Mississippi Department of Education
Office of Special Education

PROCEDURES FOR STATE BOARD POLICY 7219

VOLUME III:

Procedural Safeguards
Dispute Resolution
Confidentiality

MISSISSIPPI DEPARTMENT OF EDUCATION
Ensuring a bright future for every child

Mississippi Board of Education

Dr. John R. Kelly, Chair
Mr. Richard Morrison, Vice-Chair
Dr. O. Wayne Gann
Mrs. Kami Bumgarner
Mr. William Harold Jones
Mr. Charles McClelland
Mrs. Rosemary G. Aultman
Dr. Karen J. Elam
Mr. Johnny Franklin

State Superintendent of Education

Dr. Carey M. Wright

Chief Academic Officer

Dr. Kim S. Benton

State Director of Special Education

Mrs. Gretchen Cagle

Acknowledgements

The Mississippi Department of Education Office of Special Education would like to acknowledge the input of the following people in the development of this document: Ann Moore, Former State Director of Special Education

Writing Team

Stacy Callender
Marie Catherine Jones
Desma McElveen

Editing Team

Tanya Bradley
Susan Davis
Valecia Davis
Keisha Dixon
M. April Rice
M. Pleshette Smith
Mona Spells Adou
Armerita Tell
Candice Taylor

Review Team

The Special Education Directors' Work Group
The Professional Development Coordinators

Using this Document

This multi-volume document *Procedures for State Board Policy 7219* is intended to assist Public Agencies in the implementation of the State Board of Education Policy 7219: *State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004 (IDEA 2004)*. This document contains information about requirements of IDEA and SBE Policy 7219, recommendations from the Mississippi Department of Education's Office of Special Education's Division of Instructional Support, and guidance on Best Practices as determined by research and professional practice. Specific directives or requirements of IDEA and/or SBE Policy 7219 include *must* or *may not* in the statement. Other recommendations and guidance on Best Practices include *should* or *may* in the statements. In addition, all days listed in the document refer to calendar days, unless otherwise noted. The forms in the Procedures documents are not required forms. These forms are suggested or recommended forms designed to assist districts in having the appropriate documentation to use in implementing the requirements of State Board Policy 7219. The only required forms in the Procedures Document are the Individualized Education Program (IEP) and the Extended School Year (ESY) Fact Sheet. A Public Agency may modify these forms or use their own forms as long as they meet the requirements of State Board Policy 7219.

For additional information or clarification, please contact:

Mississippi Department of Education
Office of Special Education
Division of Technical Assistance
Post Office Box 771
Jackson, MS 39205-0771
(601) 359-3498

© 2015 Mississippi Department of Education (MDE)
Permission is granted to reproduce this document or any portion thereof for noncommercial educational purposes. No monetary charge can be assessed for the reproduction of this document or any portion thereof; however, a reasonable charge to cover the reproduction costs may be assessed.

CHAPTER 7 **PROCEDURAL SAFEGUARDS**.....1
Section 1 Procedural Safeguards 1
Section 2 Procedural Safeguards Notice 1
Section 3 Invitation to Meetings..... 3
Section 4 Recording the Meeting 3
Section 5 Prior Written Notice 3
Content of Prior Written Notice 4
When Prior Written Notice is Required 4
Section 6 Informed Parental Consent for Evaluation 5
Section 7 Independent Educational Evaluation (IEE) 6
Parents Right to an IEE.....6
Public Agency's Responsibilities Following an IEE Request 6
Section 8 Informed Parental Consent for Services 7
Parental Consent for Services not Provided 8
Revocation of Parental Consent for Services 8
Section 9 Access to Records.....8
Section 10 Surrogate Parent 9
Criteria for Selecting a Surrogate Parent 9
Section 11 Transfer of Parental Rights at Age of Majority 10

APPENDIX
Appendix PS.A Top 19 Highlights for Procedural Safeguards
Appendix PS.B Required Parental Communication Chart
Appendix PS.C Parental Consent Flowchart
Appendix PS.D Notice of Invitation to Committee Meeting and Reply
Appendix PS.E Prior Written Notice
Appendix PS.F Informed Parental Consent
Appendix PS.G Revocation of Consent
Appendix PS.H Procedural Safeguards Notice

CHAPTER 8 **DISPUTE RESOLUTION** 11
Section 1 Mediation 11
Resolution of Dispute through Mediation 12
Section 2 Formal State Complaint 12
MDE/OSE Response 13
Findings and Decision.....14
Section 3 Due Process Complaint 14

Filing a Due Process Complaint 14
Basic Timelines for the Complaint and Resolution Process 15
Resolution Meeting 16
Hearing Officers 17
Hearing Officers Authority and Duties 17
Due Process Hearing 19
Hearing Decisions 19
Section 4 Civil Action 20
Child's Status during Proceedings 20
Section 5 Attorney's Fees 21
Award of Fees 21

APPENDIX

Appendix DR.A Top 20 Highlights for Dispute Resolution
Appendix DR.B Dispute Resolution Comparison Chart
Appendix DR.C Due Process Timeline
Appendix DR.D Request for Due Process Hearing
Appendix DR.E Formal State Complaint Form

CHAPTER 9 CONFIDENTIALITY 21
Section 1 Definitions 21
Section 2 Responsibilities of the Agency for Confidentiality of Records 22
Access Rights to Personally Identifiable Information and Required Procedures 22
Notice to Parents 23
Record of Access and Disclosure of Personally Identifiable Information 24
Fees for Copies of Records.....24
Section 3 Consent for Disclosure of Personally Identifiable Information 24
Refusal to Give Consent 25
Consent is Not Required for Disclosure 25
Section 4 Destruction of Personally Identifiable Information 26
Section 5 Amendments of Records at Parent Request 27
Section 6 Opportunities for a Hearing 27
Results of Hearing 27
Section 7 Referral To and Action by Law Enforcement and Judicial Authorities 28

CHAPTER 7:
PROCEDURAL SAFEGUARDS

Public Agency in this document refers to agencies responsible for providing education to children with disabilities including the Mississippi Department of Education (MDE), Local Education Agencies (LEAs), Educational Service Agencies (ESAs), State Schools, State Agency schools, and nonprofit public charter schools that are not a part of an LEA or ESA.

Procedural Safeguards

Procedural Safeguards refer to the formal protections, or safeguards, for the rights of children with disabilities and their parents according to the Individuals with Disabilities Education Act (IDEA), Federal regulations, and State laws and policies. According to the U.S. Supreme Court's interpretation of IDEA, the core principle of the IDEA is the cooperative process between parents and educational agencies and the importance of parental involvement in all decisions made for children with disabilities. This includes all decisions regarding the identification, evaluation, placement, and provision of special education and related services. In addition, IDEA upholds a parent's right to disagree with decisions and provides multiple avenues to resolve those disputes. Further protections address privacy of and the limited access to a child's educational records.

Procedural Safeguards Notice

Each Public Agency must ensure a copy of the *Procedural Safeguards Notice* (Appendix PS.H) is provided to each parent of a child with a disability at least once a year and in the following specific situations:

- After an initial request for an evaluation is sent to the Multidisciplinary Evaluation Team (MET) [See *Volume 1: Chapter 2: Evaluation and Eligibility*];
- After a request for a reevaluation;
- After the initial meeting of the Individualized Education Program (IEP) Committee;
- Upon the receipt of the first formal State or due process complaint in a school year;
- Upon a change of placement due to a disciplinary action; or
- After a request for a Procedural Safeguards Notice by the parent.

The Public Agency may place a current copy of the Procedural Safeguards Notice on its internet website. The parent may also elect to receive a copy of the Notice by electronic mail if the Agency makes that option available.

The contents of the *Procedural Safeguards Notice* (Appendix PS.H) must include a full explanation of all of the Procedural Safeguards and State complaint procedures relating to:

- Notifications given to the parent prior to an action or refusal of an action, including the formal *Prior Written Notice* (Appendix PS.E);
- The requirement for informed parental consent for evaluations;
- The right to an Independent Educational Evaluation (IEE) and when it must be provided at public expense;
- The requirement to ensure the confidentiality of and access to educational records;
- An explanation of and the procedures for making a Formal State Complaint and Due Process Complaint;
- The options for dispute resolution including mediation, resolution sessions, hearings, and civil actions and the payment of attorney fees;
- The procedures for addressing discipline issues for children with disabilities including those that result in changes of placement to alternative educational settings; and
- The requirements when making unilateral placements by parents of children in private schools at public expense.

The *Procedural Safeguards Notice* (Appendix PS.H) must be provided using language understandable to the general public (i.e., in laymen's terms). In addition, the Procedural Safeguards Notice must be provided to the parent in his/her native language or mode of communication to ensure the parent can understand the content of the notice. If the parent's native language or mode of communication is a written language or can be provided in a print format (e.g., Braille), the Procedural Safeguards Notice must be provided in this form, unless it is not feasible to do so. If the parent's native language or mode of communication is not a written language (e.g., oral and manual communication methods), the Procedural Safeguards Notice must be translated orally or by other means in the native language to ensure the parent understands the content of the notice, and the public agency must keep written documentation of how they met the requirements for the provision of the Procedural Safeguards Notice.

For assistance in securing translations of the *Procedural Safeguards Notice* (Appendix PS. H), contact the Mississippi Department of Education Office of Special Education Division of Parent Engagement and Support.

Invitation to Meetings

Parents have the right to participate in all meetings where decisions are made for their child including any decision whether or not to conduct an evaluation or reevaluation, the determination of eligibility status and of the disability category, and the development and revision of the child's Individualized Education Program (IEP). Parents are members of both the Multidisciplinary Evaluation Team (MET) and the IEP Committee and must be invited to participate in all MET or IEP Committee meetings. When calling an IEP Committee meeting for the development or revision of the child's IEP, the parent must be given a *Notice of Invitation to Committee Meeting* (Appendix PS.D), or a similar form, that includes:

- A list of who will be in attendance by name and position;
- A statement that the parent or public agency may invite other individuals who have knowledge or special expertise regarding the child; and
- The time, location, and a description of the purpose of the meeting.

Recording the Meeting

The parent and the public agency have the right to participate in the development of the IEP and to indicate their intent to make an audio recording of the proceedings of the IEP meetings. The parent or guardian or local educational agency shall notify the members of the IEP Committee of their intent to record the meeting at least **twenty-four (24)** hours prior to the meeting.

NOTE: The Procedural Safeguards Notice only address audio recordings—not video recordings. Although there is no provision prohibiting the use of video recording, parents do not have a specific right to make a video recording of a meeting. Any use of video recording would need to be agreed upon by all parties involved and may require written releases.

Prior Written Notice

A *Prior Written Notice* (Appendix PS.E) must be provided to a parent, within a reasonable time, prior to the public agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child or to initiate or change the provision of services to provide a FAPE to a child. The public agency must ensure that the PWN is provided to the parent at least seven (7) calendar days before implementing any proposed action, unless the parent waives the timeline.

The *Prior Written Notice* (Appendix PS.E) must be provided using language understandable to the general public (i.e., in laymen's terms). In addition, the PWN must be provided to the parent

in his/her native language or mode of communication to ensure the parent can understand the content of the notice. If the parent's native language or mode of communication is a written language or can be provided in a print format (e.g., Braille), the PWN must be provided in this form, unless it is not feasible to do so. If the parent's native language or mode of communication is not a written language (e.g., oral and manual communication methods), the PWN must be translated orally or by other means in the native language to ensure the parent understands the content of the notice, and the public agency must keep written documentation of how they met the requirements for the provision of the PWN.

Content of the Prior Written Notice

The content of *Prior Written Notice* (Appendix PS.E) must provide the parent with sufficient information so s/he is fully able to understand the public agency's proposed or refused action in order to make an informed decision.
The PWN must include:

- A description of the action proposed or refused by the public agency;
- An explanation of why the public agency proposes or refuses to take action;
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- A statement that the parent of a child with a disability has protections described in the *Procedural Safeguards Notice* (Appendix PS. H) provided, if inclusion is required, or the method for receiving a copy of the Procedural Safeguards Notice;
- Sources for the parent to contact to obtain assistance in understanding the provisions of IDEA and his/her rights outlined in the Procedural Safeguards;
- A description of other options that the IEP Committee considered and the reasons why those options were rejected;
- A description of any other factors, which are relevant to the agency's proposal or refusal.

