# Part B Notice of Procedural Safeguards Parental Rights for Public School Special Education Students

The material contained in this document is intended to provide general information and guidance regarding special education rights and procedural safeguards afforded to parents of children age 3 through 21 under state and federal law. This document explains a selection of some of the rights and procedural safeguards provided to parents under the Individuals with Disabilities Education Act (IDEA), the implementing regulations at 34 C.F.R Part 300, and applicable Minnesota laws and regulations; it is not a complete list or explanation of those rights. This notice is not a substitute for consulting with a licensed attorney regarding your specific legal situation. This document does not purport to include a complete rendition of applicable state and federal law, and the law may have changed since this document was issued.

## Introduction

This document provides an overview of parental special education rights, sometimes called procedural safeguards. These same procedural safeguards are also available for students with disabilities who have reached the age of 18.

This Notice of Procedural Safeguards must be given to you at least one time per year. 34 C.F.R. § 300.504(a). It must also be given to you:

1. The first time your child is referred for a special education evaluation or if you request an evaluation, 34 C.F.R. § 300.504(a)(1);
2. The first time you file a complaint with the Minnesota Department of Education (MDE) in a school year, 34 C.F.R. § 300.504(a)(2);
3. The first time you or the district requests a due process hearing in a school year, 34 C.F.R. § 300.504(a)(2);
4. On the date the district decides to change the placement of your student by removing the student from school for a violation of the district discipline policy, 34 C.F.R § 300.504(a)(3); or
5. Upon your request, 34 C.F.R. § 300.504(a)(4).

## Prior Written Notice

The district must provide you with prior written notice each time it proposes to initiate or change, or refuses to initiate or change:

- the identification of your child;

- the evaluation and educational placement of your child;
- the provision of a free appropriate public education (FAPE) to your child; or
- when you revoke consent for services for your child in writing and before the district stops providing special education and related services, 34 C.F.R. §§ 300.503(a)(1)-(2) and 300.300(b)(4)(i).

This written notice must include:

1. A description of the action proposed or refused by the district, 34 C.F.R. § 300.503(b)(1);
2. An explanation of why the district proposes or refuses to take the action, 34 C.F.R. § 300.503 (b)(2);
3. A description of each evaluation procedure, assessment, record, or report the district used as a basis for its proposal or refusal, 34 C.F.R. § 300.503(b)(3);
4. A statement that you, as parents of a child with a disability, have protection under these procedural safeguards and information about how you can get a copy of the brochure describing the procedural safeguards, 34 C.F.R. § 300.503(b)(4);
5. Sources for you to contact to obtain assistance in understanding these procedural safeguards, 34 C.F.R. § 300.503(b)(5);
6. A description of other options the IEP team considered and the reasons why those options were rejected, 34 C.F.R. § 300.503(b)(6); and
7. A description of other factors relevant to the district's proposal or refusal, 34 C.F.R. § 300.503(b)(7).

In addition to federal requirements, prior written notice must inform you that, except for the initial placement of your child in special education, the school district will proceed with its proposal for your child's placement, or for providing special education services, unless you notify the district of an objection within 14 days of when the district sent you the prior written notice. Minn. Stat. § 125A.091, subd. 3a(1). The district must also provide you with a copy of the proposed IEP whenever the district proposes to initiate or change the content of the IEP. Minn. R. 3525.3600.

The prior written notice must also state that, if you object to a proposal or refusal in the prior written notice, you must have an opportunity for a conciliation conference, and the school district must inform you of other alternative dispute resolution procedures, including mediation and facilitated IEP team meetings, under Minnesota Statutes, section 125A.091, subdivisions 7-9. Minn. Stat. § 125A.091, subd. 3a(2).

## For More Information

If you need help understanding any of your procedural rights or anything about your child's education, please contact your district's special education director or the person listed below. This notice must be provided in your native language or other mode of communication you may be using. If your mode of communication is not a written language, the district must take steps to translate this notice orally or by other means. The district must ensure that you understand the content of this notice and maintain written evidence that this notice was provided to you in an understandable mode of communication and that you understood the content of this notice. 34 C.F.R. § 300.503(c).

If you have any questions or would like further information, please contact:

Name _____

Phone _____

For further information, you may contact one of the following organizations:

ARC Minnesota (advocacy for persons with developmental disabilities)
www.arcminnesota.org
952-920-0855
1-833-450-1494

Minnesota Association for Children's Mental Health
www.macmh.org
651-644-7333
1-800-528-4511

Minnesota Disability Law Center
www.mndlc.org
612-334-5970 (Twin Cities Metro)
1-800-292-4150 (Greater Minnesota)
612-332-4668 (TTY)

Minnesota Department of Education
www.education.gov
651-582-8689
651-582-8201 (TTY)

PACER (Parent Advocacy Coalition for Educational Rights)
www.pacer.org
952-838-9000
1-800-53-PACER,
952-838-0190 (TTY)

SMRLS Education Law Advocacy Project (Serves families with low-income in 33 southern Minnesota counties)
www.smrls.org
1-877-696-6529

# Electronic Mail

If your school district gives parents the choice to receive notices by email, you can choose to receive your prior written notice, procedural safeguards notice, or notices related to a due process complaint via email. 34 C.F.R. § 300.505.

# Parental Consent

## Definition of Consent

Consent means that you have been fully informed of all information relevant to the activity for which your consent is sought, in your native language, or through another mode of communication. 34 C.F.R. § 300.9(a). In order to consent you must understand and agree in writing to the carrying out of the activity for which your consent is sought. This written consent must list any records that will be released and to whom. 34 C.F.R. § 300.9(b).

