

Summary of Procedural Safeguards

(Parents' Rights)

Individuals with Disabilities Education Act

Revised September 26, 2008

The Individuals with Disabilities Education ACT (IDEA) requires school districts to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA and the U.S. Department of Education regulations. A copy of the Procedural Safeguards Notice must be given to parents only one time a school year, except that a copy must be given to the parents:

- ◆ Upon initial referral or parent request for evaluation;
- ◆ Upon receipt of the first formal written complaint under 34 CFR §§300.151 through 300.153 and upon receipt of the first due process hearing request under §300.507 in a school year;
- ◆ When a decision is made to take a disciplinary action that constitutes a change of placement; and
- ◆ Upon parent request. [34 CFR §300.504 (a)]

GENERAL INFORMATION

Prior Written Notice

- The district must provide you written notice (this is the Conference Summary) whenever the district proposes to initiate or refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.
- For each action the district proposes or refuses to take, the notice describes the action and provides an explanation for taking the action, including the information used to make a decision; describes other choices the district considered and reasons for rejecting those choices; and the district makes sure you understand the procedural safeguards (Parent Rights) and include resources for you to contact for help in understanding Part B of IDEA.

Native Language

- Native language and mode of communication means the language or communication mode normally used by the family and/or child.
- The notice provided to you by the district must be written in language understandable to the general public and 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 mode of communication is not a written language, the district must ensure that the notice is translated for you orally by other means in your native language or other mode of communication; you understand the content of the notice; and there is written evidence that these requirements have been met.

Electronic Mail

- The district may offer to send the following documents by email: prior written notice (Conference Summary), Procedural Safeguards Notice (Parent Rights), and notices relating to a due process complaint (i.e. due process hearing).

Parental Consent

- Consent means that you have been informed, in your native language or mode of communication, of everything the district is requesting to do for your child.
- The district asks for your written consent before the district initially evaluates your child or initially provides services to your child and must make reasonable efforts to obtain your informed consent.
- The district asks you to give your written consent voluntarily; you may refuse or withdraw your consent at any time.
- Withdrawal of consent does not undo any action that has already been done.
- If you refuse to provide consent or fail to respond to a request to provide consent for an initial evaluation, the district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing IDEA's procedural safeguards, such as mediation, an impartial due process hearing and resolution meeting.
 - **Special rules for initial evaluation of wards of the State (*use only when it applicable*)**. If a child is a ward of the State and is not living with his/her parent, the district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if: despite reasonable efforts to do so, the district cannot find the child's parent; the rights of the parents have been terminated in accordance with State law; or a judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent. In no event may the Kentucky Cabinet for Health and Family Services act as a parent under Part B of IDEA.
- If you refuse or do not respond to a request for consent for special education and related services for the first time: the district *will not* ask for a due process hearing and resolution meeting; the district *is not* in violation of the requirement to make a free appropriate public education available to your child; and, *is not* required to have an ARC meeting or develop an IEP for your child for the special education and related services for which your consent was requested.
- The district takes reasonable steps to obtain your consent for a reevaluation; however, if you do not respond, the district may provide a reevaluation of your child.
- If you refuse to provide consent for a reevaluation, the district *may*, but is not required to, ask for a due process hearing and resolution meeting.
- If your child is in a private (or home) school, and you do not provide consent for an initial or reevaluation, the district *may*, but is not required to, request a due process hearing.
- The district will not ask for your consent when reviewing existing data as a part of your child's evaluation or reevaluation or when giving an evaluation to your child that is given to all children, unless consent is required from all parents of all children.

Independent Educational Evaluation

- ❑ If you disagree with the district's evaluation, you may ask for an independent educational evaluation at public expense.
- ❑ If an independent evaluation is conducted at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the district uses when it initiates an evaluation.
- ❑ The district may either provide an independent evaluation by a qualified examiner or file a request for a due process hearing to show the district's evaluation is appropriate. If the district's evaluation is determined appropriate, you have the right to an independent educational evaluation, but not at public expense.
- ❑ You are entitled to one independent educational evaluation at public expense each time the district conducts an evaluation of your child with which you disagree.
- ❑ If you obtain an independent evaluation at your own expense, the district must consider the results of the evaluation if it meets the district's criteria.