When a Prior Written Notice is Required

Public agencies are required to provide a *Prior Written Notice* (Appendix PS.E) to a parent prior to the public agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child or to initiate or change the provision of services to provide a FAPE to a child. The public agency must ensure that the PWN is provided to the parent no less than seven (7) calendar days prior to the proposed action unless the parent waives the timeline. PWN is required under the following conditions:

- If the initial MET determines that an evaluation is warranted (i.e., the MET does suspect the child has a disability) or determines that an evaluation is not warranted (i.e., the MET does not suspect the child has a disability);

- If the public agency refuses to provide an Independent Educational Evaluation (IEE) at public expense and initiates a due process hearing;
- After the IEP Committee has developed or modified an IEP;
- If the IEP Committee refuses to convene an IEP Committee meeting at the request of a parent;
- If the IEP Committee proposes to initiate or change the identification, evaluation, or educational placement of a child or refuses a parent's request to initiate or change the identification, evaluation, or educational placement of a child;
- If the IEP Committee proposes to initiate or change the provision of services to provide a FAPE to a child or refuses a parent's request to initiate or change the provision of services to provide a FAPE to a child;
- If the public agency has removed the child with a disability that results in a change in placement (i.e., for more than ten (10) days, a series of removals that constitute a pattern, or a removal to an interim alternate educational setting (IAES) for more than forty-five (45) school days) due to discipline procedures;
- If the public agency intends to stop the provision of special education services due to ineligibility based on the results of a comprehensive reevaluation, due to ineligibility due to graduation with a standard high school diploma, or after receiving the parent's written revocation of consent for special education and related services.

Informed Parental Consent for Evaluation

Informed parental consent occurs when a parent has been made aware of all information pertinent to a proposed action and is able to make an informed decision to give permission for that action. Public agencies must ensure the parent understands:

- What is being proposed or refused; and
- The ramifications of what is being proposed or refused.

A parent must be informed of a proposed action in his/her native language or other mode of communication. The parent must understand that parental consent is voluntary and may be revoked at any time. By Federal guidelines, parental consent by signature is required during the following occurrences:

- Initial assessment for eligibility for special education services;
- Reevaluation of eligibility for special education services.

The public agency has the responsibility to ensure the child is evaluated to determine eligibility and to assist in the provision of a Free Appropriate Public Education (FAPE). The MET and IEP Committee determine the appropriate evaluation and reevaluation procedures, respectively. Qualified examiners must be used to administer all assessments for an evaluation or reevaluation.

Parental consent is required before the collecting of any individual assessment data not collected through mass screenings or other allowed educational assessments. The parent has the right to provide or not to provide consent. If the parent refuses to provide consent, the public agency may but is not required to use due process procedures to override the parent's refusal; however, a parent refusal to the provision of special education services may not be overridden.

Independent Educational Evaluation (IEE)

An independent education evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child. It can be provided at public expense if a parent disagrees with the evaluation conducted by the public agency. A parent has the right to an IEE at his/her own expense, at which the IEP Committee must consider the results.

Parents Right to an IEE

If a parent makes a request, the public agency must, without delay:

- Provide an IEE at public expense—OR—
- File a request for a due process hearing to demonstrate that the public agency's evaluation of the child is appropriate.

If the public agency requests a Due process hearing and the final decision is that the public agency's evaluation is appropriate, the parent has a right to an IEE, but not at public expense.

The IEP Committee must consider the results.

- If the hearing officer requests an IEE as part of an impartial Due process hearing, the cost of the evaluation will be at the expense of the public agency.
- If a parent requests the IEE, the public agency may ask the reason why he/she objects to the LEA's evaluation. The parent is not required to provide explanation and the public agency shall not delay providing the IEE at public expense or file a request for a Due process hearing to defend its evaluation.
- A parent is entitled to only one (1) IEE at public expense each time the public agency conducts an evaluation at which the parent disagrees.

Public Agency's Responsibilities Following an IEE Request

Following a request for an IEE the public agency will:

1. File a request for Due process hearing to show that its evaluation is appropriate, or
2. Provide the parent information about where an IEE can be obtained and the criteria applicable for the IEE. The criteria for an IEE must include the following:

a. Location of the evaluation
b. Qualifications of the examiner

3. The public agency may not impose conditions or timelines related to obtaining an IEE at public expense beyond the criteria utilized by the public agency.

Informed Parental Consent for Services

Informed parental consent occurs when a parent has been made aware of all information pertinent to a proposed action and is able to make an informed decision to give permission for that action. Public agencies must ensure that the parent understands:

- What is being proposed or refused; and
- The ramifications of what is being proposed or refused.

A parent must be informed of a proposed action in his/her native language or other mode of communication. The parent must understand that parental consent is voluntary and may be revoked at any time. By Federal guidelines, parental consent by signature is required during the following occurrences:

- Initial assessment for eligibility for special education services;
- Consent for initial service;
- Reevaluation of eligibility for special education services.

The public agency has the responsibility to ensure the provision of a Free Appropriate Public Education (FAPE). The IEP Committee determines the services that constitute FAPE for the student. In the event of disagreement over appropriate services among the IEP Committee members, the agency representative has responsibility to ensure development of an appropriate IEP that confers FAPE. Parental consent is required before the initial provision of special education and related services. This consent is for the provision *of special education*, not for a specific service(s). If a parent disagrees with the provision of a specific special education or related service, and the parent and public agency agree that the child would still be provided a FAPE without that service, the public agency should remove that service from the IEP. If, however, the parent and public agency disagree about whether the child would be provided FAPE if the service was removed, the parent may use the mediation process or due process procedures to resolve the dispute. Students with disabilities cannot receive a related service listed on the IEP if the parent refuses special education services as the related service listed is a supportive service required to assist a child with a disability to benefit from special education.

Parental Consent for Services Not Provided

If the parent fails to respond to the public agency's efforts to obtain consent or if the parent refuses to provide consent for special education and related services, the public agency is not considered to be in violation of the requirement to provide the child a FAPE. The public agency may not use dispute resolution procedures (e.g., mediation or Due process) to obtain consent nor is the public agency required to convene an IEP Committee meeting or develop an IEP.

The parent may choose not to sign the IEP at the IEP Committee meeting due to a desire to reflect on the IEP or a disagreement over the disability category (but not disability status). This does not mean the parent is refusing services altogether or the child should no longer be considered a child with a disability.

If the parent participates in the IEP Committee meeting to develop the IEP but is unsure about the content of the IEP document, the parent may take as much time as s/he wishes to decide if s/he is comfortable moving forward. As soon as the parent provides the public agency written consent, the public agency must implement the IEP immediately.

Revocation of Parental Consent for Services

After written parental consent is obtained following initial eligibility, consent for special education services is presumed unless a parent notifies the public agency in writing that they would like to revoke all special education and related services. A parent cannot revoke an individual service. Once the parent revokes special education and related services, public agencies must provide a *Prior Written Notice* (Appendix PS.E) before stopping special education and related services. Dispute resolution procedures including mediation and Due Process procedures may not be used to challenge the parent's right to terminate the services. This will not be considered a violation of the public agency's obligation to provide a FAPE to the child. Once revoked, special education and related services cannot be reinstated at parent request. The public agency is not required to amend the student's educational records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

Access to Records

Public agencies shall permit parents to inspect and review any educational records relating to their children that are collected, maintained, or used by the public agency. The public agency will make records available to the parent for review:

- Without delay;
- Before any meeting regarding an IEP;
- Before an impartial Due process hearing; and
- No later than forty-five (45) days after the request.

The parent's rights to inspect and review education records include:

- A response to reasonable requests for explanations and interpretations of the records;
- Copies of records containing the information if failure to provide the copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- The ability to have a representative of the parent inspect and review the records after the parent provides written authorization to the agency.

The parent also has a right to receive a copy of the educational records. The public agency may charge for these copies but not if the fee would effectively prevent the parent from exercising the right to inspect and review the records. The public agency cannot charge to search for or retrieve the records.

Parents have the right to inspect and review all records relating to his/her child unless the public agency has been advised that the parent does not have the authority under applicable State laws (i.e., guardianship, separation, or divorce). *See Procedural Safeguards: Your Family's Special Education Rights* (Appendix PS.H).

Surrogate Parent

A surrogate parent is an individual assigned by an LEA to assume the educational rights and responsibilities of a parent in one of the following circumstances:

- A parent cannot be identified;
- The LEA cannot locate a parent after reasonable efforts;
- The student is a ward of the State;
- The student is an unaccompanied homeless youth.

The LEA is required to determine if a student requires a surrogate parent and then assign him/her a surrogate parent. If a student is the ward of the State, the judge overseeing the case may appoint the surrogate parent, provided that the parent meets the criteria below.

Criteria for Selecting a Surrogate Parent

To determine whether a child needs a surrogate parent and to appoint a surrogate to a child, the LEA must ensure the following:

1. Identify an individual who meets the following criteria:
    - Has no other vested interest that conflicts with the interest of the child represented;
    - Has knowledge and skills that ensure adequate representation of the child; and
    - Is not an employee of a public agency responsible for the education and/or care of the child.
2. Arrange for the proposed surrogate to meet the child;
3. Ascertain whether the individual will serve as a surrogate;
4. Appoint the person as surrogate; and
5. Enter this information in the child's file.

NOTE: The LEA may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards outlined above.

A surrogate parent must be formally trained to advocate for the child in the special education process, including the procedures concerning the identification, evaluation, placement and the provision of a FAPE. The method of training shall be described by the LEA.

Transfer of Parental Rights at Age of Majority

When a child reaches twenty-one (21), the age of majority the public agency will ensure that all rights accorded to the parent under IDEA are transferred to the child (except for a child who has been determined to be incompetent under State law). If under State law a child is determined to have a severe or profound disability such that legal guardianship is required beyond the age of majority, the public agency upon receipt of a court order regarding the need for such guardianship, will appoint the legal guardian to represent the educational interests of the child through the age of twenty or if the child turns twenty-one (21) during the school year. If a surrogate parent is necessary due to the conditions addressed in *Surrogate Parent* above, the agency will appoint a surrogate parent in accordance with the above procedures to represent the interests of the child.

The public agency must notify the parent and the child of the transfer of rights. When rights are transferred to a child, any notice required under IDEA must be forwarded to the child and to the parent, except for those children who are incarcerated in adult or juvenile, State or local

correctional institutions. For incarcerated youth adjudicated as adults, all parental rights, including the notice rights, will be transferred to the youth in accordance with State law.

REGULATORY REFERENCE
§§300.300;300.501-504; 300.519;300.613

APPENDIX

Appendix PS.A	Top 19 Highlights for Procedural Safeguards
Appendix PS.B	Required Parental Communication Chart
Appendix PS.C	Parental Consent Flowchart
Appendix PS.D	Notice of Invitation to Committee Meeting and Reply
Appendix PS.E	Prior Written Notice
Appendix PS.F	Informed Parental Consent
Appendix PS.G	Revocation of Consent

Top 19 Highlights for Procedural Safeguards

Independent Educational Evaluation

1. If a parent disagrees with an evaluation and requests an Independent Educational Evaluation (IEE), the school district must respond without delay. The district may either file a request for a Due process hearing or provide an IEE at public expense.
2. The parent is entitled to have an IEE for each evaluation conducted although the IEE may not be at public expense if the Due process hearing determines that the school district's evaluation was appropriate.
3. The school district must provide the parent either a list of qualified examiners or a description of the school district's criteria for qualified examiners.
4. An IEE must be conducted by a qualified examiner who is **not** employed by the school district. The pool of qualified examiners cannot be limited to those already on contract or retained by the district.
5. The IEP Committee must consider the results of any IEE whether or not obtained at public expense.