## Revocation of Consent

Consent is voluntary and may be revoked in writing at any time. 34 C.F.R. §§ 300.9(c)(1) and 300.300(b)(4). However, revocation of consent is not retroactive; meaning revocation of consent does not negate an action that has occurred after the consent was given and before the consent was revoked. 34 C.F.R. § 300.9(c)(2).

## When the District Must Obtain Your Consent

### *A. Initial Evaluation*

The district must obtain your written and informed consent before conducting its initial evaluation of your child. 34 C.F.R. § 300.300(a)(1)(i) and Minn. Stat. § 125A.091, subd. 5(a). You or a district can initiate a request for an initial evaluation. 34 C.F.R. § 300.301(b). If you do not respond to a request for consent or if you refuse to provide consent for an initial evaluation, the district cannot override your refusal to provide consent. 34 C.F.R. § 300.300(a)(3)(i) and Minn. Stat. § 125A.091, subd. 5(a). An initial evaluation shall be conducted within 30 school days from the date the district receives your permission to conduct the evaluation, unless a conciliation conference or hearing is requested. Minn. R. 3525.2550, subp. 2.

A district will not be found in violation of meeting its child find obligation or its obligations to conduct evaluations and reevaluations if you refuse to consent to or fail to respond to a request for consent for an initial evaluation. 34 C.F.R. § 300.300(a)(3)(ii).

If you consent to an initial evaluation, this consent cannot be construed as being consent for the initial provision of special education and related services. 34 C.F.R. § 300.300(a)(1)(ii).

### *B. Initial Placement and Provision of Special Education Services and Related Services*

The district must obtain your written consent before proceeding with the initial placement of your child in a special education program and the initial provision of special education services and related services to your child determined to be a child with a disability. Minn. Stat. § 125A.091, subd. 3a(1) and 5(a); 34 C.F.R. § 300.300(b)(1).

If you do not respond to a request for consent, or if you refuse to consent to the initial provision of special education and related services to your child, the district may not override your written refusal. Minn. Stat. § 125A.091, subd. 5(a).

If you refuse to provide consent for the initial provision of special education and related services, or you fail to respond to a request to provide consent for the initial provision of special education and related services, the district will not be considered in violation for failure to provide your child with special education and related services for which the district requested consent. 34 C.F.R. § 300.300(b)(4)(i).

### *C. Reevaluations*

Your consent is required before a district conducts a reevaluation of your child. 34 C.F.R. § 300.300(c). If you refuse consent to a reevaluation, the district may not override your written refusal. 34 C.F.R. § 300.300(c)(1)(ii)

and Minn. Stat. § 125A.091, subd. 5(a). A reevaluation shall be conducted within 30 school days from the date the district receives your permission to conduct the evaluation or within 30 days from the expiration of the 14-calendar-day time period during which you can object to the district's proposed action. Minn. R. 3525.2550, subp. 2.

***D. Transition Services***

Your consent is required before personally identifiable information is released to officials of participating agencies providing or paying for transition services. 34 C.F.R. §§ 300.622(a)(2) and 300.321(b)(3).

### When Your Consent is not Required

Except for an initial evaluation and the initial placement and provision of special education and related services, if you do not notify the district of your objection within 14 days of when the district sends the notice of the district's proposal to you, the district's proposal goes into effect even without your consent. Minn. Stat. § 125A.091, subd. 3a(1).

Additionally, your consent is not required for a district to review existing data in your child's educational file as part of an evaluation or a reevaluation. 34 C.F.R. § 300.300(d)(1)(i).

Your consent is also not required for the district to administer a test or other evaluation that is given to all children, unless consent is required from parents of all children. 34 C.F.R. § 300.300(d)(1)(ii).

## Parent's Right to Object and Right to a Conciliation Conference

You have a right to object to any action the district proposes within 14 calendar days of when the district sends you the prior written notice of their proposal. Minn. Stat. § 125A.091, subd. 3a(1). If you object to the district's proposal, you have the right to request a conciliation conference, mediation, facilitated IEP team meeting or a due process hearing. 34 C.F.R. § 300.507; Minn. Stat. §§ 125A.091, subd. 3a(2) and subd.14. Within ten calendar days from the date the district receives notice of your objection to its proposal or refusal in the district's prior written notice, the district will ask you to attend a conciliation conference. Minn. Stat. § 125A.091, subd. 7.

Except as provided under Minnesota Statutes, section 125A.091, all discussions held during a conciliation conference are confidential and are not admissible in a due process hearing. Within five days after the final conciliation conference, the district must prepare and provide to you a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible evidence in any subsequent proceeding. Minn. Stat. § 125A.091, subd. 7.

You and the district may also agree to use mediation or a facilitated individualized education program (IEP) team meeting to resolve your disagreement. Minn. Stat. § 125A.091, subd. 8. You or the district can also request a due process hearing (see section about Impartial Due Process Hearings later in this document).The district must continue to provide an appropriate education to your child during the proceedings of a due process hearing. 34 C.F.R. § 300.518.

## Confidentiality and Personally Identifiable Information

Personally identifiable information is information that includes, but is not limited to, a student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's Social Security number, student number, or biometric record, another indirect identifier, such as the student's date of birth, place of birth, a mother's maiden name, other information that, alone or in combination, is linked to or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty, or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 C.F.R. § 99.3.

Districts and MDE must protect the confidentiality of any personally identifiable data, information, and records they collect, maintain, disclose and destroy. 34 C.F.R. §§ 300.610 and 300.623.

Generally, your written consent is required before a district may disclose personally identifiable information from your child's educational record with anyone other than officials of participating agencies collecting or using the information under the Individuals with Disabilities Education Act (IDEA) or for any purpose other than meeting a requirement of that law. 34 C.F.R §§ 99.3 and 99.31.

