

Procedural Safeguards Manual for Parents

(Parental Rights in Special Education)

December 2008



Bureau of Student and Family Support Services

Grant Wood AEA's PEP Program builds home-school collaboration in the IFSP/IEP process. For help and support planning your child's IFSP/IEP, call the PEP office at 800-332-8488, ext. 6777.



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Des Moines, Iowa 50319-0146



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Table of Contents

<i>Introduction</i>	1
Where can I find further assistance?	1
When do I get a copy of the procedural safeguards?	2
Are there other sources of information...?	2
What notice must the Iowa Department of Education give me about the procedural safeguards?	2
 <i>Confidentiality of Information and Educational Records</i>	 3
May I have access to my child’s educational records?	3
What educational records may I examine?	3
How do I know what records are kept on my child?.....	3
Is there a charge for the records?	3
What does the “right to inspect” include?	3
What does “personally identifiable information” mean?	3
How are my child’s records protected regarding who has access to the records?.....	3
What if I don’t think the information in the record is accurate?	4
Does the district or AEA need to ask me for permission to release the information in my child’s educational records? Are there exceptions?	4
Are there other steps the district and AEA must take to protect and safeguard my child’s confidentiality and privacy?.....	4
What happens to my child’s educational records when they are no longer needed?	4
 <i>Parental Consent</i>	 5
What does consent mean?	5
Is my consent required for an initial evaluation of my child?.....	5
What happens if I refuse to provide consent for an initial evaluation of my child?.....	5
Are there special rules for initial evaluations of children who are wards of the State?	5
Do I need to provide consent to start special education and related services?.....	5
What happens if I refuse to give my consent to start special education and related services?.....	6
May I revoke my consent for continued special education and related services?	6
Is my consent required for reevaluations?	6
What documentation of reasonable efforts to obtain parental consent must the AEA or district maintain?	6
Are there other specific instances where my consent is required?.....	6
What other information do I need to know about consent?	6
 <i>Participation in Meetings</i>	 7
In what meetings about my child must I be included?	7
How will the school help that happen?	7
Is it a “meeting” whenever public agency employees discuss my child?	7
How am I involved in placement decisions about my child?.....	7
What if I can’t participate in the meeting?.....	7
Can a decision be made without me?.....	7
 <i>Independent Educational Evaluations</i>	 7
What is an independent educational evaluation (IEE)?.....	7
May I request an IEE?.....	8
What might the school say or do if I make a request for an IEE?.....	8
If I choose to get an IEE, what can be done with the information that I get?	8
Who pays for an IEE?	8
What other things do I need to know about an IEE?.....	8
 <i>Prior Notice</i>	 8
What is prior notice by a district or an AEA?	8
What information is included in the notice?	8
What will the “notice” look like?.....	9

Dispute Resolution Options 9

Difference Between Due Process Hearing Complaint and State Complaint Procedures 9

Preappeal Conference 10

 What help can I get from the Iowa Department of Education to help resolve a dispute with my child’s district or AEA? 10

State Complaint Procedure 10

 Does the Iowa Department of Education provide a procedure to file a complaint? 10

 What does the procedure include? 10

 Are there other limits to this procedure? Are extensions beyond 60 days allowed? 10

 How is a complaint filed and who can file? 11

 What happens if an LEA, AEA, or other public agency fails to comply with a due process hearing decision? 11

Due Process Complaint (also known as Request for Due Process Hearing)..... 11

 When may I file a due process complaint (also referred to as a request for due process hearing)?.....11

 Is there a time limit for filing a due process hearing request?11

 Are there exceptions to the time limit requirements for filing a due process hearing request?11

 How can I find out where to obtain legal assistance?.....12

 What do I need to include in a due process hearing request?12

 How important is it that all of the requirements of the notice are included?12

 Who decides whether the notice has met all of the requirements?12

 Where do I send the due process hearing request?12

 What happens if I do not send the notice to all parties and to the Iowa Department of Education?12

 What if I want to change the due process hearing request after I file it?.....12

 How will the district respond to my due process hearing request?.....13

Resolution Meeting 13

 What is the purpose of the resolution meeting?.....13

 Does the resolution meeting need to be held?13

 Who attends the resolution meeting?13

 What is the “resolution period”?13

 How important is the resolution meeting?.....14

 Could a legally binding settlement agreement come from this resolution meeting?14

 Is there a period of time when I can change my mind about the agreement?.....14

Mediation 14

 What are the procedures and requirements for a mediation?.....14

 How do I know who the mediators are? How is one chosen to listen to concerns about my child? Who pays for the mediation?.....14

 How do I know the mediator is impartial?14

 What are some things I need to know about the mediation process?15

 What if I don’t want to use a mediation process?.....15

 Who is a disinterested party?.....15

 What would the disinterested party do?15

Impartial Due Process Hearing 15

 Who is responsible for conducting the due process hearing?.....15

 Who listens to the information and makes decisions at the due process hearing?.....15

 What are the qualifications of an impartial ALJ?.....15

 In the meantime, where does my child go to school?.....16

 Is there an exception to the current placement provision?.....16

 What if my child has never been in public school?.....16

 What can be discussed at the due process hearing?.....16

 Is there a time limit that needs to be followed for requesting a due process hearing?.....16

 Are there exceptions to the time limit rule?16

 What are the rights in a due process hearing that I need to be aware of according to the law?.....16

 What about disclosure of additional information at the due process hearing?16

 Are there rights specific to me as a parent at the due process hearing?.....16

 What decision is an ALJ required to make?17

 Am I restricted from filing other due process hearing requests?17

 Is the decision of the ALJ final?.....17

 If I disagree with the ALJ decision, what can I do?17

 Who else will know about the due process hearing decision?.....17

What is the timeline for the due process hearing decisions?17

Civil Action 17

 Is there a time limitation to pursue a civil action?.....17

 Are there additional requirements for a civil action?18

Rule of Construction 18

Attorney Fees 18

 What do I need to know about attorney fees?18

 What does the court consider when awarding fees?.....18

 Can attorney fees and related costs be prohibited for certain services?18

 Is there an exception to prohibition on attorney fees and related costs?19

 Can the court reduce the amount of the attorney fees?.....19

 Is there an exception to the reduction in the amount of attorney fees?.....19

Behavior and Discipline Procedures 19

 What may school personnel consider when disciplining my child?.....19

General..... 19

 What may school officials do to discipline my child?.....19

Additional Authority..... 19

 What additional authority do school officials have?19

Services..... 20

 Where may these services be provided?.....20

 Do children who have been removed from a current placement for less than 10 days
 in a school year receive services?20

 What if my child is removed for more than 10 consecutive school days?.....20

 What happens if my child has been removed for more than 10 school days in a school year but
 my child’s current removal is less than 10 school days in a row and is not a change in placement?20

 What happens if my child’s removal is a change in my child’s placement?20

Manifestation Determination 20

 What is a manifestation determination and when must it happen?.....20

 What happens if my child’s behavior is determined to be a manifestation of my child’s disability?.....21

Special Circumstances 21

 Are there any circumstances when the district may remove a child even if the
 child’s behavior was a manifestation of the child’s disability?21

 What definitions apply to this rule?.....21

Change of Placement Because of Disciplinary Removals..... 21

 What is a change of placement because of disciplinary removals?.....21

 Who determines whether there has been a change of placement?.....22

 Must the school notify me when a removal constitutes a change in placement?.....22

Determination of Setting..... 22

 Who determines the setting where my child is educated during periods of removal?.....22

Appeal 22

 What may I do if I disagree with a decision about my child’s disciplinary removal or placement?22

 May the district file an appeal concerning my child’s discipline?.....22

 What authority does the ALJ have?.....22

 What happens when I file or a public agency file a due process complaint about
 my child’s behavior or discipline?.....22

