Notice of Procedural Safeguards
Individuals with Disabilities Education Act (IDEA)

U.S. Virgin Islands Department of Education
State Office of Special Education
1834 Kongens Gade
St. Thomas, Virgin Islands 00802

2022

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The Notice of Procedural Safeguards brochure explains rights available to a parent or child under the Individuals with Disabilities Education Act (IDEA). As a parent of a child with a disability you have certain rights under federal and state law. One of those rights is to be informed, in writing and in your native language or other mode of communication that you may use, of the procedural safeguards available to you. Should you have questions about your rights or this document, please contact your local education agency (LEA) where your child attends school or the Virgin Islands Department of Education, State Office of Special Education (SOSE).

Virgin Islands Department of Education
State Office of Special Education
1834 Kongens Gade
St. Thomas, Virgin Islands 00802

St. Croix District
Virgin Islands Department of Education
Insular Superintendent
2133 Hospital Street
Christiansted, St. Croix, VI 00820-4665
(340) 773-1095

St. Thomas/St. John District
Virgin Islands Department of Education
Insular Superintendent
1834 Kongens Gade
St. Thomas, VI 00802-6746
(340) 774-0100

Virgin Islands Advocacy Organizations

Disability Rights Center of the Virgin Islands **https://drcvi.org**

MAIN Office
63 Cane Carlton
Frederiksted, VI 00840
(340) 772-1200
(340) 772-1280

STT Office
9003 Havensight Mall
St Thomas, VI 00802
(340) 776-4303

Virgin Islands Developmental Disabilities Council **https://www.viddc.org**
P.O. Box 6324
Christiansted, VI 00823
(340) 719-0076
viddcouncil@gmail.com

Virgin Islands Low or No Cost Legal Service Providers

- Legal Services of the Virgin Islands, Inc. – (340) 718-2626
- Virgin Islands Bar Association – (340) 778-7497

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FOR PARENTS

This notice is for parents, surrogate parents, and adult students. References to "you" or "parent" and "your child" also apply to surrogate parents and adult students. References in this notice to the "local education agency (LEA)" includes each school district responsible for public school programs within its boundaries.

GENERAL INFORMATION

The Individuals with Disabilities Education Act (IDEA) requires LEAs 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 federal regulations. For the purposes of this Notice, the references to LEA also pertain to any public agency or preschool serving students under the IDEA. A copy of this notice must be given to a parent at least one time a school year, and a copy must also be given to the parent at certain additional times listed below:

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first SOSE complaint under 34 C.F.R. §§300.151 through 300.153 and upon receipt of the first request for a due process hearing under 34 C.F.R. §300.507 in a school year;
3. When a decision is made by the LEA to take a disciplinary action that constitutes a change of placement; **and**
4. Upon parent request. *34 C.F.R. §300.504(a).*

PRIOR WRITTEN NOTICE — 34 C.F.R. §300.503

Notice

The LEA must give you prior written notice (PWN) before it:

1. Proposes 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; **or**
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

Content of notice

The written notice must:

1. Describe the action that your LEA proposes or refuses to take;
2. Explain why your LEA is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your LEA used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the IDEA;
5. Tell you how you can obtain a copy of the procedural safeguards;
6. Include resources for you to contact for help understanding your rights;
7. Describe any other options that your child's individualized education program (IEP) team considered and the reasons why those options were rejected; **and**
8. Provide a description of other factors that are relevant to your LEA's proposal or refusal.

Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; **and**
2. 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 LEA 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.

ELECTRONIC MAIL — 34 C.F.R §300.505

If your LEA offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Prior written notice;
2. Procedural safeguards notice; **and**
3. Notices related to a request for a due process hearing.

PARENTAL CONSENT — 34 C.F.R. §300.300

Consent for initial evaluation
Your LEA cannot conduct an initial evaluation of your child to determine whether your child is eligible to receive special education and related services under the IDEA without first providing you with PWN of the proposed action and without obtaining your informed consent. Under the IDEA, consent means that a parent has been fully informed about the proposed action, and that the parent understands and agrees in writing to the action.

Keep in mind that your consent for initial evaluation does not mean that you have also given your consent for the LEA to start providing special education and related services to your child. If your child is eligible for special education and related services, you will again be asked for your informed consent to begin those services.