When your consent is not required to share personally identifiable information. Your consent, or the consent of an eligible student (age 18 or older), is not required before personally identifiable information contained in education records is released to officials of a school district or the state department of education for meeting IDEA requirements. 34 C.F.R. § 300.622(a).

Your child’s educational records, including disciplinary records, can be transferred without your consent to officials of another school, district, or postsecondary institution if your child seeks to enroll in or attend the school or institution or a school in that district. 34 C.F.R. § 99.31(a)(2).

Disclosures made without your consent must be authorized under the Family Educational Rights and Privacy Act (FERPA). Please refer to 34 C.F.R. Part 99 for additional information on consent requirements concerning data privacy under federal law.

## Directory Information

Directory information can be shared without your consent. This type of information is data contained in an education record of your child that would not generally be considered harmful or an invasion of privacy if disclosed. 34 C.F.R. § 99.3.

Directory information includes, but is not limited to, a student's address, telephone number, email address, date and place of birth, major field of study, grade level, enrollment status, dates of attendance, participation in official activities and sports, weight and height of athletic team members, degrees, honors, and awards received, the most recent educational agency or institution attended, and a student ID number, user ID, or other unique personal identifier used for accessing or communicating electronically if certain criteria are met. Directory

information does not include a student's Social Security number or a student ID number not used in connection with accessing or communicating electronically as provided under federal law. 34 C.F.R. § 99.3.

Districts must give you the option to refuse to let the district designate any or all data about your child as directory information. This notice can be given to you by any means reasonably likely to inform you or an eligible student of this right. Minn. Stat. § 13.32, subd. 5. If you do not refuse to release the above information as directory information, that information is considered public data and can be shared without your consent.

Data about you (meaning parents) is private data but can be treated as directory information if the same procedures that are used by a district to designate student data as directory information are followed. Minn. Stat. § 13.32, subd. 2(c).

## Written Annual Notice Relating to Third-Party Billing for IEP Health-Related Services

Before billing Medical Assistance or MinnesotaCare for health-related services the first time, and each year, the district must inform you in writing that:

1. The district will share data related to your child and health-related services on your child's IEP with the Minnesota Department of Human Services to determine if your child is covered by Medical Assistance or MinnesotaCare and whether those services may be billed to Medical Assistance or MinnesotaCare.
2. Before billing Medical Assistance or MinnesotaCare for health-related services the first time, the district must obtain your consent, including specifying the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided), the purpose of the disclosure, the agency to which the disclosure may be made (i.e., the Department of Human Services) and which specifies that you understand and agree that the school district may access your (or your child's) public benefits or insurance to pay for health-related services.
3. The district will bill Medical Assistance or MinnesotaCare for the health-related services on your child's IEP. Minn. Stat. § 125A.21, subd. 2(c)(1).
4. The district may not require you to sign up for or enroll in Medical Assistance or MinnesotaCare or other insurance programs in order for your child to receive special education services.
5. The district may not require you to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for health services provided, but may pay the cost that you otherwise would be required to pay.
6. The district may not use your child's benefits under Medical Assistance or MinnesotaCare if that use would: decrease available lifetime coverage or any other insured benefit; result in your family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time your child is in school; increase your premiums or lead to the discontinuation of benefits or insurance; or risk your loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
7. You have the right to receive a copy of education records the district shares with any third party when seeking reimbursement for IEP health-related services. Minn. Stat. § 125A.21, subd. 2(c)(2).

You have the right to stop your consent for disclosure of your child's education records to a third party, including the Department of Human Services, at any time. If you stop consent, the district may no longer share your child's education records to bill a third party for IEP health-related services. You can withdraw your consent at any time, and your child's IEP services will not change or stop. Minn. Stat. § 125A.21, subd. 2(c)(3).

## Independent Educational Evaluations

An independent educational evaluation (IEE) is an evaluation by a qualified person(s) who is not an employee of your district. 34 C.F.R. § 300.502(a)(3)(i). You may ask for an IEE at school district expense if you disagree with the district's evaluation. 34 C.F.R. § 300.502(b)(1). A hearing officer may also order an independent educational evaluation of your child at school district expense during a due process hearing. 34 C.F.R. § 300.502(d).

Upon request for an IEE, the district must give you information regarding its criteria for selection of an independent examiner and information about where an independent education evaluation may be obtained. 34 C.F.R. § 300.502(a)(2).

If you request an IEE, the district must, without delay, ensure that it is provided at public expense or request a hearing to determine the appropriateness of its evaluation. 34 C.F.R. § 300.502(b)(2). If the district goes to hearing and the hearing officer determines the district's evaluation is appropriate, you still have the right to an independent evaluation, but not at public expense. 34 C.F.R. § 300.502(b)(3).

If you obtain an IEE, the results of the evaluation must be considered by the IEP team and may be presented as evidence at a due process hearing regarding your child. 34 C.F.R. § 300.502(c).

## Education Records

### Definition of an Education Record

Under federal law an education record means those records that are directly related to a student and that are maintained by the department or the district.

### Your Access to Records

If you want to look at your child's education records, the district must give you access to those records for your review. Education records include most of the information about your child that is held by the school. 34 C.F.R. § 300.613(a). However, information held solely by your child's teacher for his or her own instructional use may not be included in the education records. Minn. Stat. § 13.32, subd. 1(a).

The district must allow you to review the records without unnecessary delay, and before any meeting regarding an IEP, or any hearing or resolution session about your child. 34 C.F.R. § 300.613(a). In addition, the district must comply with your request to review your child's education records immediately, if possible, or within 10 days of the date of the request (excluding Saturdays, Sundays and legal holidays), if immediate compliance is not possible. Minn. Stat. § 13.04, subd. 3.