Prior Written Notice

6. Written notice occurs when a parent has been informed in writing within seven (7) calendar days prior to the school district's **proposal** or **refusal** to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child.

Procedural safeguard notice

7. Procedural safeguards must be provided to the parent once each school year. A copy must also be provided in the following situations:
   a. Initial referral
   b. A parent request for evaluation
   c. Receipt of the first formal State complaint in a school year
   d. Receipt of the first Due process complaint in a school year
   e. Change of placement due to a disciplinary action
   f. Request by a parent

8. Once a child is determined to be a child with a disability and eligible for special education and related services, the identification of a child with a disability and eligibility for a FAPE remains until one of the following events occur:
   a. The child exceeds the age of eligibility for FAPE under State law which is age twenty (20) unless the child turns twenty-one (21) during the school year;
   b. The student graduates from secondary school with a standard high school diploma;
   c. The student is determined, through an evaluation, to no longer be a child with a disability;

d. The student moves to another state; or
e. The parent revokes consent for special education and related services.

9. The notice must be written in a language understandable to the general public and in the native language of the parent or provided in other mode of communication used by the parent.

Informed parental consent

10. Informed parental consent occurs when a parent has been made aware of all information pertinent to the proposed action(s) and is able to make an informed decision to give permission for the action(s).

11. Informed parental consent is required prior to any individual evaluation and ensures that:
    a. The parent has been fully informed in their native language or other mode of communication, of all information about the action(s) for which they are giving consent.
    b. The parent understands and has agreed in writing to that action(s).
    c. The parent understands that the consent is voluntary on their part and they know they **may withdraw their consent at any time.**

12. Parents who revoke special education and related service, revoke all services.

Surrogate parent

13. A surrogate parent is an individual assigned to assume the educational rights and responsibilities of a parent in one of the following circumstances:
    a. A parent cannot be identified;
    b. The public agency cannot locate a parent after reasonable efforts;
    c. The child is a ward of the State;
    d. The child is an unaccompanied homeless youth.

14. The following criteria must be used to select a surrogate parent:
    a. Has no other vested interest that conflicts with the interest of the child represented;
    b. Has knowledge and skills that ensure adequate representation of the child; and
    c. Is not an employee of the public agency involved, who is responsible for the education and/or care of the child.

15. A surrogate parent must be formally trained to advocate for the child in the special education process, including the procedures concerning the identification, evaluation, placement and the provision of a FAPE. The school district must arrange for the proposed surrogate to meet the child and enter the information into the child's permanent records.

Transfer of parental rights at age of majority

16. The school district will ensure that all rights accorded to the parent under IDEA are transferred to the child when the child reaches twenty-one (21).

Access to Records

17. School districts must make records available to the parent for review:
    a. Without delay;
    b. Before any meeting regarding an IEP;
    c. Before an impartial Due process hearing; and
    d. No later than forty-five (45) days after the request.

18. The parent's rights to inspect and review education records includes:
    a. A response to reasonable requests for explanations and interpretations of the records;
    b. Copies of records containing the information if failure to provide the copies would effectively prevent the parent from exercising the right to inspect and review the records; and
    c. The ability to have a representative of the parent inspect and review the records after the parent provides written authorization to the agency.

19. Parents have the right to inspect and review all records relating to his/her child unless the public agency has been advised that the parent does not have the authority under applicable State laws (i.e., guardianship, separation, or divorce).

Required Parental Communication Chart

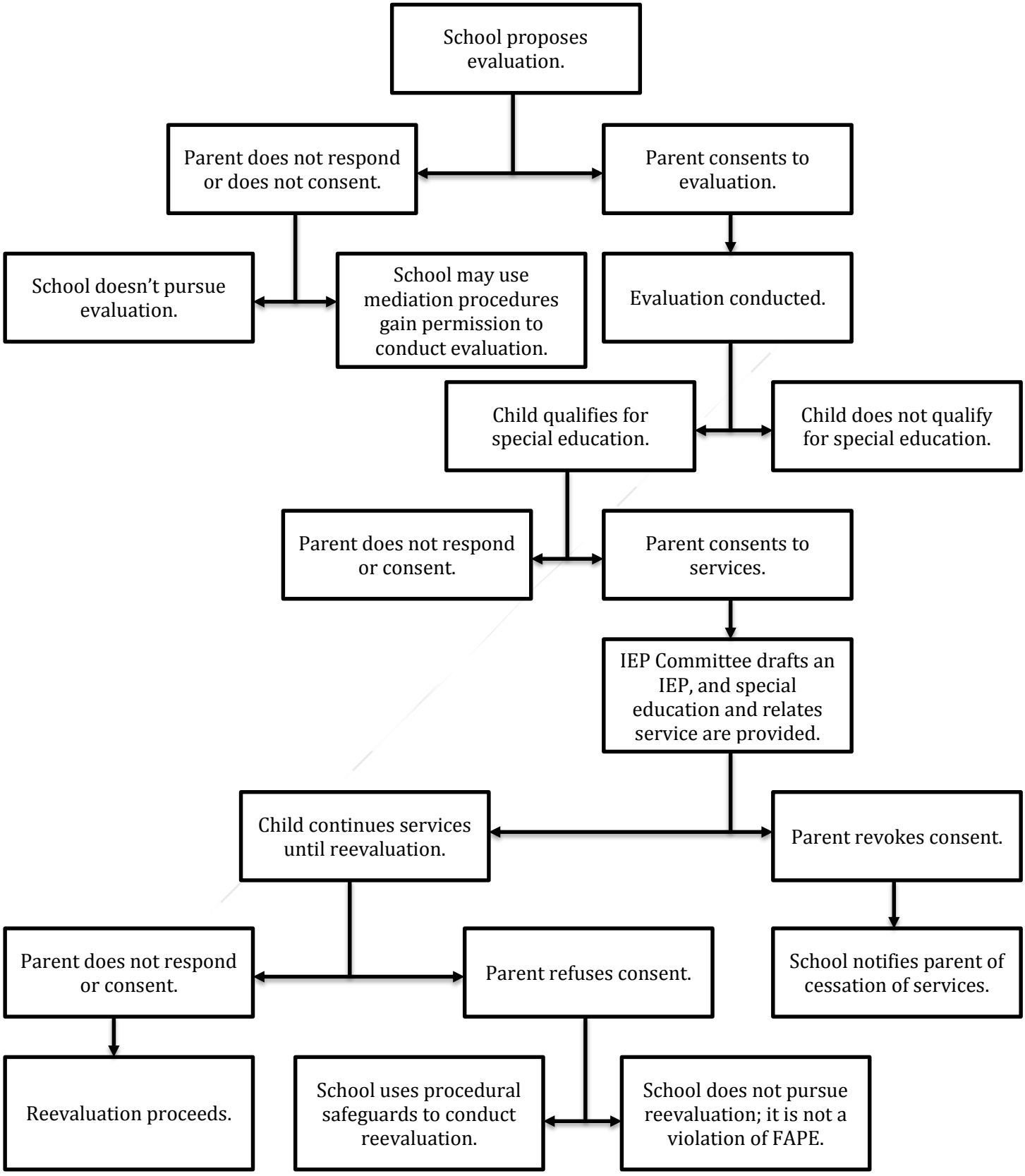
Notification, Informed Consent, Prior Written Notice and Procedural Safeguards

Special Education Process	Meeting Invitation	Informed Consent	Prior Written Notice	Procedural Safeguards
Identification				
Multidisciplinary Evaluation Team (MET) meeting – request to evaluate	X			
MET referral to conduct an initial comprehensive evaluation	X	X	X	X
MET denial of request to evaluate	X		X	X
Evaluation/Reevaluation and Eligibility Determination				
Review of existing data				
Reevaluation without further assessment required	X		X	*
Reevaluation with assessment required (exception when repeated attempts to contact parent are unsuccessful)	X	X	X	*
Determination of eligibility upon completion of an initial evaluation	X		X	
Change of disability category based on reevaluation			X	*
District denies paying for Independent Education Evaluation (IEE) and initiates a Due process hearing			X	X
Educational Placement				
Initial eligibility determination meeting	X		X	
Any change in educational placement	X		X	*
Disciplinary removal for more than 10 days	X		X	*
A series of disciplinary removals that constitute a pattern of removal	X		X	*
Disciplinary removal to an IAES for not more than 45 school days	X		X	*
Exit from Special Education (graduation or aging out)**			X	
Exit from Special Education (based on a comprehensive reevaluation)	X		X	X
Revocation of Special Education Services			X	
Provision of FAPE				
Change in annual goals on an existing IEP	X		X	*
Deletion or addition of a special education or related service	X		X	*
Increase or decrease in special education or related services	X		X	*
Change in student participation in statewide/district-wide assessments	X		X	*
Review and revision of the IEP	X		X	*
Increase or decrease of supplementary aids and services or supports	X		X	*
Consideration of ESY, if done at a separate meeting	X		X	*
Other Situations				
Release of personally identifiable information		X		
Transfer in parent's rights	X			
Receipt of a Formal State Complaint				X
Receipt of the first Due process Complaint				X

Procedural Safeguards Notice are provided at least once per year, in specific situations, or upon request.

****If graduating with a standard high school diploma, Mississippi Occupational Diploma or aging out of special education, this notification should include a Summary of Performance, MOD Portfolio, or Transition Portfolio depending on the exit option chosen. See Vol. V: Secondary Transition for additional information.***

Parental Consent Flowchart



Notice of Invitation to Committee Meeting

The Notice of Invitation to Committee Meeting, or a similar form containing the same information, may be used to notify parents and children with disabilities of a scheduled meeting of the Multidisciplinary Evaluation Team (MET) or Individualized Education Program (IEP) Committee.

1. Record the child's name and information concerning the date, time and location of the meeting.

2. The IEP Committee may review data about the child's performance collaboratively and make minor changes to the IEP without a formal IEP Committee meeting.
- When conducting a reevaluation the IEP Committee may opt to review existing data without a meeting to determine if there is a need to collect additional data.
- If the IEP needs corrections or minor changes between annual meetings, the IEP Committee may agree to amend the IEP without a meeting as long as:
    - The parent and the public agency agree to the process and the amendments in writing and,
    - Every member of the IEP Committee which includes the parent is informed of the changes.

3. Either the special education teacher, the agency representative or a member of the MET completes the appropriate sections of the form, depending on whether the meeting is to determine the need for an evaluation or to develop an IEP. Each participant in the meeting including their role is also listed.

4. The public agency must include a copy of the Notice of Invitation to Committee Meeting Reply or a similar form and the Procedural Safeguards if appropriate.

Mississippi Department of Education, Office of Special Education

NOTICE OF INVITATION TO COMMITTEE MEETING

[Public Agency Name]
[Public Agency Address 1]
[Public Agency Address 2]

[Name and Role of Contact Person]
[Contact's Phone and Fax Numbers]
[Contact's Email Address]

To: [Parent, Guardian, or Surrogate Parent]

Date: [Date invitation sent]

You are invited to attend a meeting regarding your child, **[child's name]**
to be held **[date, time, and location]**.
Your participation is very important! This meeting must be held at a mutually agreed upon time and place. If you are not able to meet at this time or location or if you need transportation or interpreter services to participate in the meeting, please contact **[Contact Person]** using the contact listed above to reschedule the meeting at a more convenient time or location or arrange for assistance. You can also indicate your preferences on the Notice of Invitation to Committee Meeting Reply letter included.

The purpose of this meeting is (*check all that apply*):

Child Find, Evaluation, and Eligibility Determination

- ☐ To determine if your child needs a comprehensive evaluation and to plan the initial evaluation.
- ☐ To discuss your child's evaluation and to determine if your child is eligible for special education.
- ☐ To determine if your child needs additional assessment for a reevaluation and to plan the reevaluation.
- ☐ To discuss your child's reevaluation and to determine if your child continues to be eligible for special education.

Individualized Education Program [IEP]

- ☐ To develop an initial or annual IEP for your child.
- ☐ To review your child's IEP and to revise it, if necessary.
- ☐ To develop or revise your child's transition plan.
- ☐ To determine if your child needs Extended School Year (ESY) services.