In certain limited circumstances, the LEA may, but is not required to, pursue an initial evaluation of your child by utilizing the IDEA's dispute resolution procedures including mediation, resolution meetings, and impartial due process hearing procedures.

If you refuse to consent to an initial evaluation, the LEA will not violate its obligation to locate, identify and evaluate your child if it does not pursue an evaluation after your refusal.

Special rules for initial evaluation of wards of the U.S. Virgin Islands
If a child is a ward of the U.S. Virgin Islands and is not living with his/her parent —
The LEA is not required to obtain consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite documented reasonable efforts to do so, the LEA cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with U.S. Virgin Islands law; **or**
3. A judge has appointed another individual to make educational decisions on behalf of the child.

Ward of the U.S. Virgin Islands does not include a foster child who has a foster parent.

Parental consent for services
Your LEA must 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 consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, the LEA may not use the dispute resolution procedures (i.e., mediation, request for a due process hearing, resolution meeting,) 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.

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 LEA does not provide your child with the special education and related services for which it sought your consent, e LEA:

1. Is not in violation of the requirement to make FAPE available to your child for its failure to provide those services to your child; **and**
2. Is not required to have an IEP meeting or develop an IEP for your child.

Revocation of Consent

If, at any time after the initial provision of special education and related services, you revoke your consent in writing for the continued provision of special education and related services, the LEA:

1. May not continue to provide special education and related services to your child, **but** must first provide you with PWN before ceasing the services;
2. May not use dispute resolution procedures, including mediation or due process hearings, in order to obtain agreement or a ruling that the services be provided to your child;
3. Will not be considered to be in violation of the requirement to make FAPE available to your child; **and**
4. Is not required to convene an IEP team meeting or develop an IEP for your child.

Also, if you revoke consent for special education and related services after the initial provision of those services to your child, the LEA is not required to amend your child's education records to remove any references to special education.

Parental consent for reevaluations

The LEA must obtain your informed consent before it reevaluates your child, unless the LEA 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 consent for your child's reevaluation, the LEA may, but is not required to, pursue your child's reevaluation by using the mediation and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. The LEA does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

Documentation of reasonable efforts to obtain parental consent

Your LEA must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, and for reevaluations. The documentation must include a record of the LEA's efforts, 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.

Other consent requirements

Your consent is not required before your LEA 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 parents of all children.

Your LEA 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 LEA may not use its consent override

procedures (i.e., mediation 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).

INDEPENDENT EDUCATIONAL EVALUATIONS 34 C.F.R. §300.502

General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was conducted or obtained by your LEA.

If you request an IEE, the LEA must provide you with information about where you may obtain an evaluation and about the LEA's criteria that apply to an IEE.

IEE means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of your child.

Public expense means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of the IDEA.

Parent right to evaluation at public expense
You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your LEA, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your LEA must, without unnecessary delay, *either*:
    a. File a request for a due process hearing to show that its evaluation of your child is appropriate; *or*
    b. Provide an independent educational evaluation at public expense, unless the LEA demonstrates in a hearing that the evaluation of your child that you obtained did not meet the LEA's criteria;
2. If your LEA requests a hearing and the final decision is that the LEA's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense; **and**
3. If you request an independent educational evaluation of your child, the LEA may ask why you object to the evaluation of your child obtained by the LEA. However, your LEA may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a request for a due process hearing to defend the LEA's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time the LEA conducts an evaluation of your child with which you disagree.

Parent-initiated evaluations
If you obtain an IEE of your child at public expense or you share with the LEA an evaluation of your child that you obtained at private expense:

1. Your LEA must consider the results of the evaluation of your child, if it meets the LEA's criteria for an IEE, in any decision made with respect to the provision of FAPE to your child; **and**
2. You or your LEA may present the evaluation as evidence at a due process hearing regarding your child.

Requests for evaluations by hearing officers
If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

LEA criteria
If an IEE is 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 LEA uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE).

Except for the criteria described above, a LEA may not impose conditions or timelines related to obtaining an IEE at public expense.

CONFIDENTIALITY OF INFORMATION

DEFINITIONS — 34 C.F.R. §300.611

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

Education records means the type of records covered under the definition of ‘‘education records’’ in 34 C.F.R. Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA).