 What if I disagree with the ALJ’s decision?.....22

Placement During Appeals..... 23

 Where is my child placed during any appeals under these provisions?.....23

Protections for Children Not Yet Eligible for Special Education and Related Services 23

 May I use the protections of these disciplinary provisions if my child is not currently
 determined eligible to receive special education?23

 What does it mean for the district to “have knowledge” that my child was a child with a disability?23

 Are there exceptions to this rule?23

What conditions apply if the district does not have a basis of knowledge that my child is a child with a disability?.....23

Referral To and Action By Law Enforcement and Judicial Authorities 24

 May the school or AEA refer my child to law enforcement or report a crime my child is suspected of committing?24

 What must the school or AEA do if it reports my child to law enforcement authorities?24

Provisions for Surrogate Parents 24

 Why would a surrogate parent be appointed?24

 What does the AEA need to do?24

 What are the criteria for being selected as a surrogate?24

 What if the child is an unaccompanied homeless youth?.....24

 What are surrogate parent responsibilities?24

 How soon must a surrogate parent be appointed for a child?25

Transfer of Rights to Child..... 25

 When do the procedural rights under IDEA 2004 transfer to my child?.....25

 What happens at the age of majority?25

Unilateral Placement of Children by Parents in Private Schools

When A Free Appropriate Public Education (FAPE) Is An Issue 25

 When won't the district pay for the cost of education in a private school for my child with a disability?25

 Can I be reimbursed for private school placement for my child?25

 Can reimbursement for private school placement be reduced or denied?.....26

 Are there exceptions to the reduction or denial of reimbursement for private school placement?26

Appendices 27

Definitions 27

 Day; business day; school day.....27

 Free appropriate public education; FAPE27

 Homeless children27

 Individualized education program; IEP27

 Individualized education program team; IEP Team27

 Native language.....28

 Parent.....28

 Personally identifiable.....28

 Controlled substance28

 Illegal drug28

 Serious bodily injury28

 Weapon28

Model Forms

 Model Form to Assist Parent(s)/Guardian(s) in Requesting a Preappeal Conference29

 Model Form to Assist Parent(s)/Guardian(s) in Filing a Due Process Complaint (Hearing)30

 Model Form to Assist Parent(s)/Guardian(s) in Filing a Complaint.....31

INTRODUCTION

Parents have rights, known as procedural safeguards, which apply to every aspect of the special education process. State and federal laws and regulations outline what needs to happen to ensure that children with identified disabilities and on an Individualized Education Program (IEP) receive a free appropriate public education (FAPE). This document serves as *your* procedural safeguards notice and will help you understand the rights available to you and your child through a federal law, the Individuals with Disabilities Education Improvement Act (IDEA 2004) and the Iowa Administrative Rules of Special Education. Some of the areas reviewed in this document are Notice, Informed Consent, Recordkeeping, Evaluations, Mediation, Due Process, Attorney Fees, Age of Majority and Discipline.

Where can I find further assistance?

If you would like further verbal explanation of your rights, contact any of the following for more help:

- **Your local district superintendent or principal**
- **Your Area Education Agency (AEA) and ask for:**
 - Director of Special Education
 - The AEA's Parent-Educator Connection program
 - The AEA's Resolution Facilitator coordinator

AEA 1	Elkader	800-632-5918
AEA 267	Cedar Falls	800-542-8375
AEA 8	Pocahontas	800-669-2325
AEA 9	Bettendorf	800-947-2329
AEA 10	Cedar Rapids	800-332-8488

AEA 11	Johnston	800-362-2720
AEA 13	Council Bluffs	800-432-5804
AEA 14	Creston	800-362-1864
GPAEA	Ottumwa	800-622-0027
NWAEA	Sioux City	800-352-9040

- **The Iowa Department of Education**
 Bureau of Student and Family Support Services
 Grimes State Office Building
 Des Moines, Iowa 50319-0146
 515-281-3176
 515-242-6019 FAX
deb.samson@iowa.gov
- **The Iowa Parent Training and Information Center**
 321 East 6th Street
 Des Moines, Iowa 50309
 1-800-450-8667
 515-243-1713
 FAX 515-243-1902
info@askresource.org
<http://www.askresource.org>
- **Iowa Protection and Advocacy, Inc.**
 950 Office Park Road, Suite 221
 West Des Moines, Iowa 50265
 515-278-2502
 515-278-0571 (TDD)
 800-779-2502
 515- 278-0539 FAX
info@ipna.org
<http://www.ipna.org>
- **Independent Living Centers:**

Central Iowa CIL 4132 E. 10 th Street Des Moines, IA 50309 Phone: 515-563-9337 FAX: 515-563-9337	Evert Conner Rights and Resources CIL 26 E Market Street Iowa City, IA 52240 Phone: 319-933-3870	Illinois Iowa CIL 736 Federal Street Davenport, IA 52801 Phone: 319-934-1460 TDD: 319-932-1460
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Both you and the district share in the education of your child. If you or school personnel have concerns about the education of your child, use every opportunity to hold early and open discussions about your concerns. If your child is receiving special education services, become actively involved in the development of your child's IEP.

When do I get a copy of the procedural safeguards?

You will receive a copy of the procedural safeguards for your child with a disability one time a year. Additionally, a copy also must be given to you:

1. Upon an initial referral or your request for evaluation for your child;
2. Upon your filing of a first due process complaint or first state complaint in that school year;
3. Whenever a decision is made to take a disciplinary action that constitute a change of placement; and
4. Upon your request for your procedural safeguards.

Are there other sources of information for me to find out more about IDEA 2004, the Iowa Administrative Rules of Special Education and other rules and regulations that are important for me to know?

The following listings are internet addresses with information about parental safeguards you can visit.

- Iowa Administrative Rules of Special Education
<http://www.iowa.gov/educate/content/view/1418/1087/>
- Individuals with Disabilities Education Improvement Act (IDEA) 2004
<http://idea.ed.gov>
For your reference, requirements for the contents of the Procedural Safeguard Manual for Parents are found in 20 USC § 1415(d) of the Individuals with Disabilities Education Act (IDEA) 2004.
- Family Educational Rights and Privacy Act (FERPA):
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Other resources and references:

- *Working Things Out When Things Go Wrong* – a document from the Iowa Department of Education
- National Dissemination Center for Children with Disabilities, NICHY, <http://www.nichcy.org>, is a web site with many publications regarding IDEA 2004, procedural safeguards and other disability information.
- PACER Center, <http://www.pacer.org/legislation/idea/index.asp> has a summary of IDEA 2004 at the time of this printing, as well as other information for families who have children with disabilities.
- The Iowa Department of Education website for Conflict Resolution at:
<http://www.iowa.gov/educate/content/category/22/537/587/>

Check with your child's classroom teacher, building principal or AEA consultant (the AEA person who most often talks to you about your child) for further information.

What notice must the Iowa Department of Education give me about the procedural safeguards?

The Iowa Department of Education must give notice that is adequate to fully inform you about the procedural safeguards under IDEA. They include:

1. The Parental Safeguard notices will be available in English, Spanish, Bosnian, Croatian, Vietnamese, Arabic, and Laotian.
2. A description of:
 - a. The children on whom personally identifiable information is maintained;
 - b. The types of information sought;
 - c. The methods the State intends to use in gathering the information (including the sources from whom information is gathered); and
 - d. The uses to be made of the information.
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.
4. A description of all of the rights of parents and children regarding this information, including the rights under FERPA (34 C.F.R. part 99).

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

CONFIDENTIALITY OF INFORMATION & EDUCATIONAL RECORDS

May I have access to my child's educational records?

1. Public agencies must permit you to inspect and review any education records that are collected or maintained or used by the educational agency through provisions in both IDEA and the Family Educational Rights and Privacy Act (FERPA).
2. The agency must comply with a request to review or inspect the records without unnecessary delay – no longer than 45 calendar days and before any meeting regarding an IEP or any hearing or resolution meeting.