Your right to inspect and review records includes the right to:

1. An explanation or interpretation from the district of your child's records upon request, 34 C.F.R. § 300.613(b)(1); Minn. Stat. § 13.04, subd. 3;
2. Have your representative inspect and review the records on your behalf, 34 C.F.R. § 300.613(b)(3);
3. Request that the district provide copies of your child's educational records to you, 34 C.F.R. § 300.613(b)(2); Minn. Stat. § 13.04, subd. 3; and
4. Review your child's records as often as you wish in accordance with state law, 34 C.F.R. § 300.613(c). State law provides that if you have been shown private data and have been informed of its meaning, that data does not need to be disclosed to you for a period of 6 months unless a dispute or action is pending or new information is created or collected. Minn. Stat. § 13.04, subd. 3.

## Transfer of Rights

Your rights regarding accessing your child's education records generally transfer to your child at age 18. 34 C.F.R. §§ 300.625 and 99.5(a). Notice must be provided to you and your child regarding this transfer of rights. 34 C.F.R. § 300.520(a)(3).

## Records on More Than One Child

If any education record includes information on more than one child, you have the right to inspect and review only information relating to your child. 34 C.F.R. § 300.615. You can seek consent to review and inspect education records that include information about children in addition to your own, but those parents of those children have a right to refuse your request for consent.

## List of Types and Locations of Information

Upon your request, the district and the department must provide you with a list of the types and locations of education records they collect, maintain or use. 34 C.F.R. § 300.616.

## Record of Access by Others

The district must keep a record of each request for access to, and each disclosure of, personally identifiable information in your child's education records. This record of access must include the name of the individual who made the request or received personally identifiable information from your child's education records, the date access was given and the purpose of the disclosure or the individual's legitimate interest in the information. 34 C.F.R. §§ 300.614 and 99.32.

## Consent to Release Records

Generally, your consent is required before personally identifiable information is released to unauthorized individuals or agencies. 34 C.F.R. §§ 300.622(a) and 99.30(a); Minn. Stat. § 13.05, subd. 4(d). The consent must be in writing and must specify the individuals or agencies authorized to receive the information: the nature of the information to be disclosed; the purpose for which the information may be used; and a reasonable

expiration date for the authorization to release information. 34 C.F.R. § 99.30(b); Minn. Stat. § 13.05, subd. 4(d). Upon request, the district must provide you with a copy of records it discloses after you have given this consent. 34 C.F.R. § 99.30(c).

The district may not disclose information contained in your child's IEP, including diagnosis and treatment information, to a health plan company without your signed and dated consent. Minn. Stat. § 125A.21, subd. 7.

## Fees for Searching, Retrieving and Copying Records

The district may not charge a fee to search or retrieve records. However, if you request copies, the district may charge a reasonable fee for the copies, unless charging that fee would prevent you from exercising your right to inspect and review the education records because you cannot afford to pay it. 34 C.F.R. §§ 300.617 and 99.11; Minn. Stat. § 13.04, subd. 3.

## Amendment of Records at Parent's Request

If you believe that information in your child's records is inaccurate, misleading, incomplete or in violation of your child's privacy or other rights, you may request in writing that the district amend or remove the information. 34 C.F.R. §§ 300.618(a) and 99.20(a); Minn. Stat. § 13.04, subd. 4.

The district must decide within a reasonable time whether it will amend the records. 34 C.F.R. §§ 300.618(b) and 99.20(b). If the district decides not to amend the records, it must inform you that you have the right to a hearing to challenge the district's decision. 34 C.F.R. §§ 300.618(c), 300.619 and 99.20(c). If, as a result of that hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of your child's privacy right, it must inform you that you have the right to include a statement of your comments and disagreements alongside the challenged information in your child's education records. 34 C.F.R. § 300.620(b). A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA. 34 C.F.R. § 300.621.

## Transfer of Records

Minnesota Statutes require that a district, a charter school, or a nonpublic school transfer a student's educational records, including disciplinary records, from a school a student is transferring from to a school in which a student is enrolling within 10 business days of a request. Minn. Stat. § 120A.22, subd. 7.

## Destruction of Records

The district must inform you when personally identifiable information is no longer needed in order to provide education services to your child. 34 C.F.R. § 300.624(a). That information must be destroyed at your request. However, the school may retain a permanent record of your child's name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed. 34 C.F.R. § 300.624(b).

Under federal law, destruction means the physical removal of personal identifiers from information so that the information is no longer personally identifiable. Thus, the student's record does not need to be physically

destroyed to comply with your request to destroy special education related records. Districts can appropriately comply with this requirement by removing personally identifiable information from the student's records. The choice of destruction method generally lies with the school district. 34 C.F.R. § 300.611; Letter to Purcell, 211 IDELR 462 (OSEP, 1987); and Klein Indep. Sch. Dist., 17 IDELR 359 (SEA TC, 1990).

The district shall not destroy any education records if there is an outstanding request to inspect or review the records. 34 C.F.R. § 99.10(e).

Despite your request to destroy records a district can keep certain records necessary to comply with the General Education Provision Act (GEPA), which requires that recipients of federal funds keep records related to the use of those funds. Letter to New, 211 IDELR 473 (OSEP, 1987); 34 C.F.R. §300.611(a); and 20 U.S.C. Ch. 31, sec. 1232(f)(a). You may want to maintain certain special education records about your child for documentation purposes in the future, such as for applying for SSI benefits.