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

Personally identifiable, according to 34 C.F.R. § 300.32, *means* information that has
- Your child’s name, your name as the parent, or the name of another family member;
- Your child’s address;
- A personal identifier, such as your child’s social security number or student number; or
- A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

NOTICE TO PARENTS — 34 C.F.R. §300.612

SOSE must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:
1. A description of the extent to which the notice is given in the native languages of the various population groups in the U.S. Virgin Islands;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the U.S. Virgin Islands intends to use in gathering the information (including the sources from whom information is gathered), and 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; **and**
4. A description of all of the rights of parents and children regarding this information, including the rights under FERPA and its implementing regulations in 34 C.F.R. Part 99.

Before any major identification, location, or evaluation activity (also known 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 Territory of the U.S. Virgin Islands to locate, identify, and evaluate children in need of special education and related services.

ACCESS RIGHTS **34 C.F.R. §300.613**

The LEA must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your LEA under Part B of the IDEA. The LEA must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the LEA to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the LEA provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The LEA may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable laws governing such matters as guardianship, or separation and divorce.

RECORD OF ACCESS **34 C.F.R. §300.614**

Each LEA must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the LEA, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records).

RECORDS ON MORE THAN ONE CHILD **34 C.F.R. §300.615**

If any education 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.

LIST OF TYPES AND LOCATIONS OF INFORMATION **34 C.F.R. §300.616**

On request, each LEA must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

FEES **34 C.F.R. §300.617**

Each LEA may charge a fee for copies of records that are made for you under Part B of the IDEA if the fee does not effectively prevent you from exercising your right to inspect and review those records.

The LEA may not charge a fee to search for or to retrieve information under Part B of the IDEA.

AMENDMENT OF RECORDS AT PARENT'S REQUEST **34 C.F.R. §300.618**

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the LEA that maintains the information to change the information.

The LEA must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the LEA refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose.

OPPORTUNITY FOR A HEARING **34 C.F.R. §300.619**

The LEA must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, is misleading, or otherwise in violation of the privacy or other rights of your child.

HEARING PROCEDURES **34 C.F.R. §300.621**

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA.

RESULT OF HEARING **34 C.F.R. §300.620**

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

If, as a result of the hearing, the LEA decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

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

CONSENT FOR DISCLOSURE **34 C.F.R. §300.622**

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of LEA or SOSE. Your consent is not required before personally identifiable information is released to officials of the LEA or SOSE for purposes of meeting a requirement of Part B of the IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under U.S. Virgin Islands law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same LEA you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the LEA where the private school is located and officials in the LEA where you reside.

SAFEGUARDS **34 C.F.R. §300.623**

Each LEA must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each LEA must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding confidentiality under Part B of the IDEA and FERPA.

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.

DESTRUCTION OF INFORMATION 34 C.F.R. §300.624

Your LEA must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

PROCEDURES FOR DISCIPLINING CHILDREN WITH DISABILITIES

AUTHORITY OF SCHOOL PERSONNEL 34 C.F.R. §300.530

Case-by-case determination
The LEA 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 Authority
To the extent that they also take such action for children without disabilities, the LEA 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 another setting, or suspension. The LEA 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 as described below.

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 LEA must, during any subsequent days of removal in that school year, provide services as described below.

Additional authority
If the behavior that violated the student code of conduct was not a manifestation of the child's disability and the disciplinary change of placement would exceed **10 school days** in a row, the LEA 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 LEA must provide services to that child as described below.

Services
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. The child's IEP team determines the interim alternative educational setting for such services.

The LEA 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.

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.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and 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 the LEA, in consultation with at least one of the child's teachers, determines 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.

If the removal is a change of placement (see 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.

CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS 34 C.F.R. §300.536

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.

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

Notification
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 LEA must notify the parent of that decision and provide the parent with a procedural safeguards notice.

Manifestation determination
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 LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) 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 parent 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 LEA's failure to implement the child's IEP.

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

Determination that behavior was a manifestation of the child's disability
If the LEA, 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 LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred; **and**
2. Implement a behavioral intervention plan unless a behavioral intervention plan already has been developed, then review the behavioral intervention plan and modify it, as necessary, to address the behavior.