Other

- ☐ To determine your child's most appropriate placement.
- ☐ To discuss disciplinary actions.
- ☐ To conduct a manifestation determination.
- ☐ To develop, review, or revise a behavior support plan.
- ☐ Other: _____

Other people who have been invited to this meeting include:

Agency Representative: **[Agency Representative's name]**
General Education Teacher: **[Teacher's name]**
Special Education Teacher: **[Teacher's name]**
[Other role]: **[Other name]**
[Other role]: **[Other name]**
[Other role]: **[Other name]**
[Other role]: **[Other name]**

You are an important member of this team! You are welcome to bring anyone with special knowledge or expertise about your child who can assist you at the meeting, or any information (e.g., medical records, results of outside testing, or work samples) that would help with making educational decisions for your child. Your child is also welcome to attend if you wish. You are also able to audio and/or video record this meeting, if you wish; however, you will need to give us a 24-hour notice so that we may also be able to record the meetingI have included the following important information for you**:**

- ☐ Notice of Invitation to Committee Meeting Reply.
- ☐ Procedural Safeguards Notice.
- ☐ **[Title/Description of any document(s) included]**

Please respond to this Notice of Invitation to Committee Meeting by completing the Notice of Invitation to Committee Meeting Reply letter included and returning it to your child's school or program. If you have any additional questions or concerns, please contact me using the number above.

Sincerely,
[Name and Role of Contact Person]

Mississippi Department of Education, Office of Special Education

NOTICE OF INVITATION TO COMMITTEE MEETING REPLY

[Public Agency Name]
[Public Agency Address 1]
[Public Agency Address 2]

[Name and Role of Contact Person]
[Contact's Phone and Fax Numbers]
[Contact's Email Address]

To: [Name of Contact Person]

I have received an invitation to attend a meeting regarding **[child's name]**

to be held **[date, time, and location]**.

Attendance (*please check all of the boxes that apply*):

- ☐ I will attend this meeting:
  - ☐ In person
  - ☐ By phone
  - ☐ Other: _____
- ☐ I will NOT attend this meeting.
- ☐ I would like to attend the meeting, but this time and/or location is not convenient. I prefer to meet on the following:

_____ _____ _____
Date *Time* *Location*

Assistance (*please check all of the boxes that apply*):

- ☐ I need transportation to participate.
- ☐ I would like to record this meeting:
  - ☐ Audio recording
  - ☐ Video recording
- ☐ I need an interpreter to participate.
- ☐ I would like to invite the following people:

_____

_____

Other comments (*please share any additional information you wish to share*):

_____

_____

_____

_____

_____

_____

Parent's signature: _____ **Date:** _____

Prior Written Notice

The Prior Written Notice Form, or a similar form containing all required information, may be used by public agencies to notify parents at least seven (7) calendar days prior to any action that the public agency proposes or refuses to initiate or change regarding the identification, evaluation, or educational placement of a child or propose or refuse to initiate or change the services and supports provided to a child which constitute a Free Appropriate Public Education (FAPE). This form should be used following the meeting where the proposed action has been discussed and the parent(s) are fully informed as to the proposed action. If appropriate, a copy of the Procedural Safeguards should also be given to the parent(s).

1. Record the date of the meeting and the name of the school district.

2. Provide any reason or justification for taking the proposed action or refusing to take the requested action. Also describe any other options that were considered and rejected.

3. Describe any records, evaluations, reports or other data or information that were used as a basis for the decision. Include any other factors that were relevant to the decision.

PRIOR WRITTEN NOTICE

[Public Agency Name]
[Public Agency Address 1]
[Public Agency Address 2]

[Name and Role of Contact Person]
[Contact's Phone and Fax Numbers]
[Contact's Email Address]

To: [Parent, Guardian, or Surrogate Parent]

Date: [Date notice sent]

Public agencies are required to provide written notice to the parent when they propose or refuse to initiate or change the identification, evaluation, or educational placement of a child or propose or refuse to initiate or change the services and supports provided to a child which constitute a Free Appropriate Public Education (FAPE). This letter is your notice of the following action proposed or refused regarding your child, **[child's name]**:

REQUEST	
On **[date of meeting]**, **[school district or program]** proposed the following action as outlined below:	
ACTION PROPOSED	
*Your child's **[school district or program]** proposes to:* ☐ Conduct an initial comprehensive evaluation of your child. ☐ Conduct a reevaluation of your child. ☐ Determine your child's eligibility status and disability category. ☐ Change your child's eligibility status or disability category based on a comprehensive reevaluation. ☐ Exit your child from special education. ☐ Begin new special education and/or related services. ☐ Develop an Individualized Education Program for your child. ☐ Change your child's IEP and/or special education and/or related services (e.g., annual goals, participation in State-wide assessments, supplementary aids and services, or supports to school personnel). ☐ Provide Extended School Year (ESY) services ☐ Change your child's educational placement. ☐ Remove your child for disciplinary reasons which results in a change in placement (e.g., a removal for more than 10 days during a school year or removal to an Interim Alternative Educational Setting). ☐ Other: _____	*Describe the specific action proposed:*
This action will go into effect: ☐ after receiving your informed written consent on the parental consent form enclosed. (*for evaluations*) ☐ on **[date of implementation or implementation of change]**.	
ACTION REFUSED	
*Your child's **[school district or program]** refuses to:* ☐ Conduct an initial comprehensive evaluation of your child. ☐ Conduct a reevaluation of your child. ☐ Change your child's eligibility status or disability category based on a comprehensive reevaluation. ☐ Change your child's IEP and/or special education and/or related services (e.g., annual goals, participation in State-wide assessments, supplementary aids and services, or supports to school personnel). ☐ Provide Extended School Year (ESY) services ☐ Change your child's educational placement. ☐ Other: _____	*Describe the specific action refused:*

REASON / JUSTIFICATION
Provide the reason or justification for taking the proposed action(s) or for refusing to take an action(s) requested.
Describe other options that were considered and rejected.
Describe the evaluations, tests, records, or reports that were used as the basis for the action(s) proposed or refused.
Describe any other relevant factors to this situation.

You and your child have protections under both the Individuals with Disabilities Education Act (IDEA) and State Board of Education Policy 7219. If you are a parent of a child with a disability, at least once per year you will be provided a copy of the Procedural Safeguards Notice which describes the rights of you and your child. If you have any questions about your rights and would like assistance in understanding your rights, you may contact me or any of the following:

Mississippi Dept. of Education
Post Office Box 771
Jackson, MS 39205-0771
Phone: (601) 359-3498
Fax: (601) 359-1829
Toll Free Parent Hotline
1-877-544-0408

Disability Rights Mississippi
210 E. Capitol Street Suite 600
Jackson, Mississippi 39201
Phone: (601) 968-0600
Fax: (601) 968-0665
Toll Free Number
1-800-772-4057

MS Parent Training & Information Center
2 Old River Place, Ste. M
Jackson, MS 39202
Phone: (601) 969-0601
Fax: (601) 709-0250
Toll Free Number
1-800-721-7255

Please contact me if you have any questions regarding this information.

Sincerely,
[Name and Role of Contact Person]

Enclosures: []

Informed Parental Consent

The Informed Parental Consent form, or a similar form, may be used by public agencies to document written permission to conduct an initial comprehensive evaluation of a child suspected of having a disability or a reevaluation of a child with a disability. This is not a required form but is a form that can be used for documentation of informed parental consent as to the type of evaluation that is recommended for their child. This form should only be used after the need for the evaluation and the type(s) of evaluation tools or instruments to be used have been discussed with the parent(s) and the MET or IEP Committee believes that the parent(s) understands the evaluation process and procedures to be used.

1. Check if this is an Initial Evaluation or a Re-evaluation. In section two under Assessment Areas, indicate which areas will be assessed. In the second column on the right, indicate the method for assessing these areas, review of records, observations, interviews or tests. More than one assessment type may be checked.

2. The parent may agree to the evaluation and indicate that a copy of the Procedural Safeguards was given or the parent may disagree with the proposed assessment. At that point, the public agency should discuss with the parent the ramifications of the refusal of the evaluation and the public agency's rights to proceed to a mediation or due process hearing on the matter.

INFORMED PARENTAL CONSENT

[Public Agency Name]
[Public Agency Address 1]
[Public Agency Address 2]

[Name and Role of Contact Person]
[Contact's Phone and Fax Numbers]
[Contact's Email Address]

To: [Parent, Guardian, or Surrogate Parent]

Date: [Date consent sent]

This letter is to request your written consent for an evaluation or reevaluation with the following assessments:

INITIAL EVALUATION	REEVALUATION
☐ The Multidisciplinary Evaluation Team (MET) requests your consent to conduct an evaluation of **[child's name]** to determine if s/he is a child with a disability and, if so, his/her educational needs. An initial evaluation will NOT be conducted unless you agree below.	☐ The IEP Committee requests your consent to conduct a reevaluation of **[child's name]** to determine if s/he continues to be a child with a disability and, if so, his/her educational needs. The IEP Committee will conduct a reevaluation unless you refuse below.

ASSESSMENT AREAS	ASSESSMENT METHODS
PHYSICAL STATUS ☐ **General physical condition**, including general health, strength, vitality, and alertness ☐ **Sensory abilities**, including hearing and vision acuity ☐ **Fine (small) motor skills**, including use of equipment and materials ☐ **Gross (large) motor skills**, including mobility and physical fitness ☐ **Sensory processing and/or perceptual-motor function**	☐ Review of Records ☐ Observations ☐ Interviews ☐ Tests
COMMUNICATION STATUS ☐ **Articulation**, including an orofacial examination and production of speech sounds ☐ **Voice and Fluency**, including quality and smoothness of speech ☐ **Language**, including ability to understand others (receptive) and express him/herself	☐ Review of Records ☐ Observations ☐ Interviews ☐ Tests
SOCIAL-EMOTIONAL STATUS ☐ **Social development and skills**, including ability to build/maintain social relationships ☐ **Emotional development and skills**, including ability to manage moods ☐ **Self-management**, ability to demonstrate appropriate behaviors across environments	☐ Review of Records ☐ Observations ☐ Interviews ☐ Tests
COGNITIVE AND ACADEMIC STATUS ☐ **Academic Achievement**, including school learning on content such as basic reading and comprehension, written and oral expression, and math calculation and reasoning ☐ **Intellectual/Cognitive Functioning**, verbal and non-verbal ability to think and learn	☐ Review of Records ☐ Observations ☐ Interviews ☐ Tests
ADAPTIVE STATUS ☐ **Adaptive Behavior**, including daily living skills, self-sufficiency, and adjustment ☐ **[Other special assessments]**	☐ Review of Records ☐ Observations ☐ Interviews ☐ Tests

Please check the boxes of the statements under "agree" or "refuse" that indicate your choice. Please sign and date.

AGREE	REFUSE
☐ I understand the proposed evaluation and **DO** give my consent to conduct the evaluation as described above. ☐ I understand that my consent is voluntary and can be revoked at any time.	☐ I understand the proposed evaluation and **DO NOT** give my consent to conduct the evaluation as described above.

☐ I was provided a copy of the Procedural Safeguards Notice, and it was explained to me.	☐ I understand the **[Public Agency]** may request mediation or a Due process hearing to override my refusal. ☐ I was provided a copy of the Procedural Safeguards Notice and it was explained to me.
Parent's signature:	**Parent's signature:**
Date:	**Date:**

Revocation of Consent

The Revocation of Consent form, or a similar form that contains all of the same information, may be used by public agencies to document a parent's revocation of consent for special education services for his/her child. It is a Prior Written Notice letter that the public agency may send to the parent to inform him/her about the consequences of the decision to revoke consent. It informs the parent(s) that the child will be subject to all requirements that apply to general education students including, but not limited to, district and statewide assessments, graduation requirements, extracurricular activities, and discipline. This form should be used following a discussion with the parent(s) where they have been fully informed of the consequences of the decision to revoke consent. It is documentation of the consequences of the decision, not the vehicle to inform the parent(s) of the consequences of the decision.

