surrogate parent to oversee the child's case. The surrogate has all the procedural rights of a parent and is responsible for representing the child's interests in all matters related to the provision of free appropriate public education.

In the case of an unaccompanied homeless youth, the school will appoint a surrogate.

Each school must make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after the school determines the child needs a surrogate.

In Other Words…Sometimes a parent or guardian of a child is unknown or unavailable. When that happens, in order to represent the child at school meetings, a surrogate parent is appointed by the school. In the case of a child who is a ward of the state, a surrogate parent is appointed by the school or a judge.

Transfer of parental rights at age 18 (age of majority)

Prior to your child's 18th birthday, the school must notify you and your child in writing that all rights accorded to parents under the IDEA 2004 will transfer to your child unless your child is determined not to be competent under state law.

If You Have Concerns

The IDEA 2004 recognizes that parents and schools occasionally disagree and provides several options to help solve these disagreements.

If you have concerns about your child's special education services, first talk to your child's general or special education teacher, the building principal, the superintendent, or the district's special education director. When a problem first arises, act immediately so steps can be taken as soon as possible to support the working relationship among the staff, your child, and you.

If your concerns are not resolved, you may want to consider a request for an IEP facilitation, mediation, or a complaint investigation by contacting the North Dakota Department of Public Instruction (NDDPI) Office of Special Education and/or request a due process hearing.

Facilitated Individualized Education Program

If you have concerns and they are directly related to decisions made relative to your child's IEP, you may request the assistance of an external neutral facilitator. The primary purpose of the facilitator is to assist the team in the development of an appropriate IEP and to maintain the focus of the meeting on the specific needs of your child. The facilitated IEP is offered at no cost to you or the school district. You may obtain a *Request for a Facilitated IEP* form by calling (701) 328-2277, or from the NDDPI website at SFN 58305

Mediation

You may ask the school district to participate in mediation at any time, even if you have already requested a state complaint investigation or due process. Mediators, who are not employees of the school district, are trained in strategies to help people reach agreement over difficult issues. In mediation, disagreements can be resolved more quickly than other dispute options. In mediation, participants work on solutions together and are in control of the outcome. You are not required to file a state complaint or a due process complaint before, during, or after mediation. If an agreement is reached, the parties sign a legally binding written agreement. Mediation is voluntary and confidential, and both parents and school staff must agree to proceed before a mediator is appointed. The NDDPI pays for costs related to special education mediation. You may obtain a Request for Mediation form by calling (701) 328-2277 or from the NDDPI website at: SFN 58601

Complaint Investigation

Under the IDEA 2004, any individual or organization may file a written state complaint alleging a violation of any Part B requirement by a school district, the state education agency, or any other public agency. If you believe a school district has violated any part under the IDEA 2004, you may file a written complaint with the NDDPI. You may submit your concerns in a letter or complete the *Request for a Complaint Investigation* form, which you may obtain through the Office of Special Education by calling (701) 328-2277 or from the NDDPI website at https://www.nd.gov/dpi/sites/www/files/documents/SFN%20Forms/SFN58618.pdf

The incident related to the complaint must have occurred within one year from the date that the complaint is filed.

A complaint must include: a statement that the school has violated Part B of the IDEA; the facts on which the statement is based; your signature and contact information; the name and address of your child; the name of the school your child is attending; or, in the case of a homeless child, available

contact information for the child and the name of the school the child is attending; a description of the nature of the problem of your child, including facts relating to the problem; and a proposed resolution of the problem. Your complaint should be sent to:

Director of Special Education
ND Department of Public Instruction
600 East Boulevard Avenue, Dept 201
Bismarck, ND 58505-0440

A copy of your complaint must be forwarded to the school involved in your complaint *at the same time your complaint is submitted to the NDDPI*. The school is given the opportunity to draft a formal response to the allegations and propose a resolution to the issues.

If your complaint does meet the requirements, it will be investigated and a decision given to you within 60 calendar days from the date your complaint is received by both the school and the NDDPI. This timeline may be extended under certain circumstances.

In Other Words…Sometimes you might disagree with the special education testing, services or placement for your child. Try to resolve your disagreements by requesting IEP facilitation or mediation, which are free services conducted by a trained, impartial professional not employed by the school district. However, at any time you may file a written formal complaint and/or request a due process hearing. To receive information regarding any dispute resolution option available to you, call the NDDPI at (701) 328-2277 or from the NDDPI website at: https://www.nd.gov/dpi/education-programs/special-education

Due Process Hearing

A due process hearing is a formal legal proceeding that can be requested by parents or by the school district. The request must be made within two years from the date the alleged action occurred. Exceptions to this timeline are if the school misled or withheld information from the parent.