## Mediation

Mediation is a free, voluntary process to help resolve disputes. You or your district may request mediation at no charge from the Minnesota Department of Education's Special Education Alternative Dispute Resolution program at 651-582-8689. Mediation uses a neutral third party trained in dispute resolution techniques. Mediation may not be used to deny or delay your right to a due process hearing. Both you and district staff must agree to try mediation before a mediator can be assigned. At any time during the mediation, you or the district may end the mediation. 34 C.F.R. §§ 300.506 and 300.152(a)(3)(ii).

If you and the district resolve all or a portion of the dispute or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is in writing and signed by both you and the district and that both parties receive a copy of the document. The written resolution or agreement shall state that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The resolution or agreement is legally binding on both you and the district and is enforceable in state or federal district court. You or the district can request another mediation to resolve a dispute over implementing the mediation agreement, if needed. Minn. Stat. § 125A.091, subd. 10.

## Filing a Written Special Education State Complaint

Any organization or individual may file a complaint with the Minnesota Department of Education (MDE). 34 C.F.R. § 300.153(a). Complaints sent to MDE must:

1. Be in writing and be signed by the individual or organization filing the complaint, 34 C.F.R. § 300.153(a);
2. Allege violations of state or federal special education law or rule, 34 C.F.R. § 300.153(b)(1);
3. State the facts upon which the allegation is based, 34 C.F.R. § 300.153(b)(2);
4. Include the name, address and telephone number of the person or organization making the complaint, 34 C.F.R. § 300.153(b)(3);

5. Include the name and address of the residence of the child and the name of the school the child is attending, 34 C.F.R. § 300.153(b)(4)(i)(ii);
6. A description of the nature of the child's problem; including facts relating to the problem, 34 C.F.R. § 300.153(b)(4)(iv);
7. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed, 34 C.F.R. § 300.153(b)(4)(v); and
8. Be forwarded to the public agency providing services to the child at the same time the complaint is sent to MDE, 34 C.F.R. § 300.153(d).

The complaint must be sent to:

Minnesota Department Education
Division of Assistance and Compliance
Due Process Supervisor
400 NE Stinson Blvd
Minneapolis, MN 55413
Phone: 651.582.8689/Fax: 651.582.8725

The complaint must be received by MDE no later than one year after the alleged violation occurred. 34 C.F.R. § 300.153(c). MDE will issue a written decision within 60 days, unless exceptional circumstances require a longer time or you or the district agree to extend the time to participate in mediation. 34 C.F.R. § 300.152(a) and (b). The final complaint decision may be appealed to the Minnesota Court of Appeals by you (the parent) or the school district injured-in-fact by the decision within 60 days of receiving notice of the final decision.

## Impartial Due Process Hearing

Both you and the district have a right to file a due process complaint and request an impartial due process hearing in writing within two years of the date you or the agency knew or should have known about the alleged action that forms the basis of the due process complaint. Minn. Stat. § 125A.091, subd. 14(a) and 34 C.F.R. §§ 300.507 and 300.511(e).

A due process complaint can be filed regarding a proposal or refusal to initiate or change a child's evaluation, IEP, educational placement, or to provide FAPE. Minn. Stat. § 125A.091, subd. 14(a).

A due process complaint may address any matter related to the identification, evaluation, educational placement, manifestation determination or provision of a free and appropriate public education of your child. Minn. Stat. § 125A.091, subd. 12. Within 15 days of receiving notice of your due process complaint, and prior to the due process hearing, the school district must arrange for a resolution meeting with you and the relevant members of the IEP team who have knowledge of the facts alleged in the due process complaint. 34 C.F.R. § 300.510(a).

The purpose of this meeting is for you to discuss the due process complaint, and the facts that form the basis of the due process complaint, and to allow the school district an opportunity to resolve the dispute that is the basis for the due process complaint. 34 C.F.R. § 300.510(a)(2).

The resolution meeting need not be held if you and the school district agree in writing to waive the meeting or agree to mediation. 34 C.F.R. § 300.510(a)(3). A resolution meeting is also not required to be held when the district is the filing party. 34 C.F.R. 300.510(a) cmts. at 71 F.R. 46700 (2006).

If the matter is not resolved within 30 days of receipt of the due process complaint, the hearing timelines begin. 34 C.F.R. § 300.510(b)(1).

If the school district is unable to obtain your participation in the resolution meeting or mediation after reasonable efforts have been made, and the school district does not agree to waive the meeting in writing, the school district may, at the conclusion of the 30-day period, request that a hearing officer dismiss your due process complaint. 34 C.F.R. § 300.510(b)(4).

## Loss of Right to a Due Process Hearing

***NOTE***: Due to an interpretation of state law by the 8th Circuit Court of Appeals, if your child changes school districts and you do not file a due process complaint before your child enrolls in a new district, you may lose the right to have a due process hearing about any special education issues that arose in the previous district. *See Thompson v. Bd. of the Special Sch. Dist. No. 1, 144 F.3d.574 (8th Cir. 1998)*. You do still have a right to file a due process complaint about special educational issues that may arise in the new district where your child is attending.

## Procedures for Initiation of a Due Process Hearing

Upon filing a written due process complaint, the district must give you a copy of this procedural safeguard notice and a copy of your rights at hearing. 34 C.F.R. § 300.504(a)(2). If you or the district file a due process complaint, the other party must be provided with a copy of the complaint and submit the complaint to MDE. Once it receives the request, MDE must give a copy of the procedural safeguards notice to you. Minn. Stat. § 125A.091, subd. 14(d). All written requests must include:

1. The name of your child, 34 C.F.R. § 300.508(b)(1); Minn. Stat. § 125A.091, subd. 14(b);
2. The address of your child, 34 C.F.R. § 300.508(b)(2); Minn. Stat. § 125A.091, subd. 14(b);
3. The name of the school your child is attending, 34 C.F.R. § 300.508(b)(3); Minn. Stat. § 125A.091, subd. 14(b);
4. A description of the problem(s), including your view of the facts, 34 C.F.R. § 300.508(b)(5); Minn. Stat. § 125A.091, subd. 14(b); and
5. A proposed resolution of the problem to the extent known and available to you at the time, 34 C.F.R. § 300.508(b)(6); Minn. Stat. § 125A.091, subd. 14(b).

