

# Part B PROCEDURAL SAFEGUARDS NOTICE

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## New York State Education Department PROCEDURAL SAFEGUARDS NOTICE

July 2017

### Rights for Parents of Children with Disabilities, Ages 3-21

As a parent, you are a vital member of the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) in New York State. The CSE/CPSE is responsible for developing recommendations for special education programs and services for your child. You must be given opportunities to participate in the CSE/CPSE discussion and decision-making process about your child's needs for special education. The following information concerns procedural safeguards that are your legal rights under federal and State laws to be informed about and involved in the special education process and to make sure that your child receives a free appropriate public education (FAPE).

A copy of this procedural safeguards notice must be provided to you one time a year and:

- upon initial referral or your request for an evaluation of your child.
- whenever you request a copy.
- upon receipt of the first due process complaint in a school year requesting mediation or an impartial hearing.
- the first time in a school year when the school district receives a copy of a State complaint that you submitted to the New York State Education Department (NYSED).
- when a decision is made to suspend or remove your child for discipline reasons that would result in a disciplinary change in placement.

The Procedural Safeguards Notice has been adapted from the model form developed by the United States Department of Education (USDOE). Information was added regarding New York State's requirements.



The University of the State of New York  
New York State Education Department  
Office of Special Education

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**GENERAL INFORMATION**

**PRIOR WRITTEN NOTICE (NOTICE OF RECOMMENDATION)**

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3. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

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

## **PARENTAL CONSENT**

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### **34 CFR section 300.300; 8 NYCRR sections 200.5(a) and (b)**

#### **Consent for initial evaluation**

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described under the heading ***Parental Consent***.

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation and your child is school-age, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances and your child can not receive special education services even if he/she would have been eligible.

#### **Special rules for initial evaluation of wards of the State**

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

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

In New York State, ward of the state means a child or youth under the age of twenty-one:

1. who has been placed or remanded pursuant to section 358-a, 384 or 384-a of the Social Services Law, or article 3, 7, or 10 of the Family Court Act, or freed for adoption pursuant to section 383-c, 384, or 384-b of the Social Services Law; or
2. who is in the custody of the Commissioner of Social Services or the Office of Children and Family Services; or

3. who is a destitute child under section 398(1) of the Social Services Law.

### Parental consent for services

Your school district must obtain your informed consent before providing special education and related services to your child for the first time. The school district must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, your school district may not use due process procedures (i.e., mediation, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's CSE or CPSE) may be provided to your child without your consent.

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

1. is not in violation of the requirement to make FAPE available to your child for its failure to provide those services to your child; **and**
2. is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

### Revocation of parental consent

If you inform the school district in writing that you revoke (take back) your consent for your school district to provide special education and related services to your child, your school district:

1. may not continue to provide special education and related services to your child;
2. may not use due process procedures (i.e., mediation, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the services may be provided to your child;
3. is not in violation of the requirement to make FAPE available to your child for its failure to provide further special education and related services to your child;
4. is not required to have an IEP meeting or develop an IEP for your child for the further provision of special education and related services; **and**
5. is not required to amend your child's education records to remove any reference to your child's receipt of special education and related services because of the revocation of consent.



**Parental consent for reevaluations**

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

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

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

**Documentation of reasonable efforts to obtain parental consent**

Your school district may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

You are entitled to only one IEE of your child at public expense each time your school district conducts an evaluation of your child with which you disagree.

**Parent-initiated evaluations**

If you obtain an IEE of your child at public expense or you choose to share with the school district an evaluation of your child that you obtained at private expense:

1. Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for IEE, in any decision made with respect to the provisory <<8310.002

**Part B**

3. a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. a description of all of the rights of parents and children regarding this information, including the rights under FERPA and its implementing regulations in 34 CFR Part 99.

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

## **ACCESS RIGHTS**

### **34 CFR section 300.613; 8 NYCRR sections 200.2(b)(6) and 200.5(d)(6)**

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

Your right to inspect and review education records includes:

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

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

## **RECORD OF ACCESS**

### **34 CFR section 300.614**

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

## **RECORDS ON MORE THAN ONE CHILD**

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### **34 CFR section 300.615**

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

## **LIST OF TYPES AND LOCATIONS OF INFORMATION**

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### **34 CFR section 300.616**

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

## **FEES**

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### **34 CFR section 300.617**

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

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

## **AMENDMENT OF RECORDS AT PARENT'S REQUEST**

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### **34 CFR section 300.618**

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

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

If the participating agency refuses to change the information 0.9(ar 0 9 Tw 12.96 -0 0 12o(ai)6(  
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## **HEARING PROCEDURES**

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### **34 CFR section 300.621**

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

## **RESULT OF HEARING**

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### **34 CFR section 300.620**

If, as





## STATE COMPLAINT PROCEDURES

### DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES

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The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, NYSED, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. NYSED staff generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended. An impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days for school-age students and 30 calendar days for preschool students after the end of the resolution period, (as described in this document under the heading Resolution Process) unless the hearing officer grants a specific extension of the timeline. Such an extension would be at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below.