The school district may request a hearing:

- if you refuse consent for an initial evaluation;
- if the school believes that maintaining the current placement is substantially likely to result in injury to your child or to other children; or
- to demonstrate that the district has conducted an appropriate evaluation and/or offered a free appropriate public education (FAPE).

If you disagree with the identification, evaluation, educational placement or other aspects relating to your child's FAPE, you can request a due process hearing by contacting the Director of Special Education at the NDDPI. You may file a complaint through a letter, request that the NDDPI send you the *Due Process Complaint Notice* form or from the NDDPI website at https://www.nd.gov/dpi/sites/www/files/documents/SFN%20Forms/SFN9461.pdf

Your hearing request must include:

- your child's name and address and the name of the school that your child is attending; or, in the case of a homeless child, available contact information for the child and the name of the school the child is attending; and
- a description of the problem, including specific facts about the problem; and any suggestions you have for resolving the problem.

If the school has not already sent you a prior written notice of special education action regarding the subject matter contained in your complaint, the school must, within 10 days, send you a response that includes:

- an explanation of why the school proposed or refused to take action on the issues raised in your due process hearing request;
- a description of other options the IEP team considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the school used as the basis for their decision; and
- a description of other factors relevant to the school's proposed or refused action.

If the school requests a due process hearing from the NDDPI and you receive a copy of the due process complaint notice, you (or your legal counsel) would also be required to send the school a response that addresses the issues raised in the due process complaint within 10 calendar days of receiving the complaint notice.

You and the school have certain rights under due process hearings, including:

- the right to bring an attorney who can give you advice, except that ND state law does not authorize non-attorneys to represent parties at a due process hearing;
- the right to bring one or more individuals who have knowledge or training about children with disabilities;
- the right to present evidence and confront, cross-examine, and require relevant witnesses to be present;
- the right to a written, or, at your option, an electronic verbatim record of the hearing; and,
- the right to written, or, at your option, electronic findings of fact and decisions.

An impartial hearing officer will issue a decision not later than 45 calendar days after the expiration of the 30 calendar day period for resolution meetings or, not later than 45 calendar days after the expiration of an adjusted time period as determined by the hearing officer.

Resolution Session

The school district will convene a meeting with the parents and relevant members of the IEP team within 15 days of when the school district receives the parent's due process complaint to discuss the facts on which your complaint is based. "Relevant members" of the IEP team means those individuals who have specific knowledge of the issues contained in your complaint. The purpose of this meeting is to allow you the opportunity to discuss with the school the issues outlined in your complaint and to provide the school an opportunity to resolve those issues. The school district has 30 days from the time the complaint is filed to resolve the complaint to the satisfaction of the parents, after which a due process hearing can occur.

The NDDPI will provide you and the school with a neutral facilitator when requested by the parent or the school district. The facilitator will facilitate the resolution meeting to assist you and the school in reaching an agreement. If an agreement is reached, you and the school will sign a legally binding agreement, and the due process hearing will not be initiated. If you and the school do not reach an agreement, the due process hearing and associated timelines will be initiated. The written agreement is enforceable in court.

The due process hearing may occur if the school has not resolved the issues within 30 days from the date your due process complaint was received, except where the parties have jointly agreed to waive the resolution process or to use mediation.

The school must document reasonable efforts to meet with you in a resolution meeting. If you do not participate in the resolution meeting, the school may request that the hearing officer dismiss your due process complaint request at the conclusion of the 30 day period.

If the school fails to hold the resolution meeting within 15 days of receiving your due process complaint or fails to participate in the resolution meeting, you may seek the intervention of the hearing officer to begin the due process hearing timeline.

Disclosure of Evidence Before Hearing

At least five business days before a hearing, school districts and parents must disclose to each other all evaluations of the student completed by that date as well as recommendations based on those evaluations that they intend to use at the hearing.

A hearing officer may bar any party that fails to comply with this rule from introducing the undisclosed evaluations or recommendations at the hearing without the consent of the other party.

Civil Action

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the finding and decision by bringing a civil action. If you disagree with the decision, you may bring a civil action within 90 days from the date of the hearing officer's decision.

Attorneys' Fees

Reasonable attorneys' fees may be awarded to:

- a parent of a child with a disability;
- the school district against the attorney of a parent who:
    - files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation; or
    - who continues to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or
- the school district against the attorney of a parent or against a parent if the parent's request for a due process hearing 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.