REVOCATION OF CONSENT

[Public Agency Name]
[Public Agency Address 1]
[Public Agency Address 2]

[Name and Role of Contact Person]
[Contact's Phone and Fax Numbers]
[Contact's Email Address]

To: [Parent, Guardian, or Surrogate Parent]

Date: [Date notice sent]

Public agencies are required to provide written notice to the parent when they propose or refuse to initiate or change the identification, evaluation, or educational placement of a child or propose or refuse to initiate or change the services and supports provided to a child which constitute a Free Appropriate Public Education (FAPE).

On **[date of notification]**, the **[Public Agency Name]** received your written revocation of consent for your child, **[child's name]**, to receive special education and related services. This letter is to inform you that, although the **[Public Agency]** believes that your child continues to need special education and related services, the **[Public Agency]** will stop providing these services on **[date of termination of services]** based on your written revocation of consent for services.

When you revoke special education and related services, the **[Public Agency]** cannot use mediation or Due process procedures to challenge your decision to terminate services. The **[Public Agency]** must honor your request within a reasonable time after the receipt of your letter.

Once your revocation of consent is effective, your child will no longer be considered as a child with a disability for educational purposes and will lose all of the protections and procedural safeguards afforded to him/her by the Individual with Disabilities Education Act of 2004 (IDEA). Your child will no longer be eligible for a free appropriate public education (FAPE) as defined by IDEA. The **[Public Agency]** will not reconvene an IEP meeting, conduct a reevaluation, or develop an IEP. Your child will be subjected to all requirements that apply to general education students including, but not limited to, district and statewide assessments, graduation requirements, extracurricular activities, and discipline.

Revocation of consent for special education and related services is not retroactive. The district will not amend your child's records to remove any references of special education and related services. However, if you wish to have your child receive special education and related services in the future, an initial comprehensive evaluation must first be conducted (as if your child was never a child with a disability). If you do wish to have your child considered for special education and related services in the future, please contact **[Child Find Contact/Coordinator]** or **[Child's Teacher/Principal]** to make a request for an initial evaluation.

I have included the following important information for you**:**

- ☐ Resource list of parent advocacy groups
- ☐ Procedural Safeguards Notice
- ☐ **[Title/Description of any document(s) included]**

Please contact me if you have any questions regarding this information.

Sincerely,
[Name and Role of Contact Person]

Enclosures: Procedural Safeguards Notice and Resource list of Advocacy Groups

The Procedural Safeguards Notice is available on the Mississippi Department of Education, Office of Special Education website:

http://www.mde.k12.ms.us/OSE/parents

CHAPTER 8:
DISPUTE RESOLUTION

Public Agency in this document refers to agencies responsible for providing education to children with disabilities including the Mississippi Department of Education (MDE), Local Education Agencies (LEAs), Educational Service Agencies (ESAs), and nonprofit public charter schools not a part of an LEA or ESA.

Dispute Resolution

If a parent of a child with a disability and representatives of the public agency or other members of the child's Multidisciplinary Evaluation Team (MET) or Individualized Educational Program (IEP) Committee, of which the parent is a member, disagree on any decisions regarding the identification, evaluation, placement, or provision of a Free Appropriate Education (FAPE) or the determination of whether a behavior was a manifestation of the child's disability, there are several options for resolution of the dispute. The parent may file a Formal State Complaint or the parent or public agency may request a due process hearing. However, prior to filing a Formal State Complaint or requesting a due process hearing, the parent and the public agency may first resolve the dispute through a mediation process. Mediation is the first official step in due process and is designed to be less confrontational than a hearing in that its goal is to assist both the parents and the school district in reaching a compromise.

Mediation

The mediation process must be voluntary on the part of the parent and the public agency. It cannot be used to deny or delay a parent's right to a hearing on the parent's due process complaint. A qualified and impartial mediator who has been trained in effective mediation techniques by the Mississippi Department of Education (MDE), Office of Special Education (OSE) must conduct the mediation. The OSE maintains a list of such qualified mediators and the mediator for each dispute is selected on a rotational basis. The mediator may not be an employee of the MDE or OSE nor of the public agency that is involved. The mediator must not have a personal or professional interest that conflicts with the person's objectivity. The mediator has no authority to impose a decision but instead is to assist the parent(s) and the public agency to reach a mutually agreed upon decision with regards to the dispute.

The Mississippi Department of Education/Office of Special Education (MDE/OSE) bears the cost of the mediation process, including the costs of any meeting(s) related to the process. All sessions for mediation must be scheduled in a timely manner and be held in a location this is convenient to the parties of the dispute.

Resolution of Dispute through Mediation

If the dispute is resolved through the mediation process, the public agency and parent must execute a legally binding agreement that specifies the resolution. This agreement must include a statement that all discussions that occurred during the process and any evidence presented must remain confidential. These confidential matters may not be used in any subsequent due process hearing or civil proceeding in a State or Federal court regardless of whether the parties resolve the dispute. The parent and a representative of the public agency, who has the authority to bind the public agency, must sign this agreement. A written, signed Mediation Agreement is enforceable in any State court of competent jurisdiction or in a District Court of the United States.

The mediation process can benefit both the parent(s) and the public agency by allowing the opportunity to understand each party's reasoning and point of view without being in an adversarial environment. It also helps to maintain a relationship between the parent(s) and the public agency. Mediation is frequently low cost and does not usually require the involvement of an attorney.

Formal State Complaints

Filing a Formal State Complaint

An organization or individual may file a signed written Formal State Complaint with the MDE/OSE. The written complaint may be in a letter or on a form provided upon request by the MDE/OSE or public agency. The violation described in the complaint must have occurred not more than one year prior to the date that the complaint is received. A copy of the complaint must be forwarded to the public agency serving the child at the same time the organization or individual files the complaint with the MDE/OSE. The complaint must include:

- A statement that the school district has violated a requirement of Part B of Individuals with Disabilities Education Act (IDEA), State Board Policy 7219 or a statement that the public agency is not implementing a due process hearing decision;
- The facts on which the statement is based, including copies of any documentation that support the allegation and general dates if possible;

- A description of the nature of the problem of the child, including facts relating to the problem;
- A proposed resolution of the problem to the extent known and available at the time the complaint is filed.
- The signature and contact information for the complainant; and
- If the violations concern a specific child:
    - The name of the child and the resident address;
    - The name of the school the child is attending;
    - In the case of a homeless child (defined by the McKinney-Vento Homeless Assistance Act), the available contact information for the child and the school attending.

MDE/OSE Response. The MDE/OSE will forward a copy of the complaint to the school district within 3 business days of receipt. At that time, the school district must provide a copy of the Procedural Safeguards to the Complainant. The school district and parent may choose to use mediation to resolve the complaint or to resolve the complaint through more formal methods. The school district must be given the opportunity to submit a written response to the allegations in the State complaint within the timelines specified by the MDE/OSE. The public agency must send a copy of its written response to the complainant. The school district's response:

- Must include a statement about the issues in the complaint.
- May include a proposal for resolution of the complaint.
- May include a proposal to mediate.

The MDE/OSE may conduct an additional investigation by reviewing documentation provided by both parties or by conducting an on-site visit. The MDE/OSE will issue a written Findings and Decision within sixty (60) calendar days of receiving the Formal State Complaint containing all of the required information.

The MDE/OSE does not investigate matters that are currently the subject of a due process hearing or matters that have been previously resolved by a Hearing Officer in a due process hearing decision. If a due process hearing request is filed on the same issues and between the same parties as a pending Formal State Complaint, the MDE/OSE will set aside any part of the Formal State Complaint that is being addressed in the due process hearing. However, any issue(s) in the Formal State Complaint that is not part of the due process request will be resolved by the MDE/OSE within the 60-day timeline.

Findings and Decision. The MDE/OSE will issue a written decision (Findings and Decision) to the complainant and to the school district which includes:

- A statement of the allegation(s) investigated; and,
- Findings of fact and a conclusion for each allegation investigated, including a statement of whether or not a violation of requirement of Part B of the Individuals with Disabilities Education Act (IDEA), State Board Policy 7219, or its implementing regulations occurred, and the reasons for the conclusion;
- The corrective actions the school district must implement including the correction of all identified cases of noncompliance, including any noncompliance discovered during the investigation unrelated to the original complaint;
- Additional corrective action of specific regulatory requirements to ensure continued compliance for any findings of systemic or substantive violations;
- Timelines for completing the corrective actions; and
- Assignment of an MDE/OSE contact person for technical assistance in completing the corrective actions.

Upon receipt of the Findings and Decision document, the school district will be required to submit an Improvement Plan. On receipt of notification that the Formal State Complaint has been satisfactorily addressed by the school district or has been withdrawn by the complainant, the MDE/OSE will consider the Formal State Complaint resolved. This includes when a school district offers to provide the remedy proposed by the complainant.

Due Process Complaints

Filing a Due Process Complaint

A parent may file a due process complaint if the public agency:

- Proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child;
- Refuses to initiate or change the identification, evaluation or educational placement or the provision of a FAPE;
- Proposes a placement as a result of a disciplinary action; or
- Has made a decision that the child's behavior is a manifestation of the child's disability.

The public agency may also request an expedited due process hearing if the agency believes that maintaining the child's current placement is substantially likely to result in injury to the child or to others. The violation must have occurred not more than two (2) years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint.

This two-year timeline does not apply if the public agency has misrepresented the resolution of the problem forming the basis of the dispute or if the public agency withheld required information from the parent. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if the parent or the agency filed a due process complaint. The public agency must also provide the parent with the Procedural Safeguards Notice document and the procedures regarding mediation services.

The party filing the complaint must provide to the other party the due process complaint, which must remain confidential. The parties involved may be the public agency, the parent or the attorney representing the parent or public agency. The party filing the complaint must also forward a copy of the complaint to the MDE/OSE. The complaint must include:

- The name of the child and the resident address;
- The name of the school the child is attending and the district;
- In the case of a homeless child (defined by the McKinney-Vento Homeless Assistance Act), the available contact information for the child and the school attending;
- A description of the nature of the problem of the child, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available at the time the complaint is filed.

No party may have a hearing on the due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements specified above. Once the due process complaint has been filed the following timelines apply:

- Within five (5) days of receiving the complaint, the Hearing Officer must make a decision as to whether the due process complaint meets the criteria described above and notify the parties in writing of his/her decision.
- The due process complaint is deemed to be sufficient unless the receiving party notifies the hearing officer and the filing party in writing within fifteen (15) days of receipt that the due process complaint does not meet the requirements specified above.

Basic Timelines for the Complaint and Resolution Process. If the public agency has not sent a Prior Written Notice (PWN) to the parent(s) regarding the subject matter contained in the parent's due process complaint, within ten (10) days of receiving a Due process complaint, filed by a parent, the public agency must send a response that includes the following:

- An explanation of why the agency proposed or refused to take the action raised in the complaint;

- A description of other options considered by the Individualized Education Program (IEP) committee and why these options were rejected;
- A description of each evaluation procedure, assessment, record or report on which the agency based their decision; and
- A description of the other factors that are relevant to the agency's proposed or refused action.

This response does not negate the public agency's option of declaring the due process complaint as insufficient, if appropriate. If the due process complaint is received by a party other than the public agency, the receiving party must respond within ten (10) days to address the issue raised in the complaint.

Resolution Meeting: The public agency must convene a meeting with the parent and relevant members of the IEP Committee as determined by the parent and the public agency, within fifteen (15) days of receiving notice of the due process complaint and prior to the initiation of a due process hearing. The purpose of this meeting is to discuss the due process complaint and the facts that form the basis of the complaint so that the public agency has the opportunity to resolve the dispute. The meeting must include an agency representative who has decision-making authority on behalf of the agency. The public agency may not include an attorney unless the parent is accompanied by an attorney. The parent and the public agency may agree in writing to waive the meeting or the parent and the public agency may agree to use the mediation process. If a resolution to the dispute is reached at the meeting, the parties must execute a legally binding agreement that is signed by both the parent and the public agency representative. This agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States. Either party has three (3) business days to void the binding agreement.