### ADOPTION OF STATE COMPLAINT PROCEDURES

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#### 34 CFR section 300.151; 8 NYCRR section 200.5(l)

##### General

NYSED must have written procedures for:

1. resolving any complaint, including a complaint filed by an organization or individual from another State;
2. the filing of a complaint with NYSED. State complaints may be sent to:  
Statewide Coordinator for Special Education  
New York State Education Department  
Office of Special Education  
89 Washington Avenue, Room 309 EB  
Albany, NY 12234
3. widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

##### Remedies for denial of appropriate services

In resolving a State complaint in which NYSED has found a failure to provide appropriate services, NYSED must address:

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

## **MINIMUM STATE COMPLAINT PROCEDURES**



## DUE PROCESS COMPLAINT PROCEDURES

### FILING A DUE PROCESS COMPLAINT

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**34 CFR section 300.507; 8 NYCRR section 200.5(i) and section 200.5(j)**

#### General

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of FAPE to your child.

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

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

1. the school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. the school district withheld information from you that it was required to provide you under Part B of IDEA.

#### Information for parents

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3. is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

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

1. who is under contract with the Community Dispute Resolution Center (CDRC); **and**
2. who would explain the benefits and encourage the use of the mediation process to you.

New York State uses qualified mediators trained by CDRC who know the laws and regulations relating to the provision of special education and related services. Mediators are selected by CDRCs on a random, rotational, or other impartial basis.

### **Arranging mediation**

Mediation is arranged through the school district with CDRCs. The State is responsible for the cost of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

### **Mediation agreements**

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

**THE CHILD’S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING (PENDENCY)**

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**34 CFR section 300.518; 8 NYCRR section 200.5(m)**

Except as provided below under the heading *PROCEDURES WHEN DISCIPLINING*



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hearing timeline for school-age students (or the 30-calendar-day due process hearing timeline for preschool) begin.

### **Adjustments to the 30-calendar-day resolution period**

If you and the school district agree in writing to waive the resolution meeting, then the 45 calendar day for school-age (or 30 calendar day for preschool) timeline for the due process hearing starts the next calendar day.

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

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

### **Written agreement**

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

1. signed by you and a representative of the school district who has the authority to bind the school district; **and**
2. enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.

### **Agreement review period**

If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within three business days of the time that both you and the school district signed the agreement.



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**Additional procedures**

In any civil action, the court:

1. receives the records of the administrative proceedings;
2. hears additional evidence at your request or at the school district's request; **and**
3. bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

**Jurisdiction of district courts**

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

**Rule of construction**

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other federal laws protecting the rights of children with disabilities. However, before filing a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed(S\*7n0( p) T\* [ a



**Award of fees**



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

**Additional authority**

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see **Manifestation determination**, below) and the child's primary change

the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

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

### **Manifestation determination**

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

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

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

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

### **Determination that behavior was a manifestation of the child's disability**

If the school district, the parent, and relevant members of the CSE or CPSE determine that the conduct was a manifestation of the child's disability, the CSE or CPSE must either:

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

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



- b. the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- c. of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitute



2. the parent requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or
3. the child's teacher, or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or to other supervisory personnel of the school district.

### Exception

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

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

### Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, a school district does not have knowledge that a child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** and ***Exception***, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

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

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

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



## REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

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### 34 CFR section 300.535

Part B of IDEA does not:

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

### Transmittal of records

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

1. must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. may transmit copies of the child's special education and disciplinary records only to the extent permitted by FERPA.



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**REQUIREMENTS FOR UNILATERAL P**

However, the cost of reimbursement:

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

## **RESOURCES**

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**USDOE - IDEA Site** - (includes Part 300 of the Code of Federal Regulations)  
<http://idea.ed.gov/>

**New York State Education Department** - <http://www.nysed.gov/home.html>

**Office of Special Education** -

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