What educational records may I examine?

As a parent of a child with a disability, you must be afforded an opportunity to inspect and review all education records of your child with respect to:

1. Identification;
2. Evaluation;
3. Educational placement of your child; and
4. The provision of a free appropriate public education (FAPE) to your child.

How do I know what records are kept on my child?

Each agency must provide parents, on request, a list of the types and locations of education records collected, maintained or used by an agency.

Is there a charge for the records?

Each agency may charge a fee for the copies of records if the fee does not effectively prevent you from your right to review and inspect the records. The agency may not charge a fee to search for or to retrieve the information.

What does the "right to inspect" include?

1. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
2. The right to request that the agency provide copies of the records containing the information if failure to provide the copies would effectively prevent you from exercising the right to inspect and review the records;
3. The right to have your representative inspect and review the records.

The agency may presume the parent has authority to inspect and review the education records unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

What does "personally identifiable information" mean?

Usually, what is meant by personally identifiable information is specific information such as your child's name, your name as parent, home address, a social security number or a listing of personal characteristics that describe a child in a way that other people could identify the child with a reasonable certainty.

How are my child's records protected regarding who has access to the records?

With the exception of access by parents, and authorized employees, the agency maintaining the records, the district or AEA, must keep a record of parties obtaining access to education records including:

1. Name of the party;
2. Date access was given; and
3. The purpose for which the party is authorized to use the records.

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

What if I don't think the information in the record is accurate?

If you believe that the information collected, maintained or used is inaccurate or misleading or violates the privacy or other rights of your child, you may request the agency that maintains the information to amend the record. The district or AEA shall decide whether to amend the information in accordance with the request within a reasonable amount of time. If the district or AEA decides to refuse to amend the information, it shall inform you of the refusal and advise you of the right to a hearing. (The hearing requirements are from FERPA and not those in IDEA.)

As a result of the hearing:

1. If the decision is that the information is misleading, inaccurate or otherwise in violation of the privacy or other rights of your child, the agency must amend the information accordingly and inform you in writing.
2. If the decision is that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the agency will inform you of the decision. The district or AEA will also inform you of your right to place in the records it maintains on your child, a statement commenting on the information or setting forth your reasons for disagreeing with the decision of the agency.
3. Any explanation placed in the records of your child must be maintained by the agency as part of the record as long as the record or contested portion is maintained by the agency. If the records or the contested portion is disclosed by the agency to any other party, your explanation must also be disclosed.

Does the district or AEA need to ask me for permission to release the information in my child's educational records? Are there exceptions?

Yes, parental consent, or consent of an eligible child who has reached the age of majority must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies (e.g., another district in which you are going to enroll your child), unless the information is contained in education records and FERPA authorizes disclosure without parent consent.

Are there other steps the district and AEA must take to protect and safeguard my child's confidentiality and privacy?

Each agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages of records. Other obligations from the law include:

1. One official at each agency must assume responsibility for ensuring the confidentiality of personally identifiable information.
2. All people collecting or using personally identifiable information must receive confidentiality and privacy training under Part B of the IDEA and FERPA.
3. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

What happens to my child's educational records when they are no longer needed?

The district and AEA must inform you when personally identifiable information collected, maintained or used under IDEA 2004 is no longer needed to provide educational services to your child. If the district or AEA determines that the information is no longer needed to provide educational services, then the information must be destroyed at your request. There is some information in your child's record that is kept as part of a permanent record and may be maintained without time limitations. That information includes such items as name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed.

PARENTAL CONSENT

What does consent mean?

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
3. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

Is my consent required for an initial evaluation of my child?

Yes. Your district and AEA cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent. Your district and AEA must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability. Your consent for initial evaluation does not mean that you have also given your consent for the district and AEA to start providing special education and related services to your child.

What happens if I refuse to provide consent for an initial evaluation of my child?

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your district or AEA may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your district or AEA will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Are there special rules for initial evaluations of children who are wards of the State?

If a child is a ward of the State and is not living with his/her parent, the district and AEA do not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, they cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; or
3. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

"Ward of the State," as used in the IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child;
2. Considered a ward of the State under State law; or
3. In the custody of a public child welfare agency.

"Ward of the State" does not include a foster child who has a foster parent.

Do I need to provide my consent to start special education and related services?

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

What happens if I refuse to give my consent to start special education and related services?

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent and the district and AEA do not provide your child with the special education and related services for which they sought your consent, your district and AEA:

1. Are not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for failure to provide those services to your child; and
2. Are not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

May I revoke my consent for continued special education and related services?

Yes. You may revoke your consent for continued special education and related services for your child. You must do so in writing. Before services stop, you must receive a prior written notice from the public agency. If you revoke your consent for continued special education and related services for your child, the district and AEA do not have to amend your child's special education records because you revoked your consent for further services.

Is my consent required for reevaluations?

Your district must obtain your informed consent before it reevaluates your child, unless your district can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; and
2. You did not respond.

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

What documentation of reasonable efforts to obtain parental consent must the AEA or district maintain?

Your district or AEA must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; and
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Are there other specific instances where my consent is required?

The IDEA and its implementing regulations set forth additional times when your consent is required. These involve sharing information about your child. These times are:

1. Your consent must be obtained whenever the district or AEA seeks to access your public insurance or benefits or private insurance to help pay for providing your child a FAPE.
2. Your consent must be obtained before the district or AEA releases personally identifiable information to participating agencies who are providing or paying for transition services.
3. If your child is enrolled or will enroll in an accredited nonpublic school located in a different AEA or district, your consent must be obtained before any personally identifiable information about your child is released between the district and/or AEA where you reside and the district and/or AEA where the accredited nonpublic school is located.

What other information do I need to know about consent?

Your consent is not required before your district or AEA 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.

Your 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.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the district may not use its consent override procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

PARTICIPATION IN MEETINGS

In what meetings about my child must I be included?

As a parent of a child with a disability, you must be afforded an opportunity to participate in meetings with respect to:

1. The identification, evaluation, and educational placement of the child; and
2. The provision of a free appropriate public education (FAPE) to the child.

How will the school help that happen?

Each district and AEA must provide notice to ensure that parents of children with disabilities have the opportunity to participate in meetings. The notice will be provided to you early enough for you to have an opportunity to attend and will provide the following information: the purpose, time, and location of the meeting, and who will be in attendance (name and position). The meeting will be scheduled at a mutually agreeable time and place. There are additional notice requirements for certain meetings about children transitioning from Early ACCESS and for children who are considering postsecondary goals and transition services.

Is it a "meeting" whenever public agency employees discuss my child?

No. In this case, it is easier to state from the law what a meeting does not include:

1. Informal or unscheduled conversations involving district and AEA personnel.
2. A conversation on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in the child's IEP.
3. Preparatory activities that district and AEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

How am I involved in placement decisions about my child?

Each district and AEA must ensure you are a member of any group that makes decisions on the educational placement of your child.

What if I can't participate in the meeting?

If you cannot participate in a meeting in which a decision is to be made relating to the educational placement of your child, the district and AEA must use other methods to ensure your participation. Those may include:

1. Individual or conference telephone calls.
2. Video conferencing.

Can a decision be made without me?

A group may make a decision without your involvement if the district is unable to obtain your participation in the decision. The school must have a record of its attempts to ensure your involvement.

INDEPENDENT EDUCATIONAL EVALUATIONS

What is an independent educational evaluation (IEE)?

An independent educational evaluation (IEE) is an evaluation of your child that is conducted by a qualified examiner who is not employed by the district or AEA. The AEA has set forth the criteria for the IEE in its board policy.

May I request an IEE?