If the public agency has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days of receipt of notice, the due process hearing may proceed. The process for issuing a final decision begins at the expiration of the thirty (30) day resolution period. The failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the due process hearing until the meeting is held. If the public agency is unable to obtain the participation of the parent in the resolution meeting after making reasonable efforts and documenting those efforts, the public agency may request dismissal of the due process complaint. If the public agency fails to hold the resolution meeting within fifteen (15) days of receiving notice of the complaint, the parent may ask the hearing officer to proceed with the due process hearing.

The forty-five (45) day timeline for the due process hearing starts the day after one of the following occurs:

- Both parties agree in writing to waive the resolution meeting.

- After either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible.
- Both parties agree in writing to continue the mediation at the end of the thirty (30) day period, but later, the parent or public agency withdraws from the mediation process.

Note: If the public agency files a due process complaint, the regulations do not require the public agency to convene a resolution meeting. However, the public agency and the parent(s) may choose to voluntarily engage in mediation to resolve the issue. Since the resolution process is not required under the regulations when a public agency files a complaint, the forty-five (45) day timeline for issuing a written decision begins the day after the public agency's due process complaint is received by the other party and the MDE/OSE. If the complaint is determined to be insufficient and is not amended, the complaint could be dismissed.

Hearing Officer. An impartial hearing officer is assigned to the complaint by the MDE/OSE. This officer cannot be an employee of the MDE or the public agency that is involved in the education or care of the child. This person cannot have a personal or professional interest that conflicts with the person's objectivity in the hearing. The hearing officer must possess knowledge of and the ability to understand the provisions of Individuals with Disabilities Education Act (IDEA) Amendments of 2004, State Board Policy 7219 and legal interpretations of IDEA by Federal and State courts. The officer must also possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

Hearing Officer's Authority and Duties

A hearing officer has the authority and the duty to:

- Conduct a fair hearing;
- Ensure that the rights of all parties are protected;
- Define issues;
- Receive and consider all relevant and reliable evidence;
- Ensure an orderly presentation of the evidence and issues;
- Ensure a record is made of the proceedings; and
- Reach a fair, independent and impartial decision based on the issues and evidence presented at the hearing and in accordance with applicable law as well as Federal regulations under IDEA and State policies.

In order to perform these duties, the hearing officer has the authority to:

- Hold pre-hearing conferences in a timely manner for the purpose of clarifying the matters in dispute or resolving the dispute without the necessity of a hearing;

- Dismiss a hearing request when the issue(s), once clarified, is one that does not pertain to the identification, evaluation, educational placement and/or provision of a free appropriate public education (FAPE);
- Dismiss a hearing request when the requesting party fails to proceed to a hearing within six (6) months from the date of the hearing request;
- Decide the matter in dispute without a hearing upon submission of written documents and with the agreement of the parties;
- Schedule a mutually convenient date, time and place for the hearing consistent with the rights of the parties under these regulations;
- Receive, rule on, exclude or limit evidence;
- Order additional evaluations by the public agency or an independent evaluation at public expense when necessary in order to determine the appropriate special education and related services for the child;
- Administer the oath of affirmation to anyone who will testify at the hearing;
- Assist all those present in making a full and free statement of the facts;
- Determine if the hearing will be opened or closed to the public based on the decision of the parent;
- Ensure that all parties have a full opportunity to present all their claims orally, or in writing, and to issue a subpoena to compel the attendance of witnesses or the production of documents specifically relevant to the resolution of the issues presented in the hearing; and
- Take such steps as appropriate to assure the orderly presentation of evidence and protection of the rights of the parties of the hearing.

If the hearing officer determines that the due process complaint is insufficient, the hearing officer's decision will identify how the notice is insufficient so that the filing party can amend the notice if appropriate. A party may amend its due process complaint only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting or through mediation. The hearing officer may also grant permission to amend the complaint at any time not later than five (5) days before the due process hearing begins. If a party files an amended due process complaint, the timelines for the resolution meeting and resolution period begin again with the filing of the amended due process complaint. If the hearing officer determines that the complaint is insufficient and the complaint is not amended, the complaint may be dismissed. A party may re-file a due process complaint if the complaint remains within the applicable timelines for filing – generally, within the two (2) year period that the alleged action occurred.

No *ex parte* communication between the appointed hearing officer and either party to the hearing will be conducted. When communication with the hearing officer by either party is necessary, the hearing officer must ensure both parties are involved in the requested communication. No

communication will be conducted between the appointed hearing officer and the MDE personnel or between either party and MDE personnel regarding any substantive issue(s) of the hearing.

Due Process Hearing

The due process hearing is conducted by an impartial due process hearing officer appointed by the MDE/OSE at a time and place that is reasonable and convenient to the parents of the child involved. The party requesting the hearing may not raise issues at the hearing other than those specified in the complaint unless the other party agrees. At least five (5) business days prior to the hearing, each party must disclose to all other parties, any evaluations completed and recommendations based on the evaluations. The hearing officer may bar any introduction of relevant evaluations or recommendations that have not been disclosed. Any party to a hearing or an appeal has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities. Unless determined under State law, non-attorneys may not represent the parents in the due process hearing. Both parties have the right to present evidence, confront, cross-examine and compel the attendance of witnesses. Both parties also have the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing. A written or, at the option of the parents, an electronic verbatim record of the hearing may be obtained by either or both parties as well as a written or electronic record of the findings of fact and opinion.

The parent involved in the hearing has the right to have the child who is the subject of the hearing present. They have the right to open the hearing to the public and to have a record of the hearing and the findings of fact and decisions provided at no cost.

Hearing Decisions

A hearing officer's decision of whether a child received FAPE must be made on substantive grounds. In matters alleging a procedural violation, the violation must have impeded the child's right to FAPE; the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE; or caused a deprivation of educational benefit. This does not preclude a hearing officer from ordering a public agency to comply with procedural requirements. A copy of the final decision must be mailed to each of the parties.

The due process hearing decision does not limit the parent from filing a separate due process complaint on an issue unrelated to the current due process complaint. All due process hearing

decisions must be transmitted to the State Special Education Advisory Panel but all personally identifiable information must be deleted. These findings and decisions must also be made available to the public.

A decision made in a due process hearing is final and binding on all parties unless either party brings a civil action.

Civil Action

Either party who disagrees with the hearing officer decision has the right to bring a civil action. The civil action may only address the due process complaint and the facts surrounding the complaint. Before filing a civil complaint, all due process procedures must be exhausted. The civil action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. The civil action must be filed within ninety (90) days from the date of the hearing officer decision. In any civil action, the court:

- Receives the records of the administrative proceedings;
- Hears additional evidence at the request of a party;
- Bases its decision on the preponderance of the evidence; and
- Grants the relief that the court determines to be appropriate.

Child's Status during Proceedings

During the pendency of any administrative or judicial proceeding regarding a due process complaint, the child involved in the complaint must remain in his or her public agency and the parent may agree to a change in placement if determined to be in the best interest of the child. The hearing officer in a due process hearing may agree with the child's parents that a change in placement is appropriate. If the complaint involves an application for initial admission to public school, the child, with the consent of the parent, must be placed in the public school until the completion of all the proceedings.

In the case of a complaint that involves a three (3) year old child transitioning from Part C to Part B who is no longer eligible for Part C services, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent gives consent for services, then the public agency must provide those special education and related services that are not in dispute.

Attorneys' Fees

In any action or proceeding as a part of dispute resolution, if the parent is the prevailing party, the court may award the parent reasonable attorneys' fees as part of the costs awarded. The fees awarded must be based on rates prevailing in the community in which the action or proceeding was filed. These rates must also be consistent with the kind and quality of services provided. No bonus or multiplier may be used in calculating the fees awarded.

Funds under Part B of IDEA may not be used to pay attorneys' fees or costs of either party that are related to an action or proceeding related to a due process hearing. The prohibited reimbursement of costs would include depositions, expert witnesses and settlements or costs related to settlements.

Part B under IDEA funds may be used for conducting an action or proceeding. These costs may include paying a hearing officer, provision of the location for the hearing and the transcript of the hearing.

If the public agency is the prevailing party, the court may also award reasonable attorneys' fees against the attorney of a parent in the following circumstances:

- The complaint is frivolous, unreasonable or without foundation;
- The parent continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or
- Against the parent if the parent's request for a due process hearing was presented for any improper purpose such as:
    - To harass;
    - To cause unnecessary delay; and
    - To needlessly increase the cost of litigation.

Award of Fees

No attorneys' fees may be awarded or related costs reimbursed for services performed after the time of a written offer of settlement to the parent:

- If the offer was made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure;
- In the case of an administrative proceeding, the offer is made at any time more than ten (10) days before the proceeding begins;
- The offer is not accepted within ten (10) days; and

- The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP Committee unless the meeting is convened as a result of an administrative proceeding or judicial action or at the discretion of the MDE for mediation.

An award of attorneys' fees and related costs may be made to the parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. The court may reduce the amount of attorneys' fees awarded if the court finds that:

- The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- 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 reasonable comparable skill, reputation and experience;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing the parent did not provide to the public agency the appropriate information in the request notice for the impartial Due process hearing.

These provisions do not apply in any action or proceeding if the court finds that the public agency has unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the law which addresses Procedural Safeguards for children with disabilities and their parents.

REGULATORY REFERENCE
§§300.506-300.518; 300.151-300.153

APPENDICES

Appendix DR.A	Top 20 Highlights for Dispute Resolution
Appendix DR.B	Dispute Resolution Comparison Chart
Appendix DR.C	Due Process Timeline
Appendix DR.D	Request for Due Process Hearing
Appendix DR.E	Formal State Complaint

Top 20 Highlights for Dispute Resolution

1. The mediation process must be voluntary on the part of the parent and the public agency and may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint.

2. If the dispute is resolved through the mediation process, the public agency and parent must execute a legally binding agreement that specifies the resolution including a statement of confidentiality of all discussions and any evidence presented.

3. An organization or individual may submit a signed written Formal State Complaint to the Mississippi Department of Education, Office of Special Education (MDE/OSE) alleging that the public agency has violated a requirement of Part B of Individuals with Disabilities Education Act (IDEA).

4. When a Formal State Complaint is submitted to the MDE/ OSE, an investigation and written decision will be completed within sixty (60) calendar days.

5. A parent may file a due process complaint if the public agency proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child. A due process complaint may also be filed if the public agency refuses to initiate or change the identification, evaluation or educational placement or the provision of a FAPE.

6. If a parent disagrees with an evaluation and requests an independent educational evaluation (IEE), the school district may file a request for a due process hearing. If the due process hearing determines that the school district's evaluation was appropriate, the parent is still entitled to have an IEE but not at public expense.

7. Within ten (10) days of receiving a due process complaint, filed by a parent, the public agency must send a response that includes the following:
    - An explanation of why the agency proposed or refused to take the action raised in the complaint;
    - A description of other options considered by the Individualized Education Program (IEP) Committee and why these options were rejected;
    - A description of each evaluation procedure, assessment, record or report on which the agency based their decision; and
    - A description of the other factors that are relevant to the agency's proposed or refused action.

8. The public agency must convene a meeting to discuss the due process complaint and the facts that form the basis of the complaint with the parent and relevant members of the IEP

Committee as determined by the parent and the public agency, within fifteen (15) days of receiving notice of the due process complaint and prior to the initiation of a due process hearing. The public agency may not include an attorney unless the parent is accompanied by an attorney.

9. If a resolution to the dispute is reached at the meeting, the parties must execute a legally binding agreement this is signed by both the parent and the public agency representative. This agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States. Either party has three (3) business days to void the binding agreement.

10. If the public agency has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days of receipt of notice, the due process hearing may proceed.

11. If the public agency is unable to obtain the participation of the parent in the resolution meeting after making reasonable efforts and documenting those efforts, the public agency may request dismissal of the due process complaint.

12. If the public agency fails to hold the resolution meeting within fifteen (15) days of receiving notice of the complaint, the parent may ask the hearing officer to proceed with the due process hearing.