Attorneys' fees may not be awarded for resolution meetings. Attorneys' fees may not be awarded relating to any meeting of the IEP team, unless the meeting is convened as a result of an administrative proceeding or judicial action.

Child's Placement During Proceedings

During the due process hearing, your child will remain in the current educational placement. The "stay put" rule applies unless:

- you and the school district agree to another placement;

- your complaint involves an application for initial admission to public school, then your child, with your consent, must be placed in the public school until the completion of all proceedings;
- your complaint involves a request for initial services under the IDEA Part B, whereby your child is transitioning from the IDEA Part C (for children Birth-3) to Part B (children ages 3-21) and is no longer eligible for Part C services. The school is then not required to provide the Part C services that your child had been receiving. However, if your child is found eligible for special education and related services under Part B, then the school must provide those services that are not in the dispute; or,
- the hearing officer determines that a change of placement is appropriate, then that change must be treated as an agreement between the state and the parents regarding your child's placement during proceedings.

A *Due Process Complaint Notice* form is available from the NDDPI Office of Special Education by calling (701) 328-2277.

In Other Words…If you cannot resolve a conflict with your school district, you have the right to a due process hearing conducted by an impartial person. You will be informed of specific timelines and requirements that are associated with a due process hearing.

Disciplinary Action

Depending on the nature of your child's behavior, you have the right to be a part of team decisions about disciplinary action.

Short Term Removals

For the purposes of removal of your child from your child's current educational placement, a change of placement occurs if:

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

The school determines on a case-by-case basis whether a pattern of removals constitutes a change of placement and this determination is subject to review through due process and judicial proceedings. Additional removals for separate incidents of misconduct are permitted as long as those removals do not constitute a change of placement.

Longer Removals

Longer removals include expulsion and suspensions that would constitute a change in placement. If a longer removal is being considered, the district must have a manifestation determination meeting, with you and other qualified personnel included in that meeting. This meeting must be held within 10 school days of any decision to change the placement of a child.

For disciplinary changes in placement: if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the

relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.

After the manifestation determination meeting, the school district must provide services that will enable your child to continue to participate in the general education curriculum. Services may occur in another setting to support your child's progress in meeting the goals set out in your child's IEP.

Protections for Children Not Yet Eligible for Special Education and Related Services
If your child has not been determined to be eligible for special education and related services, but has engaged in behavior that violated a code of student conduct, your child is entitled to the procedural safeguards afforded under the IDEA 2004 if *the school had knowledge that your child was a child with a disability before the behavior that precipitated the disciplinary action occurred*. A school is considered to have knowledge that a child is a child with a disability if:

- You expressed concern in writing to supervisory or administrative personnel of the school, *or a teacher of your child,* that your child is in need of special education and related services;
- You requested an evaluation of your child; or
- The teacher of your child or other school personnel expressed specific concerns *directly to the director of special education of the agency or to other supervisory personnel of the school about a pattern of behavior demonstrated by your child.*

Manifestation Determination Meeting

You will be invited to participate as a member of the team, which will determine whether the misconduct has a direct and substantial relationship to your child's disability. The team reviews all relevant information including:

- test results and any independent educational evaluations;
- information provided by the parents;
- observations of the child; and
- your child's IEP and placement.

After the review of information, the team then determines if:

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

If the team concludes that the misconduct was neither a manifestation of your child's disability nor a result of the school's failure to implement the IEP:

- the school district may take disciplinary action in the same manner as it would for children without disabilities;
- the school district must continue to provide educational services in another setting, to enable your child to continue to participate in the general education curriculum and progress toward meeting your child's IEP goals; and
- the school district, as appropriate, must conduct a functional behavioral assessment (FBA) and provide behavioral intervention services and modifications that are designed to address the behavior so that it does not reoccur.

If the team concludes that the misconduct was a manifestation of your child's disability or a result of the school's failure to implement the IEP, the school must:

- conduct a functional behavioral assessment (FBA), unless the school had already conducted an FBA before the behavior occurred, and implement a behavior intervention plan; *or*
- review the behavior intervention plan, if a behavior intervention plan already has been developed, and modify it as necessary to address the behavior; *and*
- 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 behavior intervention plan, or your child's misbehavior was related to drugs, weapons or serious bodily injury.