Yes. You have a right to obtain an IEE of your child if you disagree with an evaluation of your child obtained by your district and AEA, subject to several considerations.

What might the school say or do if I make a request for an IEE?

The public agency could ask you why you object to the public evaluation, but you are not required to provide this explanation. An explanation may not unreasonably delay either providing the IEE at public expense or a school or AEA initiated due process hearing. The public agency could agree with you and provide the IEE at public expense. The public agency could ask for a hearing to show why the completed evaluation is appropriate. In that case, an administrative law judge (ALJ) would make a decision about whether the district or AEA is correct. Even if the evaluation is determined to be appropriate through a hearing process, you may still get an IEE; but the district or AEA will not be required to pay for it.

If I choose to get an IEE, what can be done with the information that I get?

If the evaluation meets the criteria of the AEA, the information must be considered in decisions made with respect to FAPE for your child. In a due process hearing, any party may use the information as evidence.

Who pays for an IEE?

Unless the public agency requests a due process hearing about whether it should pay for the IEE, it pays for the full cost of the IEE or ensures that the IEE is at no cost to you. If an ALJ requests an IEE, it must be at public expense.

What other things do I need to know about an IEE?

1. If you are seeking an IEE at public expense, the AEA will provide information about where an IEE may be obtained and the agency criteria.
2. The AEA may not impose conditions or timelines, other than its criteria in getting the IEE.
3. The AEA criteria must be consistent with your right to an IEE.
4. You are entitled to only one IEE of your child at public expense each time your district or AEA conducts an evaluation of your child with which you disagree.

PRIOR NOTICE

Because your participation in decisions for your child's education is important, the laws require assurances that you are involved during specific activities along the way. Those specific activities and decisions affect your child's special education services. "Prior notice" is a written communication to you from the public agency when the public agency is proposing or refusing to initiate or proposing or refusing to change the identification, evaluation or educational placement, or the provisions of FAPE for your child. Such notice must be given to you a reasonable time before the district or AEA implements that action, but after the decision on the proposal or refusal has been made.

What is prior notice by a district or an AEA?

It is a written communication from a district or AEA that includes information about a variety of items, depending on the issue. You may get prior notice about anything that is proposed or refused for your child in relation to special education services. Those must include:

1. The initiation of a service.
2. A change in a special education service.
3. Issues related to identification of special education services.
4. The educational placement of your child, if there is a change.
5. Evaluations that are needed.
6. Anything related to the provision of FAPE if the IEP Team's inquiry leads to the conclusion that a substantial or material change has occurred.

What information is included in the notice?

1. A description of the proposed or refused action.
2. An explanation of why an action is being proposed or refused.

3. A description of each evaluation procedure, assessment, record or report that the agency used as a basis for the proposed or refused action.
4. A statement saying you and/or your child has protection under the procedural safeguards in the law. If this notice is not an initial referral for evaluation you will be told how you may get a copy of these procedural safeguards.
5. Sources for parents to contact to obtain assistance in understanding the sections of the law covered in the procedural safeguards manual.
6. A description of other options the IEP Team considered and the reasons why those options were rejected.
7. A description of any other factors that are relevant to the agency's decision to propose or refuse the action.

What will the “notice” look like?

It will be a form or written letter. The notice must be written in language understandable to the general public; and provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your public agency must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication;
2. You understand the content of the notice; and
3. There is written evidence that 1 and 2 have been met.

If your public agency offers parents the choice of receiving documents by email, you may choose to receive prior written notice by email.

DISPUTE RESOLUTION OPTIONS

There are several options if you have a disagreement with a district, an AEA, or another public agency. This part of the Procedural Safeguards Manual explains these options.

Difference Between Due Process Hearing Complaint and State Complaint Procedures

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

Preappeal Conference

What help can I get from the Iowa Department of Education to help resolve a dispute with my child's district or AEA?

One option is a preappeal conference, which is a form of mediation. It means that mediation is desired but a due process hearing is not being requested. A model form for your use is available on page 29. The Iowa Department of Education abides by the same guidelines for a preappeal conference as are outlined in the "mediation" section on page 14.

State Complaint Procedure

Does the Iowa Department of Education provide a procedure to file a complaint?

The Iowa Department of Education has written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another state, by providing for the filing of a complaint with the Iowa Department of Education;
2. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures.

In resolving a complaint in which the Iowa Department of Education has found a failure to provide appropriate services, the Department must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and
2. Appropriate future provision of services for all children with disabilities.

What does the procedure include?

The Iowa Department of Education includes in its complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the Iowa Department of Education determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the district or AEA with the opportunity to respond to the complaint, including, at a minimum:
 - a. At the discretion of the district or AEA, a proposal to resolve the complaint; and
 - b. With the consent of the parent (or the individual or organization that filed the complaint), an opportunity for the district or AEA to engage the parent or individual or organization in mediation, or alternative means of dispute resolution;
4. Review all relevant information and make an independent determination as to whether the district or the AEA is violating a requirement of IDEA;
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
 - a. Findings of fact and conclusions; and
 - b. The reasons for the Iowa Department of Education's final decision.

Are there other limits to this procedure? Are extensions beyond 60 days allowed?

The Iowa Department of Education's procedures also:

1. Permit an extension of the time limit only if:
 - a. Exceptional circumstances exist with respect to a particular complaint; or
 - b. The parent and the district or AEA agree to extend the time to conduct mediation or other dispute resolution activities.
2. Include procedures for effective implementation of the Iowa Department of Education's final decision, if needed, including:
 - a. Technical assistance activities;
 - b. Negotiations; and
 - c. Corrective actions to achieve compliance.

If a written complaint is received that is also the subject of a due process hearing, the State must set aside the complaint until the conclusion of the hearing.

1. If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties:
 - a. The due process hearing decision is binding on that issue; and
 - b. The SEA must inform the complainant to that effect.

How is a complaint filed and who can file?

An organization or individual may file a signed written complaint.

The complaint must include:

1. A statement that a district or AEA has violated a requirement of Part B of IDEA 2004;
 - a. The facts on which the statement is based;
 - b. The signature and contact information for the complainant; and
 - c. If alleging violations about a specific child:
 - i. The name and address of the residence of the child;
 - ii. The name of the school the child is attending;
 - iii. In the case of a homeless child or youth (within the meaning of § 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - iv. A description of the nature of the problem of the child, including facts relating to the problem; and
 - v. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
 - d. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.
 - e. The party filing the complaint must forward a copy of the complaint to the district and AEA serving the child at the same time the party files the complaint with the Iowa Department of Education.

A model form to file a state complaint can be found on page 31.

What happens if an LEA, AEA, or other public agency fails to comply with a due process hearing decision?

If you believe the school, the AEA, or another public agency is not complying with a due process decision, you may file a state complaint. If the Department confirms your allegation, it will order appropriate relief.

Due Process Complaint (also known as Request for Due Process Hearing)

When may I file a due process complaint (also referred to as a request for due process hearing)?

You may file a due process hearing request relating to your child and referring to a proposal or refusal to initiate or change:

1. The identification;
2. The evaluation;
3. The educational placement of your child with a disability; or
4. The provision of FAPE to your child.

Is there a time limit for filing a due process hearing request?

The due process hearing request must allege that a violation took place not more than two years before you or the district knew or should have known about the alleged action that forms the basis for the due process request.

Are there exceptions to the time limit requirements for filing a due process hearing request?

Yes. The time limit shall not apply if you were prevented from requesting the hearing for the following reasons:

1. Specific misrepresentations by the district or AEA that it had resolved the issues identified in the hearing request; or

2. The district or AEA withheld information from you that it was required to provide you under Part B of the IDEA.

How can I find out where to obtain legal assistance?

The Iowa Department of Education must inform you of any free or low-cost legal and other relevant services available in the area if:

1. You request the information; or
2. You or the agency requests a hearing under this section.

What do I need to include in a due process hearing request?