Except as described below, the LEA 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
Whether or not the behavior was a manifestation of the child's disability, the LEA 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 U.S. Virgin Islands Department of Education or the LEA;
2. Knowingly possesses 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 U.S. Virgin Islands Department of Education or the LEA; **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 U.S. Virgin Islands Department of Education or the LEA.

Definitions
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.

DETERMINATION OF SETTING — 34 C.F.R. §300.531

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 34 C.F.R. §300.532

General
The parent of a child with a disability may file a request for 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.

The LEA may file a request for 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.

Authority of hearing officer
A hearing officer must conduct the due process hearing and make a decision. The hearing officer may:

1. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the requirements described above, 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 hearing officer 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 utilized if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a LEA files a request for a due process hearing, a hearing must be held that meets the requirements for due process hearings in general, except as follows:

1. SOSE 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 LEA agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** days of receiving notice of the request for a due process hearing. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** days of receipt of the request for due process hearing.

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 34 C.F.R. §300.533

When, as described above, the parent or LEA has filed a request for a due process hearing related to disciplinary matters, the child must (unless ordered by the hearing officer or the parent and the LEA agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under **Authority of School Personnel**, whichever occurs first.

PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES 34 C.F.R. §300.534

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

Basis of knowledge for disciplinary matters
A LEA 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:

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 LEA personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the LEA's director of special education or to other supervisory personnel of the LEA.

Exception
A LEA 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.

Conditions that apply if there is no basis of knowledge
If prior to taking disciplinary measures against the child, the LEA 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 LEA, and information provided by the parents, the LEA must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

REFERRAL TO LAW ENFORCEMENT AND JUDICIAL AUTHORITIES 34 C.F.R. §300.535

Referral to law enforcement
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.

Transmittal of records
If a LEA reports a crime committed by a child with a disability, the LEA:

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 FERPA.

DISPUTE RESOLUTION PROCEDURES

DIFFERENCE BETWEEN DUE PROCESS HEARING AND STATE COMPLAINT PROCEDURES

The regulations for Part B of IDEA set forth separate procedures for state complaints filed with SOSE and a due process hearing request. Any individual or organization may file a state complaint with SOSE alleging a violation of any Part B requirement by a LEA, SOSE, or any other public agency. Only the parent or a LEA may file a request for due process on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement, or the provision of FAPE to your child. While SOSE generally must resolve a state complaint within a 60-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must convene a due process hearing (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-days after the end of the resolution period, unless the hearing officer grants a specific extension of the timeline at your request or the LEA's request. The State complaint and due process procedures are described more fully below.

ADOPTION OF STATE COMPLAINT PROCEDURES 34 C.F.R. §300.151

General

SOSE must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State or Territory;
2. The filing of a complaint with SOSE; **and**
3. Widely disseminating the complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Remedies for denial of appropriate services

In resolving a complaint in which SOSE has found a failure to provide appropriate services, SOSE 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.

MINIMUM COMPLAINT PROCEDURES 34 C.F.R. §300.152

Time limit; minimum procedures

SOSE must include in its complaint procedures a time limit of 60 days after a complaint is filed to:

1. Carry out an independent on-site investigation, if SOSE determines that an onsite 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 LEA with the opportunity to respond to the complaint, including, at a minimum:
    a. At the option of the LEA, a proposal to resolve the complaint; **and**
    b. An opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the LEA or is violating a requirement of Part B of the IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions; **and** the reasons for its final decision.

Time extension; final decision; implementation

The SOSE procedures also must:

1. Permit an extension of the 60-day time limit only if:
    a. Exceptional circumstances exist with respect to a particular complaint; **or**
    b. The parent and the LEA or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the in the U.S. Virgin Islands.
2. Include procedures for effective implementation of the its final decision, if needed, including technical assistance activities; negotiations; **and** corrective actions to achieve compliance.

State complaints and due process hearings
If a written state complaint is received by SOSE that is also the subject of a due process hearing or the complaint contains multiple issues of which one or more are part of a due process hearing, SOSE must set aside the complaint, or any part of the complaint that is being addressed in the due process hearing until the hearing is over and the hearing officer issues a decision. Any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above for state complaints.

If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, then the due process hearing decision is binding on that issue and SOSE must inform the complainant that the decision is binding.