13. An impartial hearing officer is assigned to the complaint by the MDE/OSE. This officer has the authority and the duty to:
    - Conduct a fair hearing;
    - Ensure that the rights of all parties are protected;
    - Define issues;
    - Receive and consider all relevant and reliable evidence;
    - Ensure an orderly presentation of the evidence and issues;
    - Ensure a record is made of the proceedings; and
    - Reach a fair, independent and impartial decision based on the issues and evidence presented at the hearing and in accordance with applicable law as well as Federal regulations under IDEA and State policies.

14. No *ex parte* communication between the appointed hearing officer and either party to the hearing will be conducted. When communication with the hearing officer by either party is necessary, the hearing officer must ensure both parties are involved in the requested communication. No communication will be conducted between the appointed hearing officer and the MDE personnel or between either party and the MDE personnel regarding any substantive issue(s) of the hearing.

15. A hearing officer's decision of whether a child received a FAPE must be made on substantive grounds. In matters alleging a procedural violation, the violation must have impeded the child's right to FAPE; the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE; or caused a deprivation of educational benefit.

16. All due process hearing decisions must be transmitted to the State Special Education Advisory Panel with personally identifiable information deleted. These findings and decisions must also be made available to the public.

17. A decision made in a due process hearing is final and binding on all parties unless either party brings a civil action. Before filing a civil complaint, all due process procedures must be exhausted. The civil action must be filed within ninety (90) days from the date of the hearing officer decision.

18. During the pendency of any administrative or judicial proceeding regarding a due process complaint, the child involved in the complaint must remain in his or her public agency unless the parent agrees to a change in placement.

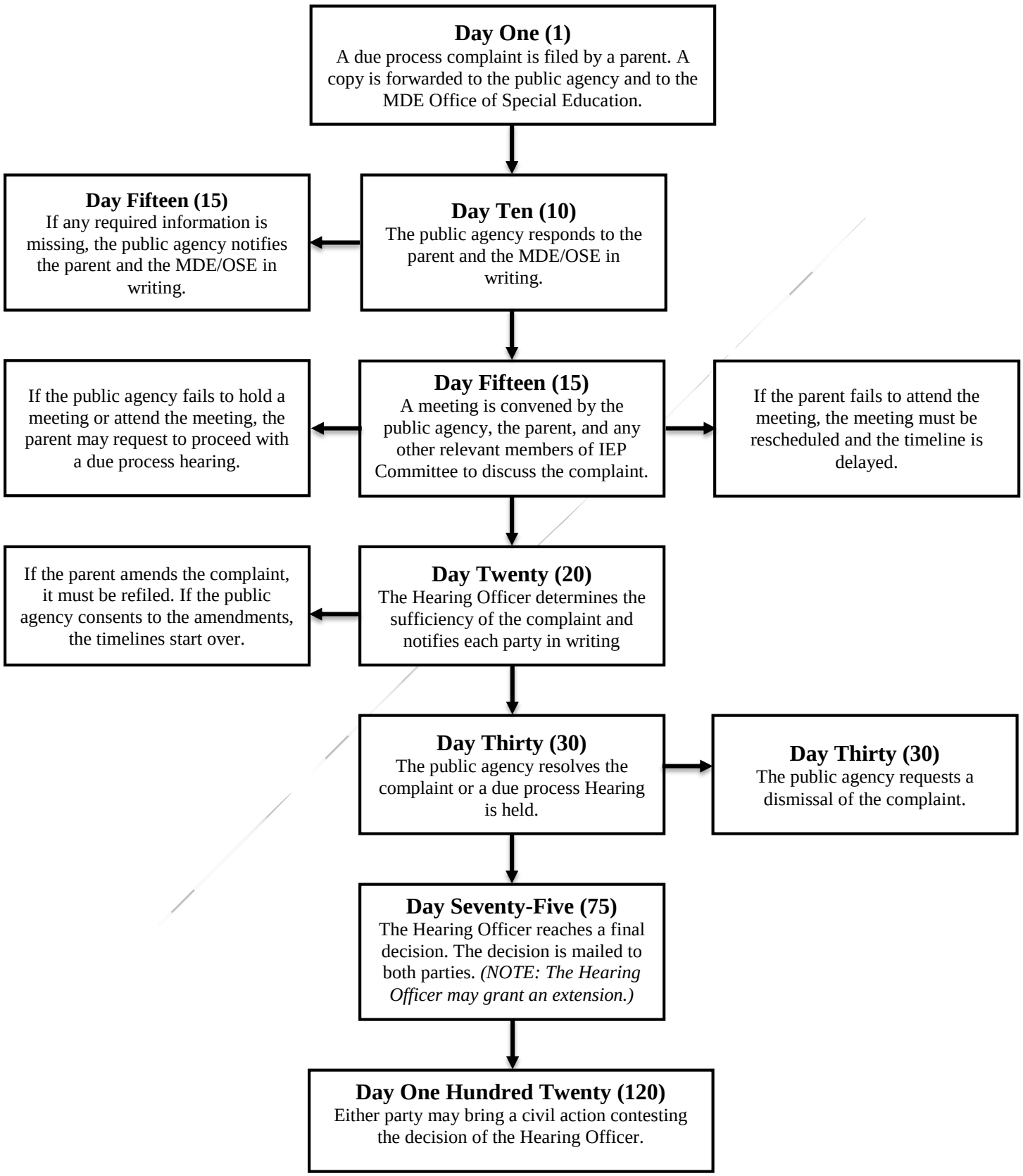
19. Funds under Part B of IDEA may not be used to pay attorneys' fees or costs of either party that are related to an action or proceeding related to a due process hearing. The prohibited reimbursement of costs would include depositions, expert witnesses and settlements or costs related to settlements. Part B under IDEA funds may be used for conducting an action or proceeding. These costs may include paying a hearing officer, provision of the location for the hearing and the transcript of the hearing.

20. In any action or proceeding as a part of dispute resolution, if the parent is the prevailing party, the court may award the parent reasonable attorneys' fees as part of the costs awarded. If the public agency is the prevailing party, the court may also award reasonable attorneys' fees against the attorney of a parent if the complaint was frivolous, unreasonable, or without foundation or if the parent's request for a due process hearing was presented to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Dispute Resolution Comparison Chart

	Mediation	Due Process	State Complaint	Resolution Session
Initiation of the process	Both the Parent and the Public Agency must participate voluntarily	Either the Parent or the Public Agency can initiate due process	Any individual or organization may initiate a State complaint	The Public Agency may schedule a resolution session upon receipt of a due process hearing request from a parent
Time limit for initiating the process	None specified	Two (2) years from learning of an issue (or when either party should have learned of the issue)	One (1) year from the alleged violation	Convened within fifteen (15) days of receipt of the due process hearing request unless both parties agree in writing to waive the resolution session or agree to mediation.
Issues that may be addressed	Any matter concerning IDEA, Federal regulations, or State Board Policy 7219	Any matter concerning identification, evaluation, placement, or provision of FAPE	Any alleged violations of IDEA, Federal regulations, or State Board Policy 7219	Any matter concerning identification, evaluation, placement, or provision of FAPE
Timeline for resolving the issues	None specified	None Specified	Sixty (60) days from receipt of the complaint, may be extended due to exceptional circumstances	The resolution period may last for no more than thirty (30) days.
Party that resolves the issues	Both the Parent and the Public Agency must agree to the solution in writing (assisted by a Mediator)	Hearing Officer	MDE Office of Special Education	Both the Parent and the Public Agency must agree to the solution in writing

DUE PROCESS TIMELINE



Request for Due Process Hearing

The Request for Due Process Hearing form may be used by parents, an individual authorized to represent the parent, or representatives of a public agency to make an official request for a hearing.

1. Complete the first line of the form by filling in the name of the person requesting the due process hearing. This may be the parent or the public agency representative.

2. Complete the family information section of the form. The section of the form which concerns the reason for the request for the due process hearing must indicate the proposal or refusal to address one of the four reasons stated below:

- Identification
- Evaluation
- Educational placement
- FAPE

3. Describe in detail the nature of the disagreement concerning the reason for the due process request. Provide as much information including dates if possible. Provide facts rather than opinions.

4. Provide a proposed resolution to the situation with as much detail as possible.

MISSISSIPPI DEPARTMENT OF EDUCATION • OFFICE OF SPECIAL EDUCATION

REQUEST FOR DUE PROCESS HEARING UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004 AMENDMENTS

I, _____ am requesting a hearing before a State Level Hearing Officer.
Parent's or Public Agency Representative's Name

<table>
<tr><th colspan="3">FAMILY INFORMATION</th></tr>
<tr><td colspan="2">Parent's Name and Address:</td><td>Child's Name and Address (if different):</td></tr>
<tr><td>Parent's Email:</td><td>Parent's Phone:</td><td>School District/Agency:</td></tr>
<tr><th colspan="3">REASON FOR DUE PROCESS REQUEST</th></tr>
<tr><td colspan="2">I disagree with a proposal to initiate or change:
☐ The identification of my child
☐ An evaluation of my child
☐ The educational placement of my child
☐ The provision of a free appropriate public education (FAPE) to my child</td><td>I disagree with a refusal to initiate or change:
☐ The identification of my child
☐ An evaluation of my child
☐ The educational placement of my child
☐ The provision of a free appropriate public education (FAPE) to my child</td></tr>
<tr><th colspan="3">DISAGREEMENT DESCRIPTION</th></tr>
<tr><td colspan="3">Describe the nature of the disagreement indicated above and any important facts about this situation. Use additional sheets of paper if more space is needed:</td></tr>
<tr><th colspan="3">PROPOSED RESOLUTION</th></tr>
<tr><td colspan="3">Describe your proposed resolution of the disagreement.</td></tr>
<tr><td colspan="3">Would you agree to participate in a Mediation process? ☐ Yes ☐ No
NOTE: Checking "yes" will <u>not</u> delay your opportunity to receive a due process hearing.</td></tr>
<tr><th colspan="3">REQUESTER'S INFORMATION</th></tr>
<tr><td colspan="2">Signature:</td><td>Date:</td></tr>
<tr><td colspan="2">*Address and phone number (if not the parent):</td><td>*Position/role (if not the parent):</td></tr>
<tr><td colspan="3">*If another individual representing the parent (e.g., attorney) completes this form on the parent's behalf, this form must be submitted with written authorization for representation signed by the parent.</td></tr>
</table>

Formal State Complaint Form

The Formal State Complaint Form, or a similar form containing all of the same required information, may be used by parents or an individual authorized to represent the parents to make an official complaint when the parent believes a public agency has violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA) or State Policies Regarding Children with Disabilities (State Board Policy 7219) or that the public agency is not implementing a due process hearing decision. Prior to filing a Formal State Complaint, the parent(s) should seek to provide the district personnel opportunities to discuss and resolve any concerns and issues and suggest possible solutions prior to filing a formal state complaint.

1. Fill out the form as completely as possible. Provide factual information with dates if possible. Provide copies of any supporting data or information. If the form is not completed accurately and as completely as possible, the MDE/OSE will notify the complainant in writing that the complaint has been determined to be insufficient and what additional information is needed in order for the complaint to meet the requirements of the regulations.

2. If the Formal State Complaint is filed on behalf of an individual student and the complainant is not the child's parent, a consent or authorization to disclose confidential information that is signed by the parent must be submitted in order for the MDE/OSE to provide the findings and decision to the complainant. The consent or authorization must be signed by the parent and specifically authorize the MDE/OSE to release information about the child to the complainant.

3. Mail or hand-deliver a copy of the completed Formal State Complaint form to the appropriate district personnel. Mail or hand-deliver the original completed complaint form to:

   Parent Consultant
   Mississippi Department of Education
   Office of Special Education
   Post Office Box 771
   Jackson, MS 39205-0771

MISSISSIPPI DEPARTMENT OF EDUCATION • OFFICE OF SPECIAL EDUCATION

FORMAL STATE COMPLAINT
UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004 AMENDMENTS

A complaint process can be used when you believe a district **violated a requirement** of Part B of the Individuals with Disabilities Education Act (IDEA) or State Policies Regarding Children with Disabilities (State Board Policy 7219) or the district is not implementing a due process hearing decision.