The due process hearing request must include:

1. The name of your child.
2. The address of your child's residence.
3. The name of your child's school and AEA.
4. A description of the nature of the problem of your child relating to the proposed or refused action, including facts relating to the problem.
5. A proposed resolution of the problem to the extent known and available to you or the district or AEA at the time.
6. In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the child's contact information, and the name of the child's school.

How important is it that all of the requirements of the notice are included?

You will not have a due process hearing until you or your attorney files a due process hearing request that meets all requirements. A model form to file a due process hearing request is found on page 30.

Who decides whether the notice has met all of the requirements?

The due process hearing request must be considered sufficient unless the party receiving the due process hearing request notifies the ALJ and all parties in writing within 15 calendar days of receipt of the due process hearing request that the receiving party believes the notice does not meet the requirements.

Within five calendar days of receipt of notification, the ALJ must make a determination on the face of the due process hearing request of whether it meets the requirements, and must immediately notify the parties in writing of that determination.

Where do I send the due process hearing request?

You are required to send the notice to your child's resident district, the AEA and any other parties named. This request must remain confidential. You will also need to provide a copy of the notice to the Iowa Department of Education. The Iowa Department of Education is responsible for conducting the impartial due process hearing.

What happens if I do not send the notice to all parties and to the Iowa Department of Education?

The IDEA requires that you provide the notice to the district, the AEA, any other parties named, and the Department of Education. All timelines associated with a due process complaint start only when all required copies have been received by all parties.

What if I want to change the due process hearing request after I file it?

You may make changes to your due process hearing request only if:

1. The other parties consent to the changes in writing and are given the chance to resolve the due process hearing request through a resolution meeting; or
2. The ALJ grants permission, except that the ALJ may only grant permission to amend at any time not later than five days before the due process hearing begins.

When a due process hearing request is changed, the timelines all begin again for the impartial due process hearing or the resolution meeting.

How will the district respond to my due process hearing request?

If the district and/or AEA has not sent a prior written notice to you regarding the subject matter contained in the due process hearing request you wrote, the district must, **within 10 calendar days of receiving** the due process hearing request, send to you a response that includes:

1. An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;
2. A description of other options that your child's IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the agency's proposed or refused action.

The district and AEA receiving a due process hearing request must, within 10 calendar days of receiving the due process hearing request, send to you a response that specifically addresses the issues in the due process hearing request. Copies of this response should also be sent to the Iowa Department of Education.

Resolution Meeting

Within 15 calendar days of receiving notice of your due process hearing request, and before the due process hearing, the district and AEA must convene a meeting with you and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in your due process hearing request that must include:

1. A representative of the district and AEA who has decision-making authority on behalf of the district and AEA.
2. May not include an attorney of the district or AEA unless an attorney accompanies you.

What is the purpose of the resolution meeting?

The purpose of the resolution meeting is for you to discuss your due process hearing request, and the facts that form the basis of request for the hearing so that the district and AEA have the opportunity to resolve the dispute.

Does the resolution meeting need to be held?

Yes, unless:

1. You, the district, and AEA agree in writing to waive the meeting; or
2. You, the district, and AEA agree to use the mediation process available through the Iowa Department of Education.

The parties identified in the due process hearing request will need to send documentation to the Iowa Department of Education demonstrating that the resolution meeting was held or that all parties agreed to waive the resolution meeting.

Who attends the resolution meeting?

You and the district and AEA determine the relevant members of the IEP Team to attend the resolution meeting.

What is the "resolution period"?

The 30 calendar day period begins when the district, the AEA, any other parties, and the Iowa Department of Education all receive the due process hearing request. During that time there are opportunities to resolve the issues in the due process complaint. If the district has not resolved the issues presented in the due process hearing request to your satisfaction within 30 calendar days, the due process hearing must occur, assuming the requirement for filing a due process hearing request requirements have been met. If the district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process hearing request, OR fails to participate in the resolution meeting, you may ask an ALJ to order that the 45 calendar day due process hearing timeline begin.

How important is the resolution meeting?

Except when you, the district, and the AEA have agreed to waive the resolution meeting or to use mediation, when you have filed a due process hearing request your failure to participate in the resolution meeting has a consequence. If after making reasonable efforts and documenting the efforts, the district is not able to obtain your participation in the resolution meeting, the district or AEA may, at the end of the 30 calendar day resolution period, request that an ALJ dismiss your due process hearing request. Documentation of the efforts must include a record of attempts to arrange a mutually agreed upon time and place such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

Could a legally binding settlement agreement come from this resolution meeting?

If a resolution to the dispute is reached at the resolution meeting you and the other parties must execute a legally binding agreement that is:

1. Signed by you and a representative of the district who has the authority to bind the district; and
2. Enforceable in any State court of competent jurisdiction or in a district court of the United States.

Is there a period of time when I can change my mind about the agreement?

Yes. It is called an agreement review period. If you and the district enter into an agreement as result of a resolution meeting any party (you, the district, or the AEA), may void the agreement within 3 business days of the time that both you and the district signed the agreement.

Mediation

Mediation must be made available to you to allow you and the public agencies to resolve disagreements involving any matter under Part B of the IDEA, including matters arising before the filing of a due process request. A request for mediation filed before a due process complaint is called a request for preappeal conference, which is discussed page 9. The Iowa Department of Education must ensure that procedures are established and implemented to allow parties to resolve disputes through a mediation process.

What are the procedures and requirements for a mediation?

The procedures must ensure that the mediation process:

1. Is voluntary on the part of the parties (you, the district and the AEA);
2. Is not used to deny or delay your right to a due process hearing or to deny any other rights you have under Part B of the IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

How do I know who the mediators are? How is one chosen to listen to concerns about my child? Who pays for the mediation?

The Iowa Department of Education must:

1. Maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
2. Select mediators on a random, rotational, or other impartial basis.
3. Bear the cost of the mediation process, including the costs of meetings with a disinterested party when the choice is to not use mediation.

How do I know the mediator is impartial?

An individual who serves as a mediator:

1. May not be an employee of the Iowa Department of Education, the AEA, or the district that is involved in the education or care of the child; and
2. Must not have a personal or professional interest that conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a district, the AEA or the Iowa Department of Education solely because he or she is paid by the agency to serve as a mediator.

What are some things I need to know about the mediation process?

1. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient for you and the other parties.
2. If you and the district resolve a dispute through the mediation process, including a preappeal conference, you, the district, and AEA must enter into a legally binding agreement that
 - a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
 - b. Is signed by you and a representative of the public agencies who have the authority to bind such agencies.
3. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.
4. The parties to mediation will be required to sign a confidentiality pledge prior to start of the mediation to ensure that all discussions that occur during mediation remain confidential.

What if I don't want to use a mediation process?

The AEA may establish procedures to offer to parents and districts that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party.

Who is a disinterested party?

A disinterested party is one of the following:

1. A person under contract with an appropriate alternative dispute resolution entity; or
2. The Iowa Parent Training and Information Center; or
3. A community parent resource center.

What would the disinterested party do?

The disinterested party would explain the benefits of and encourage the use of the mediation process to you.

Impartial Due Process Hearing

Whenever a due process hearing request is filed, you, the AEA, or the district involved in the dispute must have an opportunity for an impartial due process hearing.

Who is responsible for conducting the due process hearing?

The Iowa Department of Education conducts the hearing.

Who listens to the information and makes decisions at the due process hearing?

A person with the title of administrative law judge (ALJ) assumes that role at a due process hearing. The Iowa Department of Education must keep a list of the persons who serve as ALJs. The list must include a statement of the qualifications of each of those persons.

What are the qualifications of an impartial ALJ?