MDE maintains a list of qualified hearing officers. Upon receipt of a written due process complaint, MDE will appoint a hearing officer from that list to conduct the hearing. Minn. Stat. § 125A.091, subd. 13. Below are a few of your rights at hearing. This is not a complete list of rights.

Both you and the district have the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, 34 C.F.R. § 300.512(a)(1);
2. Present evidence and confront, cross-examine and compel the attendance of witnesses, 34 C.F.R. § 300.512(a)(2);
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing, including evaluation data and recommendations based on that data, 34 C.F.R. § 300.512(a)(3); and
4. Receive a free copy of the hearing transcript or electronic recording of findings of fact and decisions, 34 C.F.R. §§ 300.512(a)(4)-(a)(5) and (c)(3).

As a parent, you, specifically, have the right to:

1. Have your child, who is the subject of the hearing, present, 34 C.F.R. § 300.512(c)(1);
2. Open the hearing to the public, 34 C.F.R. § 300.512(c)(2); and
3. Have the record or transcript of the hearing and the hearing officer's findings of fact, conclusions of law and decisions made provided to you at no cost. 34 C.F.R. § 300.512(c)(3); Minn. Stat. § 125A.091, subd. 12.

## Responding to a Due Process Complaint

If you file a due process complaint and you did not previously receive a prior written notice from the district about the subject matter of the complaint, the district must send you a written explanation of why the district refused to take the action raised in the complaint within 10 days of receiving your complaint. This explanation must include a description of other options considered by the IEP team, why those options were rejected, a description of each evaluation procedure, assessment, record, or report that the district used as the basis for the proposed or refused action, and a description of the factors relevant to the district's proposal or refusal decision. Minn. Stat. § 125A.091, subd. 14(e)(1).

The district can assert that the due process complaint does not meet the requirements under state law. A due process complaint is considered sufficient unless the party who received the request notifies the hearing officer in writing within 15 days of receiving the request that they believe the request does not meet statutory requirements. The hearing officer must determine whether the due process complaint meets statutory requirements within five days of receiving the complaint and notify the parties. Minn. Stat. § 125A.091, subd. 14(e) (1) and (2).

Upon receiving your due process complaint, the district must also send you a written response that addresses the issues you raised in the complaint within 10 days of receiving the request. Minn. Stat. § 125A.091, subd. 14(f).

## Disclosure of Additional Evidence Before a Hearing

A prehearing conference must be held within five business days of the date the commissioner appoints a hearing officer. This conference can be held in person, at a location within the district, or by telephone. Minn. Stat. § 125A.091, subd. 15. At least five business days before a hearing, you and the district must disclose to each other all evaluations of your child completed by that date and recommendations based on those

evaluations that are intended to be used at the hearing. 34 C.F.R. § 300.512(b)(1). A hearing officer may refuse to allow you to introduce any undisclosed evaluations or recommendations at the hearing without consent of the other party. 34 C.F.R. § 300.512(b)(2).

## The Hearing Decision

A hearing decision must be issued and provided to each party within 45 calendar days, or within an appropriately extended time period, upon the expiration of the 30-day resolution period after the due process complaint was received by the state agency. 34 C.F.R. § 300.515; Minn. Stat. § 125A.091, subd. 20(a). A hearing officer may extend the time beyond the 45-day period if requested by either party for good cause shown on the record. 34 C.F.R. § 300.515(c); Minn. Stat. § 125A.091, subd. 18, 20(a). A hearing officer must conduct oral arguments in a hearing at a time and place that is reasonably convenient to you and your child. Minn. Stat. § 125A.091, subd. 20(a). A hearing officer's decision on whether your child received FAPE must be based on evidence and arguments that directly relate to FAPE. 34 C.F.R. § 300.513. The hearing decision is final unless you or the district files a civil action. 34 C.F.R. §§ 300.514(a)-(b) and 300.516(a). A hearing officer lacks the authority to amend a decision except for clerical and mathematical errors. Minn. Stat. § 125A.091, subd. 20(b).

## Separate Due Process Complaint

You have the right to file a separate due process complaint on an issue separate from a due process complaint already filed. 34 C.F.R. § 300.513(c).

## Free or Low-Cost Legal Resources

The district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or if you or the school district file a due process complaint. 34 C.F.R. § 300.507(2)(b). A legal resource list is also available on MDE's Special Education Hearings webpage (MDE > Select Students and Families > Special Education > Conflicts in Special Education > Special Education Due Process Hearings).

## Complaint and Hearings Database

Final decisions on special education complaints and due process hearings are available to the public on the MDE website. 34 C.F.R. § 300.513(d). MDE maintains a public database and makes decisions available that are redacted, removing all personally identifiable information. This database is available on MDE's website > Data Center > Data Reports and Analytics > Complaints and Hearing Decisions (https://public.education.mn.gov/MDEAnalytics/DataTopic.jsp?TOPICID=366).

Civil Action

When you or the district disagrees with the findings or decisions made by a hearing officer, either party may file a court action. The action may be brought in federal district court or the state court of appeals. 34 C.F.R. §§ 300.514(b) and 300.516(a). Different standards of review apply in each court. An appeal to the state court of appeals must be made within 60 calendar days of your receipt of the decision. Minn. Stat. § 125A.091, subd. 24.