CONFIDENTIALITY OF INFORMATION

Notice to Parents

The Kentucky Department of Education (KDE) must give notice that is adequate to fully inform you about confidentiality of personally identifiable information and the notice must be published or announced in newspapers or other media, or both before any major identification, location, or evaluation activity (also known as "child find"). The notice includes:

- ❑ A description of the extent of the notice, in the native language, to all populations in the State;
- ❑ A description of the children for whom confidential information is maintained, the types, methods of gathering the information, and uses of the information;
- ❑ A summary of policies and procedures that school districts and other agencies must follow; and
- ❑ A description of the rights of parents and children regarding this information and under the Family Education Rights and Privacy Act (FERPA).

Access Rights:

- ❑ You have the right to inspect and review any educational records on your child without unnecessary delay and before: any meeting regarding an IEP; any impartial due process hearing; and, no later than 45 calendar days after you have made a request.
- ❑ The school presumes that both parents may see your child's records unless you, as the parent, give the school a court order or other legal document that revokes these rights.
- ❑ You have the right to:
 - ❑ have the records explained to you
 - ❑ ask for copies, for which the district may charge a fee
 - ❑ have someone else inspect and review the records
- ❑ The school keeps a record of everyone who obtains access to your child's records. The school does not keep a record of each time the record is accessed by you as the parent, or the school employees who work directly with your child.

- ❑ If any educational record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.
- ❑ On request, the district must provide you with a list of the types and locations of education records collected, maintained, and used by the district.
- ❑ The district may charge a fee for copies of records, as long as the fee does not prevent you from inspecting and reviewing the record.

Amendment of Records

- ❑ If you believe that information in your child's educational records is inaccurate, misleading, or violates the privacy or other rights of your child, you may request to change the information.
- ❑ If the district refuses to change the information, the district must inform you of the refusal and advise you of the right to a hearing to challenge information in the educational records regarding your child.
- ❑ As a result of the hearing, the district either changes the information or does not change the information. If the information is not changed, the district must inform you of your right to place an explanation in the record with the reason(s) you disagree with the decision.

Consent for Disclosure of Personally Identifiable Information

- ❑ The district asks for your written consent before disclosing personally identifiable information about your child to parties other than officials of the participating agencies.
- ❑ The district asks for your written consent, or the written consent of an eligible student who has reached the age of eighteen (18), before personally identifiable information is released to officials of participating agencies providing or paying for secondary transition services.
- ❑ The district asks for your written consent before releasing information to private school officials of the school in which your child attends if it is not located in the school district in which you live.

Safeguards

- ❑ The district must protect the confidentiality and have a person responsible for ensuring the confidentiality of any personally identifiable information at collection, storage, disclosure, and destruction stages.
- ❑ All persons collecting or using personally identifiable information must receive training regarding the State's policies and procedures on confidentiality under IDEA and the Family Education Rights and Privacy Act.
- ❑ The district must keep a record of the names and positions of the employees who may have access to confidential information.

Destruction

- ❑ The district must inform the parent and student, who is age 18 or older, when confidential information is no longer needed to provide educational services.
- ❑ The district destroys the information at the request of the parent or student who is age 18 or older.

- ❑ The district may maintain a permanent record of the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year.

STATE COMPLAINT PROCEDURES

Complaints

- ❑ Any individual or organization may file a formal written complaint alleging a violation of any Part B (IDEA) requirement by a school district, Kentucky Department of Education (KDE), or any other agency.
- ❑ The complaint must allege a violation that occurred not more than one (1) year before KDE receives the complaint. The complaint shall be mail to the Director, Division of Exceptional Children Services. The address is found in your copy of Procedural Safeguards.
- ❑ KDE generally must resolve a formal written complaint within a 60-day timeline, unless the timeline is properly extended.
- ❑ A formal written complaint maybe resolved through an on-site investigation and written report of the findings, a resolution meeting, mediation or through a due process hearing.

Filing a Due Process Complaint (Due Process Hearing Request)

- ❑ You or the district may file a due process hearing request about any matter relating to a proposal or refusal to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education to your child.
- ❑ The violation must have occurred not more than three (3) years before you or the district knew or should have known about the alleged action.
- ❑ The district must inform you of any free or low-cost legal and other relevant services available if you request the information, or if you or the district file a due process hearing request.
- ❑ The request for a due process hearing is sent to the Kentucky Department of Education and they will provide a qualified hearing officer.