A complaint alleging a LEA's or other public agency's failure to implement a due process hearing decision must be resolved by SOSE.

FILING A STATE COMPLAINT — 34 C.F.R. §300.153

An organization or individual may file a signed written complaint under the procedures described above.

The complaint must include:
1. A statement that a LEA or SOSE has violated a requirement of Part B of the IDEA or its regulations;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; **and**
4. If alleging violations regarding a specific child:
    a. The name of the child and address of the residence of the child;
    b. The name of the school the child is attending;
    c. In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
    d. A description of the nature of the problem of the child, including facts relating to the problem; **and**
    e. A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than **one year** prior to the date that the complaint is received.

The party filing the complaint must forward a copy of the complaint to the LEA serving the child at the same time the party files the complaint with the SOSE.

MEDIATION — 34 C.F.R. §300.506

General
The LEA must make mediation available to allow you and the LEA to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a state complaint or request

for a due process hearing. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not you have filed a complaint or due process hearing request.

Requirements
SOSE must ensure that the mediation process:

1. Is voluntary on your part and the LEA's part;
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.

The LEA may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center; **and**
2. Who would explain the benefits and encourage the use of the mediation process to you.

SOSE must have a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. SOSE must select mediators on a random, rotational, or other impartial basis. SOSE is responsible for the cost of the mediation process, including the costs of meetings. Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the LEA.

If you and the LEA resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
2. Is signed by both you and a representative of the LEA who has the authority to bind the LEA.

A written, signed mediation agreement is enforceable in any court of competent jurisdiction (a court that has the authority under U.S. Virgin Islands law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any federal court or court of a Territory or State receiving assistance under Part B of IDEA.

Impartiality of mediator
The mediator:

1. May not be an employee of the U.S. Virgin Islands Department of Education, or the LEA that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a LEA or the U.S. Virgin Islands Department of Education, solely because he or she is paid by SOSE to serve as a mediator.

FILING A REQUEST FOR A PROCESS HEARING 34 C.F.R. §300.507

General
You or the LEA may file a request for a due process hearing on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of FAPE to your child.

The due process hearing request must allege a violation that happened not more than **two years** before you or the LEA knew or should have known about the alleged action that forms the basis of the due process hearing request.

The above timeline does not apply to you if you could not file a request for a due process hearing within the timeline because:

1. The LEA specifically misrepresented that it had resolved the issues identified in the request for a due process hearing; **or**
2. The LEA withheld information from you that it was required to provide you under Part B of the IDEA.

Information for parents
The LEA 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 LEA file a request for a due process hearing.

REQUEST FOR A DUE PROCESS HEARING 34 C.F.R. §300.508

General
In order to request a hearing, you or the LEA (or your attorney or the LEA's attorney) must submit a request for a due process hearing to the other party. That request for a due process hearing must contain all of the content listed below and must be kept confidential.

You or the LEA, whichever one filed the complaint, must also provide SOSE with a copy of the request for a due process hearing.

Content of the request
The request for a due process hearing must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to you or the LEA at the time.

Notice required before a hearing on a due process request
You or the LEA may not have a due process hearing until you or the LEA (or your attorney or the LEA's attorney), files a request for a due process hearing that includes the information listed above.

Sufficiency of request for a due process hearing
In order for a request for a due process hearing to go forward, it must be considered sufficient. The request for a due process hearing will be considered sufficient (to have met the content requirements above) unless the party receiving the request for a due process hearing notifies the hearing officer and the other party in writing, within 15 days of receiving the request for a due process hearing, that the receiving party believes that the request for a due process hearing does not meet the requirements listed above.

Within five days of receiving the notification that the receiving party considers a request for a due process hearing insufficient, the hearing officer must decide if the request for a due process hearing meets the requirements listed above and notify you and the LEA in writing immediately.

Amendment of a due process hearing request
You or the LEA may make changes to the due process hearing request only if:

1. The other party approves of the changes in writing and is given the chance to resolve the concerns in the due process hearing request through a resolution meeting; **or**
2. If, no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the LEA) makes changes to the request for a due process hearing, the timelines for the resolution meeting (within 15 days of receiving the due process request) and the time period for resolution (within 30 days of receiving the request for a due process hearing) start again on the date the amended request for a due process hearing is filed.