Drugs, Weapons, and Serious Bodily Injury

School personnel may remove your child to an interim alternative educational setting for not more than 45 school days if:

- your child carries a weapon to school or to a school function;
- your child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; or
- your child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

Referral to Law Enforcement /Transmission of Records

A school may report a crime committed by any child with a disability to appropriate authorities. In doing so, the school must ensure that copies of the special education and disciplinary records of your child are transmitted for consideration by appropriate authorities to whom the crime is reported but must also obtain your consent to send those records, consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA).

Interim Alternative Educational Setting

An interim alternative educational setting is a different setting that must allow your child to continue to receive educational services that will enable your child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in his or her IEP. You must be a part of the IEP team that determines the specific interim alternative educational setting. If you disagree with the interim alternative educational placement of your child, you may request an expedited due process hearing.

Placement by a Hearing Officer

A hearing officer may order a change in placement of your child to an interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or other children.

Extensions of 45 school day removals by a hearing officer may be repeated, if necessary, when returning the child to the current placement would be substantially likely to result in injury to your child or other children.

Appeals

If you disagree with any decision regarding the placement of your child as a result of a disciplinary action, the manifestation determination decision, or if the school believes that maintaining the current

placement of your child is substantially likely to result in injury to your child or others, then you or the school district may appeal the decision by requesting a due process hearing. The hearing officer may:

- return your child to the placement from which your child was removed; or
- order a change in placement of your child to an appropriate interim alternative educational setting for not more than 45 school days, if the hearing officer believes that maintaining the current placement of your child is substantially likely to result in injury to your child or others.

Child's Placement During Appeals

When an appeal has been made by either you or the school, your child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the timeline determined by the district's disciplinary procedures, whichever occurs first, unless you and the district agree otherwise.

Expedited Due Process Hearing

Whenever a due process hearing is requested regarding a dispute over placement, a manifestation determination decision, or because the school believes that maintaining the current placement is substantially likely to result in injury to your child or to others, then you and the school must have the opportunity to an expedited due process hearing.

The expedited due process hearing timelines differ from the standard due process hearing timelines in that:

- the hearing must occur within 20 school days of the date the due process complaint is received and;
- the hearing officer must make a determination (final decision) within 10 school days after the conclusion of the hearing.

Resolution Session and Expedited Due Process Hearings

Unless you and the school agree in writing to waive the resolution meeting or agree to use the mediation process to resolve the issues in dispute:

- the resolution meeting must occur within 7 calendar days of receiving the due process complaint notice; and
- the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process complaint.

Civil Action

The decisions on expedited due process hearing are appealable through civil action within 90 calendar days from the date of the decision of the hearing officer.

In Other Words…The IEP team, which includes you, needs to determine appropriate disciplinary actions for your child. Depending on the nature of your child's behavior, there are certain instances when you or the school may request an expedited due process hearing to resolve a dispute.

Private School Placement and Unilateral Placements

If you enroll your child in a private school, your child may receive some publicly funded special education services. If you place your child in a private school without the school's agreement, you could be awarded reimbursement for private school educational costs *only* if a court or hearing officer determines that the local school was not providing a free appropriate public education. The school is not required to pay for the cost of education, including special education and related services for your

child at a private school or facility, if the public school has made a free appropriate public education available to your child and you unilaterally choose to place your child in the private school.

If you believe a free appropriate public education is not available at your public school, you may seek reimbursement for the cost of the enrollment through a due process hearing.

If the hearing officer or court finds that the public school did not make a free appropriate public education available to your child in a timely manner prior to your child's enrollment in the private school, the hearing officer or court may order the public school to reimburse you.

The court or hearing officer may reduce or deny reimbursement if:

- you did not make your child available for an evaluation upon notice from the school district before removing your child from public school; or
- you did not inform the school district that you were rejecting the special education placement proposed by the school district, including your intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- at the most recent IEP meeting you attended before removing your child from the public school; or
- in writing to the school district at least 10 business days (including holidays) before removing your child from the public school.

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the school district for any of the following reasons:

- illiteracy and inability to write in English;
- giving notice would likely result in physical or serious emotional harm to the child;
- the school prevented you from giving notice; or
- you had not received a copy of *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards* or otherwise been informed of this notice requirement.

In Other Words…If you place your child in a private school without the school's agreement, you could be awarded reimbursement for private school educational costs *only* if a court or hearing officer determines that the local school was not providing a free appropriate public education.

Home Education

If you elect to home educate your child, you must contact your school district superintendent. Information regarding the rights and responsibilities of parent's home educating their children can be found in the ND Century Codes: 15.1-23 and 25-01.2-01. The NDDPI website includes *Informational Paper-Home Education and Children with Disabilities.*

A Final Note

The Individuals with Disabilities Education Improvement Act (IDEA 2004) recognizes that decisions about the education of children who have disabilities are best made by a team. It is expected that parents be essential partners on those teams with school personnel. The North Dakota Department of Public Instruction strongly encourages you to work closely with your school to ensure that a free appropriate public education is provided to your child.