An appeal to federal district court must be made within 90 days of the date of the decision. 34 C.F.R. § 300.516(b); Minn. Stat. § 125a.091, subd. 24.

## Placement During a Hearing or Civil Action

During a hearing or court action, unless you and the district agree otherwise, your child will remain in the educational placement where he/she is currently placed and must not be denied initial admission to school. 34 C.F.R. §§ 300.518(a) and (b) and 300.533. This is commonly referred to as the "stay-put" rule.

Two exceptions to the "stay-put" rule exist:

1. Students may be removed from their educational setting for not more than 45 school days to an interim alternative educational placement for certain weapon, drug or serious bodily injury violations, 34 C.F.R. § 300.530(g)(1)-(3); and
2. A hearing officer's decision agreeing with you that a change in placement is appropriate as the "stay-put" placement during subsequent appeals, 34 C.F.R. § 300.518(d).

## Expedited Hearings

You (the parent) or the district can file a due process complaint and request an expedited hearing in the following situations:

1. Whenever you dispute the district's proposal to initiate or change the identification, evaluation or educational placement of your child or the district's provision of FAPE to your child, Minn. Stat. § 125A.091, subd. 14(a); 34 C.F.R. § 300.532(a) and (c)(1); 34 C.F.R. 300.507(a) and 34 C.F.R. § 300.503(a)(1);
2. Whenever you dispute the district's refusal to initiate or change the identification, evaluation or educational placement of your child or the district's provision of FAPE to your child, Minn. Stat. § 125A.091, subd. 14(a); 34 C.F.R. § 300.532(a) and (c)(1); 34 C.F.R. § 300.507(a); 34 C.F.R. § 300.503(a)(2);
3. Whenever you dispute the manifestation determination, 34 C.F.R. §§ 300.530 and 300.532(a); and
4. Whenever the district believes that maintaining the current placement of your child is substantially likely to result in injury to the child or to others, 34 C.F.R. § 300.532(b)(2)(ii).

You or a school district may file a written due process complaint and request an expedited due process hearing as described above. Minn. Stat. § 125A.091, subd. 19; 34 C.F.R. § 300.532(c)(1).

## Timelines for Expedited Hearings

Expedited hearings must be held within 20 school days of the date the expedited due process complaint is filed. The hearing officer must issue a decision within 10 school days after the hearing. Minn. Stat. § 125A.091, Subd. 19; 34 C.F.R. § 300.532(c)(2). A resolution meeting must occur within 7 days of receiving the expedited due process complaint unless you and the school district agree in writing to either waive the resolution meeting or use the mediation process. Minn. Stat. § 125A.091, subd. 19; 34 C.F.R. § 300.532(c)(3) and (3)(i). The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receiving the request. Minn. Stat. § 125A.091, subd. 19; 34 C.F.R. § 300.532(c)(3)(ii).

## Dismissal of Due Process Complaint

If the school district is unable to obtain your participation in the resolution meeting or mediation after reasonable efforts have been made and the school district does not agree to waive the meeting in writing, the school district may, at the conclusion of the 30-day period, request that a hearing officer dismiss your due process complaint. 34 C.F.R. § 300.510(b)(4).

## Placement by a Hearing Officer

A hearing officer may decide to move your child to an interim alternative educational setting for up to 45 school days if the hearing officer determines your child is substantially likely to injure themself or others if they remain in the current placement. 34 C.F.R. § 300.532(b)(2)(ii).

## Right to Appeal Decision

You or the district can appeal the decision of a hearing officer in an expedited due process hearing. 34 C.F.R. §§ 300.532(c)(5) and 300.514.

## Interim Alternative Educational Placement

The district may change your child's educational placement for up to 45 school days, if your child:

1. Carries a dangerous weapon to or possesses a dangerous weapon at school, on school premises, or at a school function under the jurisdiction of the school district or MDE as defined in federal law, 34 C.F.R. § 300.530(g)(1);
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the school district or MDE. This does not include alcohol or tobacco, 34 C.F.R. § 300.530(g)(2); or
3. Inflicts serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district or MDE as defined in federal law, 34 C.F.R. § 300.530(g)(3).

On the date the district decides to remove your child and the removal is a change of placement of a child with a disability because of a violation of a code of student conduct, the school district must notify you of that decision, and provide you with the procedural safeguards notice. 34 C.F.R. § 300.530(h).

The IEP team determines the interim alternative educational setting and appropriate special education services. 34 C.F.R. §§ 300.530(d)(5) and 300.531. Even though this is a temporary change, it must allow your child:

1. To continue to participate in the general education curriculum and progress towards meeting goals set out in your child's IEP, although in a different setting, 34 C.F.R. §§ 300.530(d)(1)(i) and (d)(4); and
2. Include services and modifications designed to prevent the behavior from recurring, 34 C.F.R. § 300.530(d)(1)(ii).

If your child is placed in an interim alternative educational setting, an IEP meeting must be convened within 10 school days of the decision. 34 C.F.R. § 300.530(e)(1). At this meeting, the team must discuss behavior and its

relationship to your child's disability. The team must review evaluation information regarding your child's behavior, and determine the appropriateness of your child's IEP and behavior plan. The team will then determine if your child's conduct was caused by, or had a direct relationship to his or her disability, or if your child's conduct was the direct result of the school district's failure to implement the IEP. 34 C.F.R. § 300.530(e)(1).