LEA response to a request for a due process hearing
If the LEA has not sent a prior written notice to you regarding the subject matter contained in your request for a due process hearing, the LEA must, within 10 days of receiving the request for a due process hearing, send to you a response that includes:

1. An explanation of why the LEA proposed or refused to take the action raised in the request for a due process hearing;
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 LEA used as the basis for the proposed or refused action; **and**
4. A description of the other factors that are relevant to the LEA's proposed or refused action.

Providing the information in items 1-4 above does not prevent the LEA from asserting that your request for a due process hearing was insufficient.

Other party response to a request for a due process hearing
Except as stated immediately above, the party receiving a request for a due process hearing must, within 10 days of receiving the request for a due process hearing, send the other party a response that specifically addresses the issues in the request for a due process hearing.

CHILD'S PLACEMENT WHILE DUE PROCESS HEARING IS PENDING 34 C.F.R. §300.518

Except as provided under **PROCEDURES FOR DISCIPLINING CHILDREN WITH DISABILITIES,** once a request for a due process hearing 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 ordered by the hearing officer or you and the LEA agree otherwise, your child must remain in his or her current educational placement.

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

If the request for a due process hearing involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the LEA is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the LEA must provide those special education and related services that are not in dispute (those on which you and the LEA both agree).

Resolution meeting
Within 15 days of receiving notice of your request for a due process hearing, and before the due process hearing begins, the LEA 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 request for a due process hearing.

The meeting:
1. Must include a representative of the LEA who has decision-making authority on behalf of the LEA; **and**
2. May not include an attorney of the LEA unless you are accompanied by an attorney.

You and the LEA determine the relevant members of the IEP team to attend the meeting.

The purpose of the meeting is for you to discuss your request for a due process hearing, and the facts that form the basis of the request for a due process hearing, so that the LEA has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:
1. You and the LEA agree in writing to waive the meeting; **or**
2. You and the LEA agree to use the mediation process in place of resolution.

Resolution period
If the LEA has not resolved the request for a due process hearing to your satisfaction within 30 days of the receipt of the request for a due process hearing (during the time period for the resolution process), the due process hearing may occur.

The 45-day timeline for issuing a final decision begins at the expiration of the 30-day resolution period, with certain exceptions for adjustments made to the 30-day resolution period, as described below.

Except where you and the LEA have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the LEA is not able to obtain your participation in the resolution meeting, the LEA may, at the end of the 30-day resolution period, request that a hearing officer dismiss your request for a due process hearing.

Documentation of such efforts must include a record of the LEA's 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.

If the LEA fails to hold the resolution meeting within 15 days of receiving notice of your request for a due process hearing **or** fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-day due process hearing timeline begin.

Adjustments to the 30-day resolution period
If you and the LEA, agree in writing to waive the resolution meeting, then the 45-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-day resolution period, if you and the LEA, agree in writing that no agreement is possible, then the 45-day timeline for the due process hearing starts the next day.

If you and the LEA agree to use the mediation process, at the end of the 30-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the LEA withdraw from the mediation process, then the 45-day timeline for the due process hearing starts the next day.

Written settlement agreement
If a resolution to the dispute is reached at the resolution meeting, you and the LEA must enter into a legally binding agreement that is:

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

Agreement review period
If you and the LEA enter into an agreement as a result of a resolution meeting, either party may void the agreement within 3 business days of the time that both you and the LEA signed the agreement.

IMPARTIAL DUE PROCESS HEARING — 34 C.F.R. §300.511

General
Whenever a request for a due process hearing is filed consistent with the above procedures, you or the LEA involved in the dispute must have an opportunity for an impartial due process hearing.

Impartial hearing officer
At a minimum, a hearing officer:

1. Must not be an employee of the U.S. Virgin Islands Department of Education, or the LEA that is involved in the education or care of the child. However, a person is not an employee solely because he/she is paid to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and federal and U.S. Virgin Islands regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal, Territorial, and state courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

SOSE must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

Subject matter of a due process hearing
The party (you or the LEA) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the request for a due process hearing, unless the other party agrees.

HEARING RIGHTS — 34 C.F.R. §300.512

General
Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities, except that whether parties have the right to

be represented by non-attorneys at due process hearings is determined by U.S. Virgin Islands law;
2. Present evidence and confront, cross-examine, and require 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 written, or, at your option, electronic findings of fact and decisions.