Summary of Procedures Regarding Procedural Safeguards

Procedure	Notice of Meeting	Prior Written Notice of Special Education Action	Procedural Safeguards	Parent Consent*
Universal screening: procedures used with all enrolled students to identify possible areas of difficulties that could interfere with learning. Examples include screening for vision or hearing, or review of records of all students to identify students at-risk academically.	Not required, but suggested parents be informed	Not required	Not required	Not required
Selective screening: procedures used with selected children who are referred due to identified risk factors. It is done to determine the significance of the risk factors impacting the child's growth and development or academic performance. The result determines whether there is need for referral to BLT or for evaluation.	Not required, but suggested parents be informed	Required	Not required	Required
BLT: Building Level Team, is a team of school partners - teachers, parents, staff, and administrators - who work together as a team to help the school address the educational needs of students. All BLT members are considered equal partners in the process of school improvement.	Not required	Not required	Not required	Not required but involvement urged
Response to Intervention: RTI provides high-quality instruction and interventions matched to the student's need in general education.	Not required	Not required	Not required	Not required but involvement urged
Initial evaluation: the first multidisciplinary evaluation of a student who is referred when BLT intervention fails to adequately address the student's difficulties. If a student has received special education services, has been dismissed, and then is referred a second time, the procedures associated with initial evaluation must be followed.	Required	Required	Required	Required
Reevaluation: periodic reassessment (conducted every three years as required, or more frequently as requested) of students receiving special education services.	Required	Required	Not required	Required
Initial Individualized Education Program (IEP) development: preparation of an individual education program by a team of participants as required by regulations following an initial assessment.	Required	Required	Required	Not required
Initial placement: the first time a multidisciplinary team uses assessment data, analyzes and plans for a student's unique educational needs, and concludes that specially designed instruction is required to meet those needs. Typically, the placement decision is made as part of the IEP meeting. If a student has received special education services and has been dismissed, the initial placement procedures must be followed if the student is subsequently assessed and determined to be in need of special education services again.	Required	Required	Required	Required
Annual IEP review: review of current IEP and preparation of a new or revised IEP at least every 12 months by a team of participants as required by regulations. Review of placement as well as plans for programming and services are included.	Required	Required	Required	Not required
Dismissal from program: termination of special education services because the student no longer needs them, or the parent or student requests termination of services.	Required	Required	Required	Not required
Registration of a due process complaint: If a parent disagrees with the identification, evaluation, educational placement or other aspects relating to their child's free appropriate public education they may file a written complaint or request a due process hearing.	Required *(see page 12)*	Not required	Required (sent by NDDPI)	Not required

Procedure	Notice of Meeting	Prior Written Notice of Special Education Action	Procedural Safeguards	Parent Consent*
Filing of a state complaint: If a parent believes that the school has violated a requirement of IDEA 2004 they may file a complaint with the state.	Not required	Not required	Required (sent by NDDPI)	Not required
Other agency invitation to Secondary Transition Meeting: If another agency is participating in the Secondary Transition Services needed by a student, parent consent must be given to invite them to the meeting.	Not required	Not required	Not required	Required

*Parent consent is required when information is collected on an individual child that is not being obtained for all individuals in the same school, grade, or class (Hatch Act, 1974, amended to General Education Provisions Act, 1984, 34 CFR 98).

Other Resources

The publicly funded organizations listed here may be able to assist you in understanding the procedural safeguards and other provisions of the IDEA.

Your local school district_____

Pathfinder Parent Center

Minot: (701) 837-7500
Toll Free: 1-800-245-5840
Website: http://pathfinder-nd.org/

North Dakota Protection & Advocacy (P & A) Project

Bismarck: (701) 328-2950
Toll Free: 1-800-472-2670

North Dakota Department of Public Instruction - Office of Special Education

Bismarck: (701) 328-2277
Website: https://www.nd.gov/dpi/education-programs/special-education

The IDEA Advisory Committee meets several times each school year. This representative group of parents, administrators, university personnel, general and special educators makes recommendations about special education in North Dakota. Information about the advisory committee and its meeting schedule is available from the NDDPI Office of Special Education by calling (701) 328-2277 or at https://www.nd.gov/dpi/parentscommunity/community/boards-and-committees/idea-advisory-committee