At a minimum, an ALJ must not be:

1. An employee of the Iowa Department of Education, the AEA or the district that is involved in the education or care of the child; or
2. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

An ALJ:

1. Must possess knowledge of, and the ability to understand, the provisions of the IDEA 2004, Federal and State regulations pertaining to IDEA, and legal interpretations of the IDEA by Federal and State courts;
2. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
3. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ.

In the meantime, where does my child go to school?

Your child must remain in his or her current educational placement during the period of the administrative or judicial proceedings, unless all parties agree otherwise.

Is there an exception to the current placement provision?

Yes, if a child is in an interim alternative educational placement at the time of the hearing proceedings, the child must remain in that setting pending the decision of the ALJ or the expiration of the time period occurs.

What if my child has never been in public school?

If the due process hearing request involves an application for initial admission to public school, your child, with your consent, must be placed in the public school until the completion of all the proceedings.

If the decision of an ALJ in a due process hearing conducted by the Iowa Department of Education agrees with you that a change of placement is appropriate, that placement must be treated as an agreement between the State and you.

What can be discussed at the due process hearing?

The party requesting the due process hearing shall not be allowed to raise any issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

Is there a time limit that needs to be followed for requesting a due process hearing?

You, the district, or AEA must request an impartial hearing within two years of the date that you, the district, or AEA knew or should have known about the alleged action that forms the basis of the due process hearing request.

Are there exceptions to the time limit rule?

The time limit does not apply if you were prevented from filing a due process hearing request due to:

1. Specific misrepresentations by the district or AEA that it had resolved the problem forming the basis of the due process hearing request; or
2. The district or AEA withheld information from you that was required to be provided to you under Part B of IDEA.

What are the rights in a due process hearing that I need to be aware of according to the law?

Any party to a hearing conducted has the right to:

1. Be accompanied and advised by a lawyer and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
5. Obtain a written, or, at your option, electronic findings of fact and decisions.

What about disclosure of additional information at the due process hearing?

At least five business days before a due process hearing, you and all other parties must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the other parties intend to use at the hearing. An ALJ may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other parties.

Are there rights specific to me as a parent at the due process hearing?

When you are involved in hearings you must be given the right to:

1. Have your child, who is the subject of the hearing, present;
2. Open the hearing to the public; and

3. Have the record of the hearing and the findings of fact and decisions provided at no cost to you. The due process hearing must be scheduled at a time and place that is reasonably convenient to you and your child.

What decision is an ALJ required to make?

An ALJ must make a decision on substantive grounds based on a determination of whether the child received a FAPE. In matters alleging a procedural violation, an ALJ may find that a child did not receive a FAPE only if the procedural inadequacies:

1. Impeded your child's right to a FAPE;
2. Significantly impeded your opportunity to participate in the decision-making process regarding the provision of a FAPE to your child; or
3. Caused a deprivation of educational benefit.

Nothing in these provisions shall be construed or interpreted to prevent an ALJ from ordering a district or AEA to comply with IDEA's procedural requirements.

Am I restricted from filing other due process hearing requests?

Nothing prevents you from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

Is the decision of the ALJ final?

A decision made in a hearing is final, including a hearing related to disciplinary procedures, except that any party involved in the hearing may appeal the decision to court, as discussed below.

If I disagree with the ALJ decision, what can I do?

Any party shall have the right to bring a civil action with respect to the due process hearing decision. Such action may be brought in state or federal district court, without regard to the amount in controversy.

Who else will know about the due process hearing decision?

The Iowa Department of Education, after deleting any personally identifiable information, must:

1. Transmit the findings and decisions to the state Special Education Advisory Panel; and
2. Make those findings and decisions available to the public.

What is the timeline for due process hearing decisions?

The Iowa Department of Education must ensure that not later than 45 days after the expiration of the 30 calendar day period for resolution meetings or the adjusted period for resolution meetings

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

An ALJ may grant specific extensions of time beyond the 45 calendar day time period at the request of either party.

Civil Action

Any party who does not agree with the findings and decision in the due process hearing, including a hearing relating to disciplinary procedures (described below), has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. Such action may be brought in state or federal district court, without regard to the amount in controversy.

Is there a time limitation to pursue a civil action?

Any party who disagrees with the decision of the ALJ shall have 90 calendar days from the date of the decision of the ALJ to file a civil action.

Are there additional requirements for a civil action?

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at the request of a party; and
3. Basing its decision on the preponderance of the evidence, grants the relief the court determines to be appropriate.

Rule of Construction

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

ATTORNEY FEES

What do I need to know about attorney fees?

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

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

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

What does the court consider when awarding fees?

Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the attorney fees.

Can attorney fees and related costs be prohibited for certain services?

Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed subsequent to the time of a written offer of settlement to you, if:

1. The offer to settle the dispute is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedures or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
2. The offer is not accepted within 10 calendar days; and
3. The court or ALJ finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorney 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. The resolution meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action or an administrative hearing or judicial action for purposes of these provisions on attorneys' fees.

Is there an exception to prohibition on attorney fees and related costs?

An award of attorney fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

Can the court reduce the amount of the attorney fees?

The court may reduce the amount of the attorney fees if the court finds:

1. You, or your attorney, unreasonably protracted the final resolution of the controversy;
2. The amount unreasonably exceeds the hourly rate prevailing in the community;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing the parent did not provide the district or AEA the appropriate information in the due process hearing request notice.

Is there an exception to the reduction in the amount of attorney fees?

Provisions of reducing attorney fees do not apply if the court finds the district, AEA or the Iowa Department of Education unreasonably protracted the final resolution of the action or there was a violation of Section 615 of IDEA 2004.

BEHAVIOR AND DISCIPLINE PROCEDURES

What may school personnel consider when disciplining my child?

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

General

What may school officials do to discipline my child?

To the extent that they also take such action for children without disabilities, school personnel may, for not more than 10 school days in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (which must be determined by the child's IEP Team), another setting, or suspension. School personnel may also impose additional removals of the child of not more than 10 school days in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see *Change of Placement Because of Disciplinary Removals* for the definition, below).

Additional Authority

What additional authority do school officials have?

Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, the district must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading *Services*.

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see *Manifestation Determination*, below) and the disciplinary change of placement would exceed 10 school days in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under *Services*. The child's IEP Team determines the interim alternative educational setting for such services.

Services

Where may these services be provided?

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.

Do children who have been removed from a current placement for less than 10 days in a school year receive services?

A district is only required to provide services to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who has been similarly removed.

What if my child is removed for more than 10 consecutive school days?

A child with a disability who is removed from the child's current placement for more than 10 school days must:

1. Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not happen again.

What happens if my child has been removed for more than 10 school days in a school year but my child's current removal is less than 10 school days in a row and is not a change in placement?

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

What happens if my child's removal is a change in my child's placement?

If the removal is a *change of placement* (see definition below), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

Manifestation Determination

What is a manifestation determination and when must it happen?

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for 10 school days in a row or less and not a change of placement), the district, the parent, and relevant members of the IEP Team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

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

If the district, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

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

What happens if my child’s behavior is determined to be a manifestation of my child’s disability?

If the district, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the child’s disability, the IEP Team must either:

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

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

Special Circumstances

Are there any circumstances when the district may remove a child even if the child’s behavior was a manifestation of the child’s disability?

Yes. Whether or not the behavior was a manifestation of the child’s disability, school personnel may remove a student to an interim alternative educational setting (determined by the child’s IEP Team) for up to 45 school days, if the child:

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

What definitions apply to this rule?

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

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

“Serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

“Weapon” has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

For more information and some examples, see the Appendix of this document.

Change of Placement Because of Disciplinary Removals

What is a change of placement because of disciplinary removals?

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

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

Who determines whether there has been a change of placement?

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

Must the school notify me when a removal constitutes a change in placement?

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

Determination of Setting

Who determines the setting where my child is educated during periods of removal?