Additional disclosure of information
At least five business days prior to a due process hearing, you and the LEA must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the LEA intend to use at the hearing.

A hearing officer 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 party.

Parental rights at hearings
You must be given the right to:
1. Have your child present;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

HEARING DECISIONS 34 C.F.R. §300.513

Decision of hearing officer
A hearing officer's decision on whether your child received FAPE must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:
1. Interfered with your child's right to FAPE;
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a FAPE to your child; **or**
3. Caused a deprivation of an educational benefit.

Construction clause
None of the provisions described above can be interpreted to prevent a hearing officer from ordering a LEA to comply with the requirements in the procedural safeguards section of the federal regulations under Part B of the IDEA.

Separate request for a due process hearing
Nothing in the procedural safeguards section of the federal regulations under Part B of the IDEA can be interpreted to prevent you from filing a separate request for a due process hearing on an issue separate from a request for a due process hearing already filed.

Findings and decision to advisory panel and general public
SOSE, after deleting any personally identifiable information, must:
1. Provide the findings and decisions in the due process hearing or appeal to the U.S. Virgin Islands special education advisory panel; **and**
2. Make those findings and decisions available to the public.

TIMELINES AND CONVENIENCE OF HEARING AND REVIEWS **34 C.F.R. §300.515**

SOSE must ensure that not later than 45 days after the expiration of the 30-day period for resolution meetings **or**, not later than 45 days after the expiration of the adjusted time period:

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

A hearing officer may grant specific extensions of time beyond the 45-day time period described above at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

APPEALS

FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW **34 C.F.R. §300.514**

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the LEA) may appeal the decision by bringing a civil action, as described below.

CIVIL ACTIONS **34 C.F.R. §300.516**

Any party (you or the LEA) who does not agree with the findings and decision of a due process hearing officer (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a court of competent jurisdiction (a court that has authority to hear this type of case) or in a district court of the United States.

Time limitation
The party (you or the LEA) shall have 90 days after the decision is mailed to you to appeal the decision.

Additional procedures
In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the LEA's request; **and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Jurisdiction of district courts
The district courts of the United States have authority to rule on actions brought under Part B of the IDEA without regard to the amount in dispute.

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 rights 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

request for a due process hearing, resolution meeting, and impartial due process hearing procedures) before going directly into court.

ATTORNEYS' FEES — 34 C.F.R. §300.517

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

In any legal action or proceeding brought under Part B of the IDEA, a court in its discretion may award reasonable attorneys' fees as part of the costs to LEA if they prevail, to be paid by your attorney:

1. 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; **or**
2. 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.

Award of fees
A court awards reasonable attorneys' fees as follows:

1. 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 fees awarded.
2. 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 after a written offer of settlement to you if:
    a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than 10 days before the proceeding begins;
    b. The offer is not accepted within 10 days; **and**
    c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

Fees may not be awarded relating to any meeting of the IEP team unless the meeting is held as a result of an administrative proceeding or court action.

A resolution meeting is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court may reduce, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**

4. The attorney representing you did not provide to the LEA the appropriate information in the due process request.

However, the court may not reduce fees if the court finds that the LEA unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOL

GENERAL **34 C.F.R. §300.148**

Part B of the IDEA does not require the LEA to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the LEA made FAPE available to your child and you choose to place the child in a private school or facility. However, the LEA where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 C.F.R. §§300.131 through 300.144.

Reimbursement for private school placement
If your child previously received special education and related services under the authority of a LEA, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the U.S. Virgin Islands standards that apply to education provided by the LEA.

Limitation on reimbursement
The cost of reimbursement described in the paragraph above may be reduced or denied if:

1. At the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the LEA to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or at least 10 business days prior to your removal of your child from the public school, you did not give written notice to the LEA of that information;
2. Prior to your removal of your child from the public school, the LEA provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
3. S court finds that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if:
    a. The school prevented you from providing the notice;
    b. You had not received notice of your responsibility to provide the notice described above; or
    c. Compliance with the requirements above would likely result in physical harm to your child; **and**
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for the parents' failure to provide the required notice if the parent is not literate or cannot write in English, or compliance with the above requirement would likely result in serious emotional harm to the child.