Please fill out this form as completely as possible. Use additional paper if more space is needed.

FAMILY INFORMATION		
Parent's Name and Address:		**Child's Name and Address (if different):**
Parent's Email:	**Parent's Phone:**	**School District/Agency:**

COMPLAINT DESCRIPTION

Please provide a detailed summary of the situation including any key dates and important facts about what happened. Use additional sheets of paper if more space is needed. Please provide copies of any documentation that supports the allegation, if possible:

List the regulation(s) you believe the school district or educational agency has violated?

This violation occurred less than one (1) year before the date of this complaint? ☐ Yes ☐ No

If so, do you believe the violation is continuing? ☐ Yes ☐ No

EFFORTS TO RESOLVE COMPLAINT

Have you talked with school/program personnel about this issue? ☐ Yes ☐ No

If so, list the name of the person with whom you spoke: _____

Have you met with school/program personnel about this issue? ☐ Yes ☐ No

If so, list the name of the person with whom you met: _____

When was the meeting held: _____

PROPOSED RESOLUTION

Describe your proposed resolution of the complaint.

REQUESTER'S INFORMATION	
Signature	**Date**
***Address and phone number (*_if not the parent_*)**	***Relationship to child (*_if not the parent_*)**

**If another individual representing the parent (e.g., attorney) completes this form on the parent's behalf, this form must be submitted with written authorization for representation signed by the parent.*

Mail or deliver original to: Parent Consultant, MDE Office of Special Education, P.O Box 771, Suite 301, Jackson, MS 39205

CHAPTER 9:
CONFIDENTIALITY

Public Agency in this document refers to agencies responsible for providing education to children with disabilities including the Mississippi Department of Education (MDE), Local Education Agencies (LEAs), Educational Service Agencies (ESAs), and nonprofit public charter schools not a part of an LEA or ESA.

The Mississippi Department of Education, Office of Special Education, requires each public agency to have policies and procedures in effect to ensure the confidentiality of any personally identifiable information collected, used or maintained relative to preschool, elementary and secondary students as required under IDEA and the Family Education Rights and Privacy Act (FERPA).

Definitions

Personally identifiable means information that contains:

- The name of the child, the child's parent, or other family member(s);
- The address of the child or the child's family:
- A personal identifier, such as the child's social security number or student ID number;
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty;
- Other information that would make the child's identity easily traceable including information recorded in any way, such as computer media, video or audio materials, digital materials or photographs;
- Any indirect identifier such as the child's date of birth, place of birth or mother's maiden name;
- Other information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person in the state agency's community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or
- Information requested by a person who the state agency reasonably believes knows the identity of the child to whom the education record relates.

Education records mean the type of records covered under the definition of "education records" in 34 CFR §99 of the Family Rights and Privacy Act of 1974. Under FERPA, the term means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.

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

Responsibilities of the Agency for Confidentiality of Records

Each participating agency must protect the confidentiality of personally identifiable information at:

- Collection
- Storage
- Disclosure
- Destruction

The agency must appoint one official to assume responsibility for ensuring the confidentiality of personally identifiable information. Responsibilities of this individual would include:

- Maintaining the data in a locked storage facility;
- Determining who has access to the records;
- Maintaining records of all individuals who had access to the records except parents and appropriate agency staff; and
- Securing parental consent prior disclosure of personally identifiable data, unless allowed by law.

All agency personnel collecting or using personally identifiable information must receive training or instruction regarding MDE's policies and procedures for protecting the confidentiality of personally identifiable information.

Access Rights to Personally Identifiable information and Required Procedures

- Each public agency must permit parents to inspect and review any education records relating to their children that are collected, maintained or used by the public agency. The rights of parents regarding education records are transferred to the adult student at age twenty-one (21), taking into consideration the type or severity of the disability.
- The public agency must comply with a request without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP), any due process hearing or

resolution session and in no case more than forty-five (45) days after the request has been made.

- An agency may presume that the parent has authority to inspect and review the records relating to his or her child unless the agency has been advised that parent does not have the authority under applicable State laws governing such matters as guardianship, separation and divorce.
- If any education record includes information on more than one child, the parents have the right to inspect and review only the information relating to their child or to be informed of that specific information.
- Upon request, the public agency must provide the parents with a list of the types and locations of education records collected, maintained or used by the public agency.
- The public agency must respond to reasonable requests for explanations and interpretations of the records.
- The public agency must comply with the parent's request for copies of the records containing the information if failure to provide these copies would effectively prevent the parents from exercising the right to inspect and review the records.
- The parent must provide written authorization to the agency if a representative of the parent inspects and reviews the records.

Notice to Parents

Annually, the public agency must give notice to parents concerning the confidentiality regulations using various methods of communication (e.g., website, brochures, newspapers, etc.). Notices must be available in the native language of the children and/or the families of those served by the public agency.

This notice must include:

- A description of the children for whom personally identifiable information is maintained;
- The types of information sought;
- The methods used to gather the information including sources from whom the information is gathered;
- The uses to be made of the information;
- 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
- A description of all of the rights of parents and children regarding this information, including the rights under IDEA and the Family Educational Rights and Privacy Act (FERPA).

Record of Access and Disclosure of Personally Identifiable Information

Each participating agency must keep a record of parties obtaining access to, or requests for disclosure of, education records collected, maintained or used under Part B of IDEA. Record of access by parents and authorized employees of the participating agency does not need to be maintained. The agency must maintain, for public inspection, a current listing of the names and position of those employees within the agency who may have access to the information. For all other parties who obtain access to education records collected and maintained by the public agency, the public agency must keep a record which includes:

- The name of the party;
- The date access was given; and
- The purpose for which the party is authorized to use the records.

The agency must maintain the record of access with the education records of the student as long as the records are maintained.

Fees for Copies of Records

Each participating agency may charge a fee for copies of records that are made for parents. However, the charge cannot effectively prevent the parents from exercising their right to inspect and review those records. Fees cannot be charged for the time required to search for or retrieve the records.

Consent for Disclosure of Personally Identifiable Information

Consent for the release of personally identifiable data means that the parent has been fully informed in his or her native language or other mode of communication of all information that will be released. The parent must consent in writing to the disclosure. The parent should understand that the granting of consent is voluntary and may be revoked at any time. If the parent revokes consent, this action does not negate any disclosure that occurred prior to the revocation of the consent.

The written consent must include:

- A specification of the records to be disclosed;
- The purpose of the disclosure; and
- Identification of the party or parties to whom the disclosure may be made.

The consent must be signed and dated by the parent. Parental consent must be obtained before personally identifiable information is disclosed. At the parent request, the agency must provide a copy of the records disclosed.

Refusal to Give Consent

In a situation where the public agency is seeking consent for the release of records (e.g., educational, medical, psychological, etc.), but the parent refuses to give consent, the public agency may, but is not required to, initiate mediation or due process procedures (refer to Chapter 8: Dispute Resolution).

Consent is not Required for Disclosure

Consent is not required to disclose personally identifiable information to or for the purpose of:

- Other school officials, including teachers, within the public agency whom the agency has determined to have legitimate educational interests.
- Authorized Federal, State or local representatives in connection with an audit or evaluation of the Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs. The information must be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to above and must be destroyed when no longer needed.
- A financial aid application if the information is necessary for the completion of the application for which the student has applied or which the student has received.
- State and local officials or authorities to whom this information is allowed to be disclosed under State statute concerning the juvenile justice system and the system's ability to effectively serve the student whose records are released.
- Organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate or administer predictive tests; administer student aid programs; or improve instruction. Information may only be disclosed if the study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization and the information is destroyed when no longer needed.
- Accrediting organizations to carry out their accrediting functions.
- A judicial order or a lawfully issued subpoena. The public agency must make a reasonable attempt to notify the child's parents of the judicial order or subpoena before releasing the records. Notice to the parents is not required if the disclosure is in compliance with a Federal grand jury subpoena or any other subpoena issued for law enforcement purposes and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished not be disclosed.

- A public agency designated "directory". Public notice must be given to parents of students in attendance and eligible students in attendance at the agency prior to the disclosure. The notice must specify the types of personally identifiable information that the agency has designated as "directory" information. The parent or eligible student has the right to refuse to let the agency designate any or all of those types of information about the student as directory information. The parent or eligible student must be given a timeline for submitting in writing their refusal to allow any or all of the disclosure.
- The court, without a court order or subpoena, if the public agency has initiated legal action against the parent or student. The information disclosed must be relevant for the agency to proceed with the legal action as plaintiff.
- To the court, without a court order or subpoena, if the parent or eligible student has initiated legal action against the public agency. The information disclosed must be relevant for the agency to defend itself.
- Protecting the health or safety of the child or other individuals in connection with a health or safety emergency.
- The Office for Civil Rights.
- Officials within the Department of Human Services, Department of Corrections, Department of Juvenile Justice and Department of Labor for the purpose of making appropriate educational decisions regarding placements.

Destruction of Personally Identifiable Information

The public agency must inform parent when personally identifiable information collected, maintained or used under this part is no longer needed to provide educational services to the child.

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

The information must be destroyed at the request of the parents. The parents have the right to request a copy of the information at no cost.

However, the agency must keep a permanent record of the student's name, address, telephone number, grades, attendance record, classes attended, grade level completed and year completed.

Amendments of Records at Parent Request

If a parent believes that information in the education records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child, the parent may request the public agency to amend the information. The public agency must decide whether to amend the information in accordance with the request. This decision must be made within a reasonable period of time of receipt of the request. If the public agency decides to refuse to amend the information in accordance with the request, it must inform the parents of the refusal and advise the parent of the right to a hearing. If the public agency agrees to amend the information in accordance with the request, it must notify the parent within a reasonable time period from when the amendment has been completed.

Opportunity for a Hearing

If the parent requests a hearing, the public agency provides an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child. The public agency must hold the hearing within a reasonable time after it has received the request for the hearing from the parent. The parents must be given a notice (within a reasonable amount of time) of the date, time and place of the hearing. Any individual, including an official of the educational agency who does not have direct interest in the outcome of the hearing, may conduct the hearing. The parent must have a full and fair opportunity to present evidence relevant to the issue raised. The parent may, at their own expense, be represented by an attorney(s) licensed to practice law in Mississippi and one or more individuals of their choice. The public agency must make its decision in writing within a reasonable period of time after the hearing. The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Result of the Hearing

If, as a result of the hearing, the public agency determines that evidence presented in the hearing substantiates the parents' charge, the student's record will be amended to correct the error and the parent shall be informed in writing that this amendment has been made.

If, as a result of the hearing, the public agency determines that the records are not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the parent shall be informed of this decision and their right to place in their child's record a statement

commenting on the information or setting forth any reasons for disagreeing with the decision of the hearing. The statement shall be maintained with the contested part of the record for as long as the record is maintained. If the records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

Referral To and Action by Law Enforcement and Judicial Authorities

If the public agency has reported a crime committed by a child with a disability, the agency may forward copies of the special education and disciplinary records of the child for consideration by the appropriate authorities to whom the agency reported the crime. Parental consent will be required when releasing personally identifiable information except in certain limited circumstances. These circumstances would include:

- The public agency initiates legal action against a parent or student. The public agency may disclose to the court the education records of the student that are relevant for the agency to proceed with the legal action as plaintiff.
- A parent initiates legal action against a public agency. The agency may disclose to the court the education records of the student that are relevant for the agency to defend itself.
- The disclosure is in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Appropriate information concerning disciplinary action taken against the student may also be included if the student's conduct posed a significant risk to the safety or well-being of that student, other students or other members of the school community.
- The student is an alleged perpetrator of a crime of violence or non-forcible sex offense.
- The student has committed a violation of the institution's rules or policies.

REGULATORY REFERENCE
§§300.611-300.612; 300.615-300.626

NOTES

MISSISSIPPI DEPARTMENT OF EDUCATION

Ensuring a bright future for every child