The IEP Team must determine the interim alternative educational setting for removals that are changes of placement, and removals under the headings *Additional Authority* and *Special Circumstances*, above.

Appeal

What may I do if I disagree with a decision about my child's disciplinary removal or placement?

The parent of a child with a disability may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

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

May the district file an appeal concerning my child's discipline?

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

What authority does the ALJ have?

An ALJ must conduct the due process hearing and make a decision. The ALJ may:

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

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

What happens when I file or a public agency files a due process complaint about my child's behavior or discipline?

Whenever a parent or a district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described above, except as follows:

1. The Iowa Department of Education must arrange for an expedited due process hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing.
2. Unless the parents and the district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.

What if I disagree with the ALJ's decision?

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings.

Placement During Appeals

Where is my child placed during any appeals under these provisions?

When, as described above, the parent or district has filed a due process complaint related to disciplinary matters, the child must (unless the parent and the Iowa Department of Education or district agree otherwise) remain in the interim alternative educational setting pending the decision of the ALJ, or until the expiration of the time period of removal as provided for and described under the heading *Authority of School Personnel*, whichever occurs first.

Protections For Children Not Yet Eligible For Special Education And Related Services

May I use the protections of these disciplinary provisions if my child is not currently determined eligible to receive special education?

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

What does it mean for the district to “have knowledge” that my child was a child with a disability?

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

1. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;
2. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; or
3. The child’s teacher or other district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the district’s director of special education or to other supervisory personnel of the district.

Are there exceptions to this rule?

A district would not be deemed to have such knowledge if:

1. The child’s parent has not allowed an evaluation of the child or refused special education services; or
2. The child has been evaluated and determined to not be a child with a disability under Part B of the IDEA.

What conditions apply if the district does not have a basis of knowledge that my child is a child with a disability?

If prior to taking disciplinary measures against the child, a district does not have knowledge that a child is a child with a disability, as described above, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the district, and information provided by the parents, the district must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

Referral To And Action By Law Enforcement And Judicial Authorities

May the school or AEA refer my child to law enforcement authorities or report a crime my child is suspected of committing?

Yes. Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

What must the school or AEA do if it reports my child to law enforcement authorities?

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

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

PROVISIONS FOR SURROGATE PARENTS

Why would a surrogate parent be appointed?

Each district, AEA, and the state must ensure that the rights of a child are protected when:

1. No parent can be identified;
2. The district or AEA, after reasonable efforts, cannot locate a parent;
3. The child is a ward of the State under the laws of Iowa;
4. In the case of a child who is a ward of the State, the judge presiding over the child's case alternatively may appoint a surrogate parent (The criteria are listed below.); or
5. The child is an unaccompanied homeless youth.

What does the AEA need to do?

The duties of an AEA include the assignment of an individual to act as a surrogate for the parents. This must include a method for:

1. Determining whether a child needs a surrogate parent; and
2. Assigning a surrogate parent to the child.

What are the criteria for being selected as a surrogate?

The AEA may select a surrogate parent in any way permitted under State law. The AEA must ensure that a person selected as a surrogate parent:

1. Is not an employee of the Iowa Department of Education, the AEA, the district, or any other agency that is involved in the education or care of the child;
2. Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
3. Has knowledge and skills that ensure adequate representation of the child.

A person otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

What if the child is an unaccompanied homeless youth?

In that case, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates, until a surrogate can be appointed that meets all of the requirements.

What are surrogate parent responsibilities?

The surrogate parent may represent the child in all matters relating to:

1. The identification, evaluation, and educational placement of the child; and
2. The provision of a free appropriate public education (FAPE) to the child.

How soon must a surrogate parent be appointed for a child?

The state must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 calendar days after an AEA determines that the child needs a surrogate parent.

TRANSFER OF RIGHTS TO CHILD

Iowa provides policies and procedures of the extent to which children are afforded rights of privacy, taking into consideration the age of your child and type or severity of the disability. Educational record rights transfer to your child at 18. However, educational records shall be made available to the parents if the eligible individual is determined to be a dependent student as defined in the Internal Revenue Code.

When do the procedural rights under IDEA 2004 transfer to my child?

A parent's rights under the IDEA will transfer to your child at the age of majority. The age of majority is 18 in Iowa, except for a child with a disability who has legally been determined to be incompetent under Iowa law. In addition, all minors attain their majority by marriage. A person who is less than 18 but who is tried, convicted, and sentenced as an adult also attains majority status.

What happens at the age of majority?

1. The district will provide any notice required under the law to both you and your child.
2. All other rights given to you will transfer to your child (this includes youth who are incarcerated in a juvenile or an adult Federal, Iowa or local correctional institution).
3. Beginning at least one year before your child reaches the age of majority under Iowa law, your child's IEP shall include a statement that he or she has been informed of the rights that will transfer to your child at the age of majority. Special education rights transfer to the student when he or she reaches the age of majority.

As a parent, you will retain the rights you have had with the exception of requesting an IEE, and giving consent of an initial evaluation or reevaluation. You will be able to attend and participate at IEP meetings if the student, district or AEA invites you. Under Iowa law, you retain the right to use the dispute resolution procedures as described in this notice.

UNILATERAL PLACEMENT OF CHILDREN BY PARENTS IN PRIVATE SCHOOLS WHEN A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) IS AN ISSUE

When won't the district pay for the cost of education in a private school for my child with a disability?

The IDEA does not require that the district or AEA pay for the cost of education in a private school or facility, including special education and related services for your child with a disability, if:

1. The district made FAPE available to your child; and
2. You elected to place the child in a private school or facility.

Please note there may be some right created by state and federal law to receive special education and related services for children with disabilities who are enrolled by their parents in accredited nonpublic schools. Such special education and related services to these children will be provided by public agencies.

If there is a disagreement between you and district regarding the availability of an appropriate program for your child, the question of who will pay is subject to an impartial due process hearing.

Can I be reimbursed for private school placement for my child?

If your child has been determined an eligible individual under the IDEA and has received special education and related services at school and then you enroll your child in a private preschool, elementary school or secondary school without the consent of or a referral by the district, a court or an ALJ *may* require the district to reimburse you for the cost of the enrollment if:

1. The court or ALJ finds that the agency had not made FAPE available to your child in a timely manner prior to the enrollment in the private school; and

2. The private placement is appropriate.

An ALJ or court may find the private placement appropriate even if it does not meet the state standards that apply to education provided by Iowa Department of Education, AEAs, and districts.

Can reimbursement for private school placement be reduced or denied?

Yes. Reimbursement may be reduced or denied if:

1. At the most recent IEP meeting that you attended prior to the removal you did not inform the IEP Team that you were rejecting the placement proposed to provide a FAPE to your child, including stating your concerns with the proposed placement and your intent to enroll your child in a nonpublic school at public expense;
2. You did not give written notice 10 business days (including any holidays that occur on a business day) before the removal including your concerns and the reasons why;
3. Prior to the removal the district or AEA requested an evaluation and you did not make the child available; or
4. If a court finds that your actions were unreasonable.

Are there exceptions to the reduction or denial of reimbursement for private school placement?

According to the IDEA, the cost of reimbursement must not be reduced or denied if:

1. The district prevented you from providing the required notice.
2. You did not get notice of these requirements.
3. Compliance would likely result in physical harm to the child.

The costs of reimbursement may, at the discretion of the court or an ALJ, not be reduced or denied for failure to provide the required notice if:

1. You are illiterate and unable to write in English; or
2. Compliance would likely result in serious emotional harm to your child.

APPENDICES

Definitions

Because the language used in law is so specific, below are a few definitions to help you understand the law. As parents, you need to have an increased awareness of what you are reading – ‘must’ and ‘shall’ in the law are different from ‘may’, as an example. *Musts* and *shalls* are ‘need to happen’ items and ‘may’ suggests there is a choice to do or not. Not every term defined in the law is included here. Talk to your district personnel, AEA consultants, other parents, Parent-Educator Connection program staff in your AEA, and/or the PTI of Iowa for help in understanding what some other words mean.