Mediation

- ❑ You and the district may request mediation to settle differences about the identification, evaluation, educational placement, or provision of a free appropriate public education to your child.
- ❑ Mediation is voluntary and cannot be used to deny or delay your right to a due process hearing or any other rights you have under IDEA.
- ❑ The request for mediation is sent to the Kentucky Department of Education and they will provide an impartial mediator.

Child's Placement While the Due Process Request and Hearing are Pending (Stay-Put)

- ❑ Once a due process hearing request is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or district agree otherwise, your child must remain in his or her current education placement.

Resolution Process

- ❑ Within 15 days of receiving notice of your due process complaint, and before the due process hearing begins, the district must convene a meeting with you and the relevant member or members of the Admissions and Release Committee (ARC) to discuss your hearing request and give the district the opportunity to resolve the dispute.
- ❑ You and the district may agree in writing to waive the resolution meeting and agree to use the mediation process.
- ❑ If the district has not resolved the issues raised in your hearing request within 30 days of the receipt of the hearing request, the due process hearing may occur.
- ❑ If a resolution to the dispute is reached at the resolution meeting, then you and the district must enter into a legally binding agreement.
- ❑ You and the district may void the resolution agreement within three (3) business days of the time you signed the agreement.

Hearings on Due Process Complaints/Hearing Requests

- ❑ Whenever a due process hearing request is filed, you or the district involved in the dispute must have an opportunity for an impartial due process hearing.
- ❑ The party (you or the district) that requests the due hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.
- ❑ You or the district must request an impartial hearing on a due process complaint within three years of the date you or the district knew or should have known about the issue addressed in the complaint.
- ❑ KDE will provide an impartial hearing officer.
- ❑ KDE, after deleting any personally identifiable information, must: provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; and make those findings and decisions available to the public.

Appeals

- ❑ A decision made in a due process hearing is final, unless you or the school district appeals the decision to the Exceptional Children Appeals Board (ECAB).
- ❑ The decision made by the ECAB is final unless you or the school district brings a civil action.

Attorneys' Fees

- ❑ In any action or proceeding brought under Part B of the IDEA, if you prevail (win), 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 school district or KDE, to be paid by your attorney, if the attorney: filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or** the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing school district or KDE, 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.

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

- Your child may be removed from their current educational placement to an appropriate interim alternative educational setting as determined by the Admissions and Release Committee, another setting, or suspension for not more than 10 school days in a row during a school year.
- If your child is removed from their current educational placement for more than 10 school days in a school year, the district must provide educational services so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP; and, 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.
- If your child violates the Student Code of Conduct and the behavior is not a manifestation of his/her disability and the disciplinary change of placement would exceed 10 school days in a row, the district may apply the same disciplinary procedures that are applied to students without disabilities, except that the district must provide educational services to your child.
- Your child may be placed in an interim alternative educational setting for up to forty-five (45) school days if your child:
 - Carries a weapon or has a weapon at school, on school premises, or a school function;
 - Knowingly has or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or a school function; or
 - Inflicts serious bodily injury on another person while at school, on school premises, or at a school function.
- If your child is removed from their current educational placement, the ARC will meet to review your child's IEP and placement.

Appeal

- You may file a due process hearing request if you disagree with the placement and/or manifestation decisions.
- The district may file a due process complaint to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.
- Unless you and the district agree otherwise, the child remains in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal has expired.

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

- If your child has not been determined eligible for special education and related services and violates the Student Code of Conduct, you may assert protections under the IDEA if the district has knowledge that your child was a child with a disability before the behavior occurred.

- If the district does not have knowledge that your child is a child with a disability before taking disciplinary action, your child will be subject to the same disciplinary action as those applied to children without disabilities.
- If a request is made to evaluate your child during the time period in which your child is subjected to disciplinary measures, the district will expedite the evaluation and your child will remain in an educational placement determined by school personnel pending the evaluation results.

Referral to and Action by Law Enforcement and Judicial Authorities

- The district is not prohibited from reporting a crime committed by a child with a disability to local authorities.
- If the district reports a crime committed by a child with a disability, the district must ensure that copies of the child's special education records are transmitted for consideration by the authorities to whom the agency reports the crime; and 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).

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AS PUBLIC EXPENSE

- Part B of the IDEA does not require the district to pay for the cost of special education and related services of your child with a disability at a private school or facility, if the district made a free appropriate public education (FAPE) available to your child and you choose to place your child in a private school or facility.