### Attorney's Fees for Hearings

You may be able to recover attorney fees if you prevail in a due process hearing. 34 C.F.R. § 300.517(a)(1)(i). A judge may make an award of attorney's fees based on prevailing rates in your community. 34 C.F.R. § 300.517(c)(1). The court may reduce an award of attorney's fees if it finds that you unreasonably delayed the settlement or decision in the case. 34 C.F.R. § 300.517(c)(4)(i). If the district prevails and a court agrees that your request for a hearing was for any improper purpose, you may be required to pay the district's attorney's fees. 34 C.F.R. § 300.517(a)(iii).

## Exclusions and Expulsion of Pupils With a Disability

Before your child with a disability can be expelled or excluded from school, a manifestation determination must be held. Minn. Stat. § 121A.43(d). If your child's misbehavior is related to his or her disability, your child cannot be expelled.

When a child with a disability is excluded or expelled under the Pupil Fair Dismissal Act, Minnesota Statutes Sections 121A.41-56, for misbehavior that is not a manifestation of the child's disability, the district shall continue to provide special education and related services after the period a period of suspension, if imposed. Minn. Stat. § 121A.43(d).

### Disciplinary Removals

If a child with a disability is removed from his or her current educational placement, this is considered a change of placement if:

1. The removal is for more than 10 school days in a row, 34 C.F.R. § 300.536(a)(1); or
2. Your 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 year, 34 C.F.R. § 300.536(a)(2)(i);
    b. Your child's behavior is substantially similar to your child's behavior in previous incidents that resulted in a series of removals, 34 C.F.R. § 300.536(a)(2)(ii); and
    c. Of additional factors such as the length of each removals, the total amount of time your child has been removed, and the proximity of the removals to one another, 34 C.F.R. § 300.536(a)(2)(iii).

The determination of whether a pattern of removals constitutes a change of placement is made by the district. 34 C.F.R. § 300.536(b)(1). If this determination is challenged it is subject to review through due process and judicial proceedings. 34 C.F.R. § 300.536(b)(2).

## Children Not Determined Eligible for Special Education and Related Services

If your child has not been determined eligible for special education and related services and violates a code of student conduct, and the school district knew before the discipline violation that your child was a child with a disability then your child can utilize the protections described in this notice. 34 C.F.R. § 300.534(a).

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

1. You expressed concern in writing to supervisory or administrative personnel at the district or to your child's teacher that your child is in need of special education and related services, 34 C.F.R. § 300.534(b)(1);
2. You requested an evaluation related to eligibility for special education and related services under Part B of the IDEA, 34 C.F.R. § 300.534(b)(2); or
3. Your child's teacher or other district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the district's director of special education or to other district supervisory staff, 34 C.F.R. § 300.534(b)(3).

## Exceptions to a District's Knowledge

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

1. You have previously refused consent for an evaluation of your child or you have previously refused special education services, 34 C.F.R. § 300.534(c)(1)(i)-(ii); or
2. Your child has already been evaluated and determined to not be a child with a disability under Part B of IDEA, 34 C.F.R. § 300.534(c)(2).

## Conditions that Apply if There is No Basis of Knowledge

If a district does not have knowledge that your child is a child with a disability prior to taking disciplinary measures against your child, your child may be subjected to similar disciplinary consequences that are applied to children without disabilities who engage in similar behaviors. 34 C.F.R. § 300.534(d).

If a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. 34 C.F.R. § 300.534(d)(2)(i). Until the evaluation is complete, your child remains in the educational placement determined by the district, which can include suspension or expulsion without educational services. 34 C.F.R. § 300.534(d)(2)(ii). In Minnesota, regular special education services are provided on the sixth day of a suspension and alternative education services are provided.

# Referral to and Action by Law Enforcement and Judicial Authorities

A district can report a crime committed by a child with a disability to appropriate authorities and State law enforcement and judicial authorities can exercise their responsibilities under the law related to crimes committed by a child with a disability. 34 C.F.R. § 300.535(a).

### Transmittal of Records

If a district reports a crime committed by a child with a disability, the district must ensure that copies of the child's special education and disciplinary records are transmitted to the appropriate authorities to whom the crime is reported for consideration. However, the district may only transmit copies of your child's special education and disciplinary records to the extent permitted by FERPA. 34 C.F.R. § 300.535(b).

## Private School Placement

IDEA does not require the district to pay for the cost of educating your child, including special education and related services, at a private school if the district made FAPE available to your child and you chose to place your child in a private school. 34 C.F.R. § 300.148(a). However, you may be able to recover tuition expenses for a private school placement if you informed the district of your intent to enroll your child in a private school at public expense in a timely manner and if a hearing officer finds that the district did not promptly make FAPE available to your child prior to your child being enrolled in the private school and if the private placement is appropriate. You must inform the district of your intent to place your child in a private placement at public expense at the most recent IEP meeting prior to removal of your child from public school or by written notice to the district at least 10 business days prior to removal of your child from public school. 34 C.F.R. § 300.148(c)-(d).

Your notice must state why you disagree with the district's proposed IEP or placement. If a hearing officer or court finds that the district failed to provide or is unable to provide your child with an appropriate education and that the private placement is appropriate, you may be reimbursed for the cost of the private placement. Failure to tell the school of your intent to enroll your child in a private school at public expense, failure to make your child available for evaluation prior to placing your child in a private school after the district has given you notice of its intent to evaluate your child, or other unreasonable delay on your part could result in a reduction or denial of reimbursement for the private school placement. 34 C.F.R. § 300.148(d).

A hearing officer cannot reduce or deny the cost of reimbursement if: the district prevented you from being provided with this notice; you did not receive notice of your responsibilities as discussed above in this section; or if compliance with the above requirements would likely result in physical harm to your child and if you failed to provide the required notice because you cannot write in English or if compliance with the above requirements would likely result in serious emotional harm to your child. 34 C.F.R. § 300.148(e).