Day; business day; school day	Day means calendar day unless otherwise indicated as business day or school day. Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of a business day). School day has the same meaning for all children in school, including children with and without disabilities.
Free appropriate public education or FAPE	Special education and related services that (1) are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the State, including the requirements of IDEA 2004; (3) include an appropriate preschool, elementary school, or secondary school education, and (4) are provided in conformity with an individualized education program (IEP).
Homeless children	The meaning given the term in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 <u>et seq.</u> The term “homeless children and youths” -- (A) means individuals who lack a fixed, regular, and adequate nighttime residence; and (B) includes-- (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (iv) migratory children who qualify as homeless because the children are living in circumstances described in clauses (i) through (iii).
Individualized education program or IEP	A written record of an eligible individual’s special education services developed, reviewed, and revised with an IEP Team. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary for the eligible individual to receive needed services appropriate to the individual’s special learning needs.
Individualized education program team or IEP Team	A group of individuals that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

Native language	<p>When used with respect to an individual who is limited English proficient, means the following:</p> <ol style="list-style-type: none"> 1. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child 2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. <p>For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).</p>
Parent	<p>Means:</p> <ol style="list-style-type: none"> 1. A natural or adoptive parent of a child; 2. A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; 3. A guardian (but not the State if the child is a ward of the State); 4. An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or 5. A surrogate parent who has been appointed.
Personally identifiable	<p>Information that contains:</p> <ol style="list-style-type: none"> 1. The name of the child, the child's parent, or other family member; 2. The address of the child; 3. A personal identifier, such as the child's social security number or student number; or 4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Definitions – Special Disciplinary Circumstances

Controlled substance	<p>A drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. § 812(c))</p> <p>For a listing, check http://www4.law.cornell.edu/uscode/html/uscode21/usc_sec_21_00000812----000-.html</p>
Illegal drug	<p>A controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal law.</p>
Serious bodily injury	<p>Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.</p> <p>The term "serious bodily injury" means bodily injury, which involves—</p> <ol style="list-style-type: none"> 1. A substantial risk of death; 2. Extreme physical pain; 3. Protracted and obvious disfigurement; or 4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. <p>http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001365----000-.html</p>
Weapon	<p>Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.</p> <p>The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.</p> <p>http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000930----000-.html</p>



Model Form to Assist Parent(s)/Guardian(s) in Requesting a Preappeal Conference
 (A *Preappeal Conference* is a mediation, without asking for a due process hearing.)

PLEASE PRINT

Date: _____ I, _____, am requesting a preappeal conference.
 Your name

Child's Information	_____
	Child's name
	Address where child lives (for contact information)
	Name of District, School, and AEA where child lives
	Name of District, School, and AEA where child attends , if different from where the child lives.

Parent(s)/Guardian(s) Information	Parent(s)/Guardian(s)' name(s): _____
	Mailing address (or contact information): _____
	City: _____ State: _____ Zip: _____
	Phone/Contact number: _____ E-mail (if available): _____
	<u>If there is another parent/guardian at another address with parental rights, please complete the following:</u>
	Parent(s)/Guardian(s)' name(s): _____
	Mailing address (or contact information): _____
	City: _____ State: _____ Zip: _____
	Phone/Contact number: _____ E-mail (if available): _____

Describe the following (use additional sheets of paper, if more space is needed):

- The nature of the problem:

- The facts of this case relating to the above problem:

- Your proposed resolution of the problem:

Name, address, phone number or contact information of person filing request, if not parent/guardian: _____

Position/role of person filing request, if not parent/guardian: _____

Send a completed form to **EACH** of the following:

Addresses Available at Your School

- The district that made the decisions with which you disagree.
- The AEA special education director.
- Director, Iowa Department of Education**
 Grimes State Office Building, Des Moines, Iowa 50319-0146



Model Form to Assist Parent(s)/Guardian(s) in Filing a Due Process Complaint (Hearing)

Date: _____ I, _____ am requesting a hearing before a State Administrative Law Judge.
Your name

Child's Information	_____
	Child's name

	Address where child lives (for contact information)
Parent(s)/Guardian(s)' Information	_____
	Name of District, School, and AEA where child <u>lives</u>

	Name of District, School, and AEA where child <u>attends</u> if different from where the child lives
Parent(s)/Guardian(s)' Information	Parent(s) Guardian(s) name(s): _____
	Mailing address (or contact information): _____
	City: _____ State: _____ Zip: _____
	Phone/Contact number: _____ E-mail (if available) _____
	<u>Is there another parent/guardian at another address with parental rights?</u> ____ Yes ____ No. If yes , please complete the following:
	Parent(s) Guardian(s) name(s): _____
	Mailing address (or contact information): _____
	City: _____ State: _____ Zip: _____
	Phone/Contact number: _____ E-mail (if available) _____

Describe the following (use additional sheets of paper if more space is needed):

1. The nature of the problem:
2. The facts of this case relating to the above problem:
3. Your proposed resolution of the problem:

Did the violation happen not more than two years before you or the district knew or should have known about the alleged action that forms the basis of this filing? _____ Yes _____ No

Before a hearing is actually held:

I/we agree to participate in a resolution meeting provided by the district/AEA: ____ Yes ____ No

I/we agree to participate in a mediation process provided by the state: ____ Yes ____ No

Name, address and phone number of person filing request, if not parent/guardian: _____

Position/role of person filing request, if not parent/guardian: _____

(for example: superintendent, principal, attorney)

Send a completed form to **EACH** of the following:
which you disagree. (**Addresses Available at Your School**)

1. The district that made the decisions with
2. The AEA special education director.
3. Director, Iowa Department of Education
Grimes State Office Building
Des Moines, Iowa 50319-0146



Model Form to Assist Parent(s)/Guardian(s) in Filing a Complaint

A complaint process can be used when you believe a district or area education agency **violated a requirement** of Part B of the Individuals with Disabilities Education Act (IDEA). *The complaint process is not the avenue to use when you are having differences of opinion with educators, such as the type of reading program to use or the amount of support services you believe should be provided for a child.*

Child's Information	_____
	Child's name

	Address where child lives (for contact information)
Parent(s)/Guardian(s) Information	_____
	Name of District, School, and AEA where child lives

	Name of District, School, and AEA where child attends if different from where the child lives
Parent(s)/Guardian(s) Information	Parent(s) Guardian(s) name(s): _____
	Mailing address (or contact information): _____
	City: _____ State: _____ Zip: _____
	Phone/Contact number: _____ E-mail (if available) _____
	<u>Is there another parent/guardian at another address with parental rights?</u> <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes , please complete the following:
	Parent(s) Guardian(s) name(s): _____
	Mailing address (or contact information): _____
	City: _____ State: _____ Zip: _____
	Phone/Contact number: _____ E-mail (if available) _____

Describe the following (use additional sheets of paper if more space is

1. The nature of the problem (including a statement that the public agency violated a requirement of the Individuals with Disabilities Education Act or the Iowa Special Education Rules):
2. The facts of this case relating to the above problem:
3. Your proposed resolution of the problem:

Did the alleged violation occur less than one year prior to the date that the complaint was received by the Department of Education? Yes No

Organization or person filing the complaint: _____

Address: _____

City: _____ State: _____ Zip: _____

If organization, contact person's name: _____

Telephone number or other method of contact: _____

Send a completed form to **EACH** of the following:
Addresses Available at Your School

1. **The district that made the decisions with which you disagree.**
2. **The AEA special education director.**
3. **Director, Iowa Department of Education**
Grimes State Office Building, Des Moines, Iowa